

CALL-OFF TERMS THE SUPPLY OF GOOD AND SERVICES HIV AND SYPHILIS TESTING

Where an Order Form is issued by the Authority that refers to the Framework Agreement, the Contract is made between the Authority and the Supplier on the date of that Order Form. The Contract is subject to the terms set out in the schedules of these Call-off Terms and Conditions listed below ("**Schedules**").

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract. For the avoidance of doubt, the Contract consists of the terms set out in the Order Form and the Schedules, together with the annexes as stated.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Goods and/or Services on the terms of the Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Goods and/or Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods or Services covered by a valid Order Form.

The Definitions in Schedule 3 of these Call-off Terms and Conditions apply to the use of all capitalised terms in the Contract.

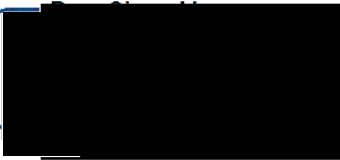
ORDER FORM

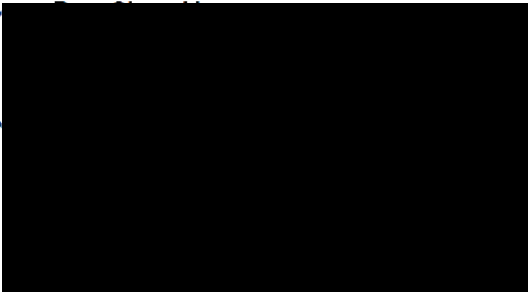
1. Contract Reference	C127733
2. Date	1st February 2023
3. Authority	The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1 0EU acting as part of the Crown
4. Supplier	SH:24 C.I.C. , which is a company registered in England and Wales under company number 08737119, and whose registered office is at 35a Westminster Bridge Road, London, England SE1 7JB
5. The Contract	<p>The Supplier shall supply the Services described below on the terms set out in this Order Form and the Schedules and any Annexes.</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3 (Definition and Interpretation).</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <p>Please do not attach any contractor terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</p>
6. Services to be supplied	Provision of self-sampling and/or self-testing services as set out in the Framework Specification (Schedule 5) and replicated in here in Schedule 4 (Specifications)

7. Goods to be supplied	<p>Goods to be Supplied: HIV and Syphilis self-testing and/or self-sampling devices as specified in the Specifications (Schedule 5) and replicated in here in Schedule 4 (Specifications) during National Campaigns. Dates for national campaigns will be advised by the Authority representative at least 2 months in advance as the started date of the campaign.</p> <p>Delivered to service users.</p>																		
8. Term	<p>The Term shall commence on 01/02/2023</p> <p>And the Expiry Date shall be 31/12/2024 unless it is otherwise extended or terminated in accordance with the terms and conditions of the contract.</p> <p>The Authority may extend the Contract for a period of up to 24 months by giving not less than three 1 months’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period. The duration of this Contract shall be no longer than 31/12/2026 years in total.</p>																		
9. Charges	<p>The Charges for provision of the Services shall be in accordance with prices as set out in <u>Schedule 8 Commercial (Pricing)</u>.</p> <p>The available maximum contract value is £1,500,000. Funding for each year national campaign(s) will be confirmed to the supplier in advance of the campaign preparation via a change control process as set out in the Optional Key Provisions 20. The table below shows the estimated and confirmed monies for each financial year available at the time of contract signature:</p> <table><tr><th>Financial year</th><th>Estimated cost (£) (excl. VAT)</th><th>Confirmed costs (£) (excl. VAT)</th></tr><tr><td>2022/23</td><td>300,000.00</td><td>300,000.00</td></tr><tr><td>2023/24</td><td>400,000.00</td><td></td></tr><tr><td>2024/25</td><td>400,000.00</td><td></td></tr><tr><td>2025/26</td><td>400,000.00</td><td></td></tr><tr><td>Total</td><td>1,500,000.00</td><td>300,000.00</td></tr></table>	Financial year	Estimated cost (£) (excl. VAT)	Confirmed costs (£) (excl. VAT)	2022/23	300,000.00	300,000.00	2023/24	400,000.00		2024/25	400,000.00		2025/26	400,000.00		Total	1,500,000.00	300,000.00
Financial year	Estimated cost (£) (excl. VAT)	Confirmed costs (£) (excl. VAT)																	
2022/23	300,000.00	300,000.00																	
2023/24	400,000.00																		
2024/25	400,000.00																		
2025/26	400,000.00																		
Total	1,500,000.00	300,000.00																	
10. Payment	<p>All invoices must be sent quoting a valid Purchase Order number to: mb-paymentqueries@dhsc.gov.uk</p> <p>Within 15 Working Days of receipt of your countersigned copy of the Contract, we will send you a unique Purchase Order number (the “PO Number”). You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>All invoices must be sent quoting a valid PO Number. Every payment request must be accompanied by a current statement of</p>																		

	<p>accounts; this is a standard commercial process and should show all invoices raised and amounts outstanding. Copy invoices requiring payment must be sent with all statement of accounts with supporting documents. The minimum supporting documents required are an invoice and packing list.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Authority Representative). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment, please contact our Accounts Payable section by email to:</p> <p>accountspayable@dhsc.gov.uk</p>		
<p>11. Authority Representative(s)</p>	<p>For general liaison your contact will be:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>or, in their absence,</p> <p>[REDACTED]</p>		
<p>12. Supplier Representative(s)</p>	<p>[REDACTED]</p> <p>In her absence,</p> <p>[REDACTED]</p>		
<p>13. Address for notices</p>	<table border="1"> <tr> <td data-bbox="600 1798 1038 2047"> <p>Authority:</p> <p>[REDACTED]</p> </td><td data-bbox="1038 1798 1481 2047"> <p>Supplier:</p> <p>[REDACTED]</p> <p>In her absence,</p> </td></tr> </table>	<p>Authority:</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p> <p>In her absence,</p>
<p>Authority:</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p> <p>In her absence,</p>		

16. Policies and Procedures	<p>The Supplier shall perform the Services in accordance with the following Authority and cross-government policies and procedures:</p> <p>DHSC Data Protection Policy;</p> <p>Data Breach Notification Policy;</p> <p>DHSC Fraud, Bribery and Corruption Policy and Response Plan;</p> <p>Transparency in Supply Chains;</p> <p>Cyber Essentials Scheme;</p>
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Signed by the authorised representative of THE AUTHORITY	
<div></div> <div><div><div></div></div><div><div></div></div></div> <div><div></div><div></div></div> <div>Date Signed: 06/02/2023</div>	

Signed by the authorised representative of THE SUPPLIER	
<div></div> <div>Date Signed: 3/2/23</div>	

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1. SCHEDULE 1 KEY PROVISIONS

2. Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 2 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 3 to 25 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

2 Order of precedence

- 2.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
 - 2.1.1 Order Form;
 - 2.1.2 Schedule 1: Key Provisions;
 - 2.1.3 Schedule 2: General Terms and Conditions;
 - 2.1.4 Schedule 3: Definitions and Interpretations;
 - 2.1.5 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.
- 2.2 For the avoidance of doubt, the Order Form shall include, without limitation, 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 as included in these Terms and Conditions. Should there be a conflict between these parts of the Order Form, 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.

3. Optional Key Provisions

3 Quality assurance standards ☒

(only applicable to the Contract if this box is checked and the standards are listed)

- 3.1 The following quality assurance standards shall apply, as appropriate, to the provision of the Goods and Services:

UKAS accreditation to ISO/IEC 17025 or ISO/IEC 15189

4 **Purchase Orders** ☒

(only applicable to the Contract if this box is checked)

- 4.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods and Services 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 and shall ensure that the any Purchase Order is clearly noted on each delivery. 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 and Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods and Services covered by a valid Purchase Order.

5 **Implementation Phase** ☐

(only applicable to the Contract if this box is checked)

- 5.1 In this Clause, the following definitions shall apply:
- 5.1.1 **"Delay"**: a delay in the successful achievement of a Milestone.
 - 5.1.2 **"Detailed Implementation Plan"**: the detailed plan for the implementation of the Services that is developed in accordance with Clause 5 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, as amended from time to time in accordance with the Change Control Process.
 - 5.1.3 **"Implementation Plan"**: the Outline Implementation Plan unless and until it is superseded by the Detailed Implementation Plan.
 - 5.1.4 **"Key Milestone"**: any Milestone which is identified as "key" in the Implementation Plan or by operation of the Change Control Process.
 - 5.1.5 **"Key Milestone Date"**: the date for completion of any Key Milestone as set out in the Implementation Plan.
 - 5.1.6 **"Milestone"**: an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
 - 5.1.7 **"Milestone Date"**: the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed.
 - 5.1.8 **"Outline Implementation Plan"**: the outline plan set out in Schedule 7 – Project plan for the implementation of the Services.

Development of the Detailed Implementation Plan

- 5.2 Prior to commencement of delivery of the Services, there is an implementation phase and therefore all references in Clause 5.7 of Schedule 2 (General Terms and Conditions) (General Terms and Conditions) of these Call-off Terms and Conditions

to the Implementation Plan shall apply. The Detailed Implementation Plan shall be agreed as follows:

- 5.2.1 the Supplier shall prepare and deliver to the Authority for the Authority's approval a draft of the Detailed Implementation Plan within [thirty (30)] Working Days of the Commencement Date;
- 5.2.2 the Supplier shall not be entitled to propose any variation to the Key Milestone Dates set out in the Outline Implementation Plan;
- 5.2.3 the Authority shall review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable;
- 5.2.4 following such review and consultation, the Authority shall formally approve or reject the draft Detailed Implementation Plan no later than [twenty (20)] Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority. If the Authority rejects the draft Detailed Implementation Plan, the provision of Clause 5.3 (Rejection of Detailed Implementation Plan) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall apply; and
- 5.2.5 once the draft Detailed Implementation Plan is approved, it shall replace the Outline Implementation Plan.

Rejection of Detailed Implementation Plan

- 5.3 The following shall apply if the Authority rejects the draft Detailed Implementation Plan:
 - 5.3.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 5.3.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within [20] Working Days of the date of the Authority's notice of rejection.

The provisions of Clause 5.2 (Development of the Implementation Plan) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and this Clause 5.3 (Rejection of Detailed Implementation Plan) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution in accordance with Clause 21 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) (General Terms and Conditions) of these Call-off Terms and Conditions at any time.

Implementation

- 5.4 The Supplier shall perform each of the tasks identified in the Implementation Plan by the applicable Milestone Date assigned to the particular task in the Implementation Plan.
- 5.5 If the Supplier is relying on a dependency to be performed by the Authority in order to achieve a Milestone or Key Milestone, the Supplier shall ensure that any such dependency is:

- 5.5.1 incorporated into the Implementation Plan; and
- 5.5.2 notified to the Authority at least ten (10) days prior to the date when the Supplier requires the dependency to be performed and completed by the Authority.
- 5.6 In the event that the Supplier fails to comply with Clause 5.5 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions above, any non-performance of a dependency by the Authority shall not be treated as a breach or default by the Authority and the Authority shall use reasonable endeavours to complete such dependency as soon as reasonably practicable.
- 5.7 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Authority of the fact of the Delay, the reasons for the Delay, the consequences of the Delay for the rest of the Implementation Plan and how the Supplier proposes to mitigate the Delay.
- 5.8 Subject to Clause 5.9.2 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, the Parties acknowledge that the Contract Price shall not be increased as a result of a Delay.
- 5.9 The Parties acknowledge that:
- 5.9.1 where a Delay is caused by a breach or default of the Supplier, the Authority shall be entitled to claim any direct loss and/or expense that cannot be mitigated that it incurs as a result of the breach or default of the Supplier; and
- 5.9.2 where a Delay is caused by a breach or default of the Authority (and for the purposes of this Clause 5.9.2, a Delay caused by a failure of the Authority to perform a dependency specified in the Implementation Plan shall only be treated as a breach or default of the Authority in accordance with the provisions of Clauses 5.5 and 5.6 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions) and the Supplier has demonstrated to the Authority's satisfaction that it has incurred a direct loss and/or expense as a result of the breach or default of the Authority, in which circumstance the Supplier shall be entitled to compensation to the extent that it cannot mitigate that loss or expense.
- 5.10 Any disputes about or arising out of Delays shall be resolved through the dispute resolution procedure set out in Clause 21 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) (General Terms and Conditions) of these Call-off Terms and Conditions. Pending the resolution of the dispute, the Parties shall continue to work together to resolve the causes of, and mitigate the effects of, the Delay.

6 Time of the essence ☐

(only applicable to the Contract if this box is checked)

- 6.1 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 18.2.1(i) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

7 Specific time periods for inspection of Goods ☐ (only applicable to the

Contract if this box is checked and Clause 7.1 of this Schedule 1 (Key Provisions) is completed)

- 7.1 The Authority shall visually inspect the Goods within [insert time period during which any inspection must be carried out] of the date of delivery of the relevant Goods.

8 Specific time periods for rights and remedies under Clause 4.6 of Schedule 2 (General Terms and Conditions) ☐

(only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 (Key Provisions) is completed)

- 8.1 The Authority's rights and remedies under Clause 4.6 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall cease [insert period – e.g. 12 months] from the date of delivery of the relevant Goods.

9 Termination for convenience ☒

(only applicable to the Contract if this box is checked and Clause 9.1 of this Schedule 1 (Key Provisions) is completed)

- 9.1 The Authority may terminate this Contract or cancel any order or part order of the Goods and Services which has not been delivered as specified in the Contract by issuing a Termination Notice to the Supplier at any time on one (3) month's written notice. Such notice shall not be served within [six (6) months] of the Commencement Date.

- 9.2 Subject to Clauses 15 (Limitation of Liability) and 16 (Insurance) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, should the Authority terminate this Contract in accordance with this Clause 9 (Termination for Convenience) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, then the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Authority shall only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under this Clause 9 (Termination for Convenience) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

- 9.3 The Authority shall not be liable under this Clause 9 (Termination for Convenience) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions to pay any sum which:

9.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

9.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Term; or

9.3.3 is a claim by the Supplier for loss of profit, due to early termination of the Contract.

10 Consigned Goods ☐

(only applicable to the Contract if this box is checked)

- 10.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause 2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.
- 10.2 For the avoidance of doubt, Clause 4 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 10.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 10.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
- 10.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
 - 10.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
 - 10.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
 - 10.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 10.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each [week/month/quarter/other agreed period] detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.
- 10.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).
- 10.7 Each [week/month/quarter/other agreed period] the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall

be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:

10.7.1 the Contract Price of the Minimum Quantity in the relevant period; and

10.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.

- 10.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Working Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 10.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Working Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Working Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Working Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 10.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Working Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within [insert period] of their delivery to the Authority and/or which have a remaining shelf life of less than [insert period].
- 10.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 10.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 10.8 and 10.9 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall survive the expiry or earlier termination of this Contract for these purposes.

11 **Electronic product information** ☐

(only applicable to the Contract if this box is checked)

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 If requested in writing by the Authority, and to the extent not already agreed as part of writing, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

12 Different Levels and/or Types of Insurance ☒**(only applicable to the Contract if this box is checked)**

- 12.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
Employer's Liability	£5,000,000
Public Liability	£10,000,000
Product Liability	£5,000,000
Professional Indemnity	£2,000,000

13 Guarantee ☐**(only applicable to the Contract if this box is checked)**

- 13.1 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 Key Provision, if applicable, shall be an irremediable breach of this Contract.

14 Measures to promote tax compliance ☐

(only applicable to the contract if this box is checked)

- 14.1 The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 10 (Warranties) and Clause 17 (Termination) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions together with the associated definitions in Schedule 3 (Definitions and Interpretation) of these Call-off Terms and Conditions, shall apply.

15 Supply Chain Visibility ☒

(only applicable to the Contract if this box is checked)

Visibility of Sub- Contract Opportunities in the Supply Chain

- 15.1 The Supplier shall:

15.1.1 subject to Clause 15.3 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and Services above a minimum threshold of £25,000 that arise during the Term;

15.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contract Finder with details of the successful Sub-contractor;

15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

15.1.4 provide reports on the information at Clause 15.1.3 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions to the Authority in the format and frequency as reasonably specified by the Authority; and

15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

- 15.2 Each advert referred to at Clause 15.1.1 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

- 15.3 The obligation on the Supplier set out at Clause 15.1 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall only apply in respect of Sub-contract opportunities arising after the Commencement Date.

- 15.4 Notwithstanding Clause 15.1, the Authority may by giving its prior Approval, agree that a Sub-contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

Visibility of Supply Chain Spend

- 15.5 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Authority which shall include:

15.5.1 the total contract revenue received directly on the Contract;

15.5.2 the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and

15.5.3 the total value of sub-contracted revenues to SMEs and VCSEs.

- 15.6 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Authority from time to time. The Supplier agrees that it shall provide the information detailed at Clause 15.5 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and acknowledges that the required information may be changed from time to time (including the data required and/or format) by the Authority. The Authority agrees to give at least thirty (30) days’ notice in writing of any such change.

- 15.7 The Supplier further agrees and acknowledges that it may not make any amendment to any required Supply Chain Information Report template without the prior Approval of the Authority.

- 15.8 Without prejudice to Clause 27 (Assignment, novation and sub-contracting) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the Supplier shall:

15.8.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

- (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
- (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and

15.8.2 include within the management information produced by it pursuant Clause 8 (Contract Management and Monitoring) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions a summary of its compliance with this Clause 15.8, such data to be certified every six (6) months by a director of the Supplier as being accurate and not misleading.

- 15.9 If the Supplier fails to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days in either of the previous two six month periods, the Supplier shall provide to the Authority within fifteen (15) Working Days of submission of the management information required by Clause 15.8.1(i) of this Schedule 1 (Key Provisions) of these

Call-off Terms and Conditions an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:

- 15.9.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - 15.9.2 actions to address each of the causes set out in Clause 15.9.1 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions; and
 - 15.9.3 mechanism for and commitment to regular reporting on progress to the Supplier’s board of directors.
- 15.10 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within ten (10) Working Days of the date on which the Action Plan is provided to the Authority.
- 15.11 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.12 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Tender (to the extent it is not already included).

16 Tackling Modern Slavery ☐

(only applicable to the Contract if this box is checked)

- 16.1 The Supplier shall, and procure that each of its Sub-contractors shall, comply with the Authority’s anti-slavery policy as provided to the Supplier from time to time (“**Authority’s Anti-slavery Policy**”).
- 16.2 The Supplier shall:
- 16.2.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
 - 16.2.2 respond promptly to all slavery and trafficking due diligence questionnaires or any modern slavery risk assessment or identification tools issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 16.2.3 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority regarding the Contract;
 - 16.2.4 permit the Authority and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 16 (Tackling Modern Slavery) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, to have access to and take copies of the Supplier’s records and any other information

and to meet with the Supplier Personnel to audit the Supplier's compliance with its obligations this Clause;

16.2.5 implement annual audits of its compliance and its Sub-contractors' and contractor's compliance with the Authority's Anti-slavery Policy, either directly or through a third party auditor. The first set of audits shall be completed by [DATE]; and

16.2.6 implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015 and the Authority's Anti-slavery policy.

17 **Carbon Footprint / Net Zero Obligations** ☐

(only applicable to the Contract if this box is checked)

17.1 In this Clause, the following definitions shall apply:

17.1.1 **"Carbon Footprint"** means the amount of carbon dioxide equivalent emissions that will be released into the atmosphere as a result of the supply of the Services determined in accordance with international carbon reporting practice, being the accepted practice from time to time in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change.

17.1.2 **"Carbon Reduction Plan"** means the template at the Annex A or otherwise agreed by the Authority.

17.1.3 **"Carbon Reporting"** means reporting of an organisation's greenhouse gas emissions and extraction to a standard not less than that required by the UK government's Streamlined Energy and Carbon Reporting (SECR).

17.1.4 **"Greenhouse Gases"** means gases that contribute to or accelerate the greenhouse effect by absorbing infrared radiation, including but not limited to: carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons and chlorofluorocarbons;

17.2 [The Parties acknowledge that the UK Government has committed to bring all greenhouse gas emissions to net zero by 2050 pursuant to the Climate Change Act 2008 (2050 Amendment) Order 2019.

17.3 As a condition of this Contract the Supplier warrants that:

17.3.1 it has undertaken an assessment of the Carbon Footprint; and

17.3.2 so far as it is aware, the Carbon Footprint projected to be incurred as set out in [Schedule/Annex] is true and accurate as at the date of this Contract.

17.4 The Supplier undertakes:

17.4.1 to develop and implement a plan of continuous improvement with the objective of reducing the Carbon Footprint throughout the Term by [set reduction target] [per Contract Year] and shall provide a copy of that plan to the Authority on request;

17.4.2 to re-assess the Carbon Footprint every [one][three] Contract Years; and

- 17.4.3 to provide the Authority with a written confirmation of the results of each assessment within one month of the completion of each assessment under Clause 17.4.2 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.
- 17.5 The Supplier shall at the Authority's request arrange for the Carbon Trust to undertake an independent assessment and verification of the Carbon Footprint and make a copy of the results of that assessment and verification available to the Purchaser as soon as reasonably practicable after receipt (but no more than once in any period of [two] Contract Years).]
- 17.6 [The Supplier acknowledges and understands the Authority's Net Zero Target. Accordingly, the Supplier shall:
- 17.6.1 set its own Net Zero target (the "**Supplier NZ Target**") with a target achievement date the same as or earlier than the Net Zero Target Date (the "**Supplier NZ Date**");
 - 17.6.2 agree the Contract Target with the Authority;
 - 17.6.3 achieve the Contract Target;
 - 17.6.4 ensure that this Clause 17 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions will be copied into any and all of its supply chain contracts that relate to its obligations under this Contract;
 - 17.6.5 introduce emission reduction technologies, processes and policies as well as offsetting and, where technologically and commercially feasible, carbon removal initiatives, to achieve the Supplier NZ Date;
 - 17.6.6 undertake and keep up to date full and complete records of Carbon Reporting activity and data and provide the same to the Authority each year and more frequently as the Authority may reasonably request;
 - 17.6.7 attend, on reasonable notice, meetings with the Authority Representative or other nominated representative to present the Supplier's plan to achieve, and current progress towards, the Supplier NZ Date;
 - 17.6.8 not do or omit to do anything which could reasonably be expected to cause the Authority to miss its Net Zero Target Date, whether pursuant to this contract or otherwise.
- 17.7 If:
- 17.7.1 the Supplier fails to comply with any of the obligations in Clause 17.6 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions; or
 - 17.7.2 the Authority, having reviewed the Carbon Reporting and discussed with the Supplier its progress to achieve the Supplier NZ Date, determines (acting reasonably) that the Supplier is making insufficient progress towards achieving the Supplier NZ Date; or
 - 17.7.3 the Supplier fails to achieve the Supplier NZ Target by the Supplier NZ Date, the Authority may, without affecting any other right or remedy available to it:

- (i) terminate this Contract by giving one month's written notice to the Supplier;
- (ii) require the Supplier to plant a number of Native Trees in the UK sufficient to compensate for the Authority's shortfall in progress towards the Supplier NZ Date attributable to the production of the Goods and the delivery of the Services; and/or
- (iii) recover from the Supplier any costs reasonably incurred by the Authority in achieving the Contract Target to the extent by which that Contract Target is missed by the Supplier by:
 - (A) obtaining carbon credits to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the provision of the Goods and the delivery of the Services; or
 - (B) planting, or arranging for the planting of, Native Trees to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the production of the Goods and the delivery of the Services.

17.8 The Supplier shall, at its own cost, submit a report to the Authority within 20 Working Days identifying the emergence of new and evolving relevant technologies and processes which could accelerate the achievement of the Supplier NZ Date. Such report shall provide sufficient detail to enable the Authority to evaluate properly the benefits of the new technology or process. The Authority may only require the Supplier to provide such report no more than once in any period of **[two]** Contract Years.

17.9 The Supplier warrants to Authority that:

17.9.1 it has sufficient resources, infrastructure and materials to achieve the Contract Target by the date of the expiry of the contract;

17.9.2 none of the Goods and Services supplied under this Contract will be of lower quality as a result of working towards the Contract Target;

17.9.3 it will not offer preferential terms to those other customers who do not require a Contract Target or similar obligations in their contracts.

17.10 For the purposes of this Clause 17 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, the term Net Zero Target Date shall mean the first year by which the Authority aims to achieve the Net Zero Target, being 1 January **[2050]**.

ANNEX A – CARBON REDUCTION PLAN

Supplier name:

Publication date:

Commitment to achieving Net Zero

[Supplier name] is committed to achieving Net Zero emissions by 20XX.

Baseline Emissions Footprint

Baseline emissions are a record of the greenhouse gases that have been produced in the past and were produced prior to the introduction of any strategies to reduce emissions. Baseline emissions are the reference point against which emissions reduction can be measured.

[Instructions to Suppliers: Please provide details of your organisation's baseline emissions below. If your organisation has not previously assessed or reported emissions, please detail this below and use your first reporting period as your Baseline.]

Baseline Year: [20xx]	
Additional Details relating to the Baseline Emissions calculations.	
[Instructions to Suppliers: Add commentary regarding your Baseline Emissions as required: e.g. historic baseline which deviates from the requirements under this measure (e.g. no prior Scope 3 emissions reporting), where there is no previous reporting and the creation of a new baseline due to substantial organisational change or restructuring]	
Baseline year emissions:	
EMISSIONS	TOTAL (tCO ₂ e)
Scope 1	
Scope 2	
Scope 3 (Included Sources)	
Total Emissions	

Current Emissions Reporting

Reporting Year: [20xx]	
EMISSIONS	TOTAL (tCO ₂ e)
Scope 1	
Scope 2	
Scope 3 (Include Sources)	
Total Emissions	

Emissions reduction targets

[Instructions to Suppliers: If existing emissions reduction targets are in place for your organisation, please provide details below. If you have no previous emissions reduction commitment, or if this is your organisation's first carbon footprint, please provide targets for your organisation]

In order to continue our progress to achieving Net Zero, we have adopted the following carbon reduction targets. We project that carbon emissions will decrease over the next five years to XX tCO₂e by 20XX. This is a reduction of XX%.

Carbon Reduction Projects

Completed Carbon Reduction Initiatives

The following environmental management measures and projects have been completed or implemented since the 20XX baseline. The carbon emission reduction achieved by these schemes equate to XX tCO₂e, a XX%ge reduction against the 20XX baseline and the measures will be in effect when performing the contract

[Instructions to Suppliers: Briefly provide details of some of your completed carbon reduction projects. This is for information only. This may include environmental management measures such as certification schemes like ISO14001 or PAS 2060, signing up to SBTi or specific measures you have taken such as; the adoption of LED/PIR lighting controls, changes to policy resulting in a reduction in company travel and flights or the electrification of the company fleet.]

In the future we hope to implement further measures such as:

[Instructions to Suppliers: Briefly provide details of some of any likely/proposed future carbon reduction projects. This is for information only.]

Declaration and Sign Off

This Carbon Reduction Plan has been completed in accordance with PPN 06/21 and associated guidance and reporting standard for Carbon Reduction Plans.

Emissions have been reported and recorded in accordance with the published reporting standard for Carbon Reduction Plans and the GHG Reporting Protocol corporate standard and uses the appropriate Government emission conversion factors for greenhouse gas company reporting .

Scope 1 and Scope 2 emissions have been reported in accordance with SECR requirements, and the required subset of Scope 3 emissions have been reported in accordance with the published reporting standard for Carbon Reduction Plans and the Corporate Value Chain (Scope 3) Standard.

This Carbon Reduction Plan has been reviewed and signed off by the board of directors (or equivalent management body).

Signed on behalf of the Supplier:

.....

Date:

18 Corporate Social Responsibility and Social Value Reporting ☒

(only applicable to the Contract if this box is checked)

Corporate Social Responsibility and Social Value Reporting

- 18.1 The Supplier shall complete the Corporate Social Responsibility Report in relation its provision of the Goods and Services under this Contract and provide the Corporate Social Responsibility Report to the Authority on the date and frequency

outlined in Clause 18.2 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

Reporting Requirements

- 18.2 The Supplier shall provide to the Authority the following corporate social responsibility and social value reporting requirements (the “**Corporate Social Responsibility Report**”) at the specified intervals. The Supplier acknowledges that the Authority may make reasonable adjustments to the Corporate Social Responsibility Report reporting requirements during the Term.

To be reported at framework level under Schedule 1-Standard Key Provision; Social Value Commitments

19 Price adjustment on extension of the Term ☐

(only applicable to the Contract if this box is checked)

- 19.1 The Contract Price shall apply for the Term. In the event that the Authority agrees to extend the Term pursuant to Clause 7 (Term) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions the Authority shall, in the six (6) Month period prior to the expiry of the Term or, as the case may be, in such other period as may be appropriate, enter into discussion, in good faith, with the Supplier (for a period of not more than thirty (30) Working Days) to agree a variation to the Contract Price.
- 19.2 If the Parties are unable to agree a variation to the Contract Price in accordance with Clause 19.1 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, the Contract shall terminate at the end of the Term.
- 19.3 If a variation to the Contract Price is agreed between the Authority and the Supplier, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- 19.4 Any increase in the Contract Price pursuant to Clause 19.1 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index or another such index as may be specified in Schedule 8 (Pricing) of these Call-off Terms and Conditions.

20 Inclusion of a Change Control Process ☒

(only applicable to the Contract if this box is checked)

- 20.1 In this Clause, the following definition shall apply:
- 20.1.1 “**Variation Form**” means the form set out in Schedule 10 (Variation Form) of these Call-off Terms and Conditions;
- 20.2 Any changes to this Contract, including to the Goods and/or Services, may only be agreed in accordance with the Change Control Process set out in this Clause 20 (Inclusion of a Change Control Process) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

- 20.3 Either Party may request a variation to the Contract provided that such variation does not amount to a substantial modification of the Contract within the meaning of the Public Contracts Regulations 2015 (as amended) and the Law.
- 20.4 A Party may request a variation by completing a draft Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed variation and any additional cost that may be incurred.
- 20.5 The Supplier must provide an Impact Assessment of the proposed variation on the Services either:
- 20.5.1 with the Variation Form, where the Supplier requests the variation; or
- 20.5.2 within ten (10) Working Days following receipt of a draft Variation Form requested by the Authority, or such other time agreed by the Parties.
- 20.6 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 20.7 In the event that the variation to the Contract cannot be agreed or resolved by the Parties, the Authority can either:
- 20.7.1 agree that the Contract continues without the variation;
- 20.7.2 terminate the Contract with immediate effect, unless the Supplier has already provide part or all of the Services, or where the Supplier can show evidence of substantial work being carried out to provide the Services; or
- 20.7.3 refer the matter to be resolved in accordance with the dispute resolution procedure in accordance with Clause 21 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 20.8 If the Parties agree the variation, the Supplier shall implement such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.
- 20.9 Within ten (10) Working Days of the Parties agreeing the variation the Supplier shall deliver to the Authority a copy of this Contract updated to reflect all variations agreed in the relevant Variation Form and annotated with a reference to the Variation Form pursuant to which the relevant variations were agreed. Upon receipt of the updated Contract from the Supplier the Authority shall review such updated Contract to verify its accuracy and shall thereafter notify the Supplier whether such updated Contract is approved. Following approval, the Supplier shall provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

21 Authority step-in rights ☒

(only applicable to the Contract if this box is checked)

- 21.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step-In Rights set out in Schedule 15 (Step-In Rights) of these Call-off Terms and Conditions.

22 Exit and service transfer ☒

(only applicable to the Contract if this box is checked)

- 22.1 In this Clause, the following definition shall apply:
- 22.1.1 **“Exit Plan”** means the plan for the provisions of the Transitional Assistance Services in the event of the expiry or termination of the Contract, which is to be developed by the Parties pursuant to Clause 22 (Exit and Service Transfer) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions;
- 22.1.2 **“Transitional Assistance Services Charges”** means the charges, if any, payable by the Authority to the Supplier for the provision of the Transitional Assistance Services, which shall be calculated in accordance with Schedule 8 (Pricing) of these Call-off Terms and Conditions;
- 22.1.3 **“Transitional Assistance Services”** means the services to be provided by the Supplier to the Authority pursuant to Clause 22 (Exit and Service Transfer) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions in order to facilitate the transfer of the Services to the Authority or a Replacement Contractor.
- 22.2 In the event of the termination or expiry of the Contract for any reason the Supplier shall provide the Transitional Assistance Services to the Authority in accordance with the requirements of the Exit Plan and both Parties shall comply with their respective obligations set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions. The Supplier shall co-operate with the Authority and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Services from the Supplier to the Authority or the Replacement Supplier.
- 22.3 The Authority shall pay the Transitional Assistance Services Charges in respect of the provision of the Transitional Assistance Services, except in circumstances where the Authority has terminated the Contract pursuant to Clause 17 (Termination) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 22.4 The Supplier shall, within three (3) months after the Commencement Date, produce an Exit Plan based on the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions for the orderly transition of the Services from the Supplier to the Authority or any Replacement Supplier in the event of any termination or expiry of the Contract. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions. If the Parties are unable to agree the contents of the Exit Plan within that ten (10) Working Day period, the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions shall apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 20 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 22.5 The Supplier shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Supplier shall:
- 22.5.1 submit the revised Exit Plan to the Authority for review;

22.5.2 within ten (10) Working Days after the submission of the revised Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions and the changes that have occurred in the Services since the Exit Plan was last agreed; and

22.5.3 if the Parties are unable to agree the contents of the revised Exit Plan within that ten (10) Working Day period, the previous version shall continue to apply and either Party may refer the dispute for resolution in accordance with the dispute resolution procedure set out at Clause 20 (Dispute Resolution) of Schedule (General Terms and Conditions) of these Call-off Terms and Conditions.

22.6 Until the agreement of the Exit Plan, the Supplier shall provide the Transitional Assistance Services in accordance with the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions and the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith. The Supplier shall ensure that it is able to implement the Exit Plan at any time.

22.7 Within thirty (30) days after service of a Termination Notice by either Party or six (6) months prior to the expiration of the Contract:

22.7.1 the Supplier shall update the Exit Plan into a final form that could be implemented immediately and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Plan can be submitted to the Authority for review and approval; and

22.7.2 the Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan based on the principles set out in Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions ; and

22.7.3 until the agreement of the updated Exit Plan, the Supplier shall provide the Transitional Assistance Services in accordance with the last-approved version of the Exit Plan (insofar as this still applies) to the Authority in good faith.

23 Business Continuity and Disaster Recovery ☒

(only applicable to the Contract if this box is checked)

23.1 At least [ninety (90)] Working Days prior to the Services Commencement Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a Business Continuity Plan, which shall detail the processes and arrangements that the Supplier shall follow to:

23.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

23.1.2 the recovery of the provision of the Services in the event of a disaster

- 23.2 Following receipt of the draft Business Continuity Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Business Continuity Plan. If the Parties are unable to agree the contents of the Business Continuity Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with Clause 20 (Dispute Resolution) of Schedule (General Terms and Conditions) of these Call-off Terms and Conditions.
- 23.3 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 23.3 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions 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) Working Days of any material update or revision to the Business Continuity Plan.
- 23.4 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.
- 23.5 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. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Services in accordance with this Contract.

24 **Service levels – Key Performance Indicators** ☒

(only applicable to the Contract if this box is checked)

- 24.1 In this Clause, the following definitions shall apply:
- 24.1.1 **"Critical Service Level Failure"**: has the meaning given to it in the Order Form;
- 24.1.2 **"Escalation Meeting"** means a meeting between the authorised representatives of the Supplier and the Authority to address issues that have arisen during the Rectification Plan Process;
- 24.1.3 **"Notifiable Default"** means:
- (i) the Supplier commits a material default; and/or
 - (ii) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;
- 24.1.4 **"Rectification Plan"** means the Supplier's plan (or revised plan) to rectify its breach using the template at Annex to Part C which shall include:

- (i) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (ii) the actual or anticipated effect of the Notifiable Default; and
- (iii) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);

24.1.5 **"Rectification Plan Process"** means the process set out in the Annex to Part C;

24.1.6 **"Service Credits"** any service credits specified in the Annex to Part A of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions being payable by the Supplier to the Authority in respect of any failure by the Supplier to meet one or more Service Levels;

24.1.7 **"Service Credits Cap"** has the meaning given to it in the [Order Form];

24.1.8 **"Service Level Failure"** means a failure to meet the Service Level Performance Measure in respect of a Service Level;

24.1.9 **"Service Level Performance Measure"** shall be as set out against the relevant Service Level in the Annex to Part A of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions;

24.1.10 **"Service Level Threshold"** shall be as set out against the relevant Service Level in the Annex to Part A of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions; and

24.1.11 **"Service Period"** has the meaning given to it in the Order Form.

Service Levels

24.2 The Supplier shall at all times provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.

24.3 The Supplier acknowledges that any Service Level Failure shall entitle the Authority to the rights set out in Part A of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Losses that may be suffered by the Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.

24.4 The Supplier shall send Performance Monitoring Reports to the Authority detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

24.5 A Service Credit shall be the Authority's exclusive financial remedy for a Service Level Failure except where:

24.5.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or

24.5.2 the Service Level Failure:

24.5.3 exceeds the relevant Service Level Threshold;

24.5.4 has arisen due to a Prohibited Act or wilful default by the Supplier;

24.5.5 results in the corruption or loss of any Authority Data; and/or

24.5.6 results in the Authority being required to make a compensation payment to one or more third parties; and/or

24.5.7 the Authority is otherwise entitled to or does terminate this Contract pursuant to Clause 18 (Termination) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

24.6 Not more than once in each Contract Year, the Authority may, on giving the Supplier at least three (3) months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Contract Price as a result of such changes, provided that:

24.6.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the commencement of the Term;

24.6.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and

24.6.3 there is no change to the Service Credit Cap.

Critical Service Level Failure

24.7 On the occurrence of a Critical Service Level Failure:

24.7.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

24.7.2 the Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Contract Price which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 24.7 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Supplier for material breach.

Part A: Service Levels and Service Credits

Service Levels

24.8 If the level of performance of the Supplier:

24.8.1 is likely to or fails to meet any Service Level Performance Measure; or

24.8.2 is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without limiting any other of its rights, may:

24.8.3 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

24.8.4 instruct the Supplier to comply with the Rectification Plan Process;

24.8.5 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Authority; and/or

24.8.6 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material breach).

Service Credits

24.9 The Authority shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

24.10 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

ANNEX TO PART A: SERVICES LEVELS AND SERVICE

#	Indicator	Good (=Target)	Approachin g Target	Requires Improvement	Inadequac y (=Critical Service Level Failure)
1	Percentage of individuals accessing the online Service who have sexual history and STI/HIV risk assessment undertaken	>95%	95-90%	<90-80%	<80%*
2	Percentage of kits packaged and posted to Service User within 2 working days of request	95%	95-90%	<90-80%	<80%*
3	Percentage of self-sampling specimens returned to the laboratory by Service User for	>60%	60-50%	<50-40%	<40%

#	Indicator	Good (=Target)	Approachin g Target	Requires Improvement	Inadequacy (=Critical Service Level Failure)
	processing within 30 days of receipt				
4	Percentage of self-sampled specimens that could not be processed by the laboratory therefore requiring a repeat kit	<8%	8-10%	>10-15%	>15%
5	Percentage of negative Service Users receiving sexual health promotion messaging and signposting where to access information for other sexual health services	100%	<100-90%	<90-80%	<80%
6	Percentage of self-sampling Service Users with negative results that received their results through their preferred method of contact within 5 working days of receiving sample	100%	<100-90%	<90-80%	<80%
7	Percentage of reactive results attempted to be communicated to Service Users within 5 working days of receiving the self-sample	100%	<100-90%	<90-80%	<80%*
8	Percentage of reactive results actually communicated to Service Users within 5 working days of receiving self-sample	75%	<75-70%	<70-65%	<65%*
9	Percentage of self-testing Service Users reporting a reactive result contacted within 48 hours for follow up	>95%	95-90%	<90-80%	<80%*
10	Percentage of reactive Service Users self-reporting attendance at chosen sexual health service in less than 10 working days from receiving a reactive result	>70%	70-60%	<60-50%	<50-40%

#	Indicator	Good (=Target)	Approachin g Target	Requires Improvement	Inadequac y (=Critical Service Level Failure)
1 1	Percentage of self-testing Service Users self-reporting attendance at chosen sexual health service in less than 10 working days from self-reporting a reactive self-test	>70%	70-60%	<60-50%	<50-40%
1 2	Percentage of staff undertaken safeguarding training	90%	<90-80%	<80-70%	<70-60%*

The Service Credits shall be calculated on the basis of the following formula:

The Service Credits shall apply when the supplier's performance only meet the 'requires improvement' target in any of the KPI marked with *. Service credits will be calculated applying a 5% discount to the Contract Price payable to the Authority in the quarter where the KPIs hit 'requires improvement' and it will be deducted from the next Invoice payable by the Authority.

Part B: Performance Monitoring

Performance Monitoring and Performance Review

- 24.11 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 24.12 The Supplier shall provide the Authority with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 24.12.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 24.12.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 24.12.3 details of any Critical Service Level Failures;
 - 24.12.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 24.12.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and

24.12.6 such other details as the Authority may reasonably require from time to time.

24.13 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall:

24.13.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Authority shall reasonably require;

24.13.2 be attended by the Supplier's Representative and the Authority's Representative; and

24.13.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting.

24.14 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting.

24.15 The Supplier shall provide to the Authority such documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

Satisfaction Surveys

24.16 The Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services. The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

ANNEX TO PART C: RECTIFICATION PLAN PROCESS

Rectifying issues

24.17 If there is a Notifiable Default, the Supplier must notify the Authority within three (3) Working Days and the Authority can, without limiting its other rights, may request that the Supplier provide a Rectification Plan within ten (10) Working Days alongside any additional documentation that the Authority requires.

24.18 When the Authority receives a requested Rectification Plan it can either:

24.18.1 reject the Rectification Plan or revised Rectification Plan, giving reasons; or

24.18.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

24.19 Where the Rectification Plan or revised Rectification Plan is rejected, the Authority:

24.19.1 will give reasonable grounds for its decision; and

24.19.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

Escalating issues

24.20 If the Supplier fails to:

24.20.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 22.17 or 22.19; and

24.20.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

24.20.3 or if the Authority otherwise rejects a Rectification Plan, the Authority can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Authority will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the authorised representative of the Supplier is available to attend.

24.21 The Escalation Meeting(s) will continue until the Authority is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the dispute resolution set out in Clause 21 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) (General Terms and Conditions).

24.22 If the Supplier is in breach or default of any of its obligations under this Clause 22, the Authority shall be entitled to terminate this Contract.

The Rectification Plan

Request for [Revised] Rectification Plan	
Details of the breach or default	[Guidance: Explain the breach or default, with clear schedule and clause references as appropriate]
Deadline for receiving the [Revised] Rectification Plan	[add date (minimum 10 days from request)]
Signed by Authority	
Date	
Supplier [Revised] Rectification Plan	
Cause of the breach or default	[add cause]
Anticipated impact assessment	[add impact]
Actual effect of breach or default	[add effect]

Steps to be taken to rectification	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
Timescale for complete Rectification of breach or default	[X] Working Days	
Steps taken to prevent recurrence of breach or default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
Signed by the Supplier		
Date		
Review of Rectification Plan Supplier		
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]	
Reasons for rejection (if applicable)	[add reasons]	
Signed by Supplier		
Date		

25 Intellectual Property Rights

4. OPTION 2 ☒

(ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

Intellectual Property Rights

- 25.1 Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 25.2 Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

Licences granted by the Supplier: Supplier Existing IPR

25.3 Where the Authority orders Services which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Authority a Supplier Existing IPR Licence on the terms set out in Clause 25.4 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

25.4 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Authority to enable it:

25.4.1 or any End User to use and receive the Services; or

25.4.2 to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

Licences granted by the Authority and New IPR

25.5 Any New IPR created under the Contract is owned by the Authority. The Authority gives the Supplier a [insert duration or delete if no duration required] licence to use the Authority Existing IPR and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term or using or exploiting the New IPR developed under the Contract, including (but not limited to) the right to grant sub-licences to Subcontractors provided that:

25.5.1 any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in this Contract; and

25.6 Unless otherwise agreed in writing, the Supplier and the Authority will record any New IPR in the table at Annex 1 to this Clause 25 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and keep this updated throughout the Term.

Third Party IPR

25.7 The Supplier shall not use in the delivery of the Services any Third Party IPR unless Prior written consent of the Authority is granted by the Authority and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Clause 25.8 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions. If the Supplier cannot obtain for the Authority a licence on the terms set out in Clause 25.8 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions in respect of any Third Party IPR the Supplier shall:

25.7.1 notify the Authority in writing; and

25.7.2 use the relevant Third Party IPR only if the Authority has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

25.8 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Services under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

- 25.9 The Third Party IPR Licence granted to the Authority shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Authority to enable it or any End User to receive and use the Services and make use of the deliverables provided by a Replacement Supplier.

Termination of licences

- 25.10 The Supplier Existing IPR Licence granted pursuant to Clause 25.3 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and the Third Party IPR Licence granted pursuant to Clause 25.7 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall survive the Expiry Date and termination of this Contract.
- 25.11 The Supplier shall, if requested by the Authority in accordance with Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 25.12 On expiry of the licence granted to the Supplier pursuant to Clause 25.5 (Licence granted by the Authority) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions the Supplier shall:
- 25.12.1 immediately cease all use of the New IPR and Authority Existing IPR (including the Authority Data within which the Authority Existing IPR may subsist);
- 25.12.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the New IPR, Authority Existing IPR and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the New IPR, the Authority Existing IPR and the Authority Data (as the case may be); and
- 25.12.3 ensure, so far as reasonably practicable, that any new IPR, Authority Existing IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such New IPR, Authority Existing IPR or Authority Data.

Supplier Exploitation of New IPR

- 25.13 Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:
- 25.13.1 the Supplier must always offer a price and solution to the Authority which is in accordance with the Contract Price and must licence the New IPR and Supplier Existing IPR to the Authority on equivalent terms as apply under this Contract;

- 25.13.2 where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request; and
- 25.13.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Clause 25.13.2 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions have been applied to the price for the Services offered to the Authority and other potential End Users;
- 25.14 The Authority shall be under no obligation to:
- 25.14.1 offer the New IPR (where this is owned by the Authority) or the Authority Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or
- 25.14.2 accept any alternative arrangement proposed by the Supplier under this Clause and the Authority shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Authority) or Authority Existing IPR applies as applies under this Contract. Such agreement does not confer any exclusive right on the Supplier to negotiate with the Authority in relation to the New IPR (where this is owned by the Authority), Authority Existing IPR or any Crown IPR and the Authority shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Authority has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).
- 25.15 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.

OPTION 3 ☐ (ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

Intellectual Property Rights

- 25.16 Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 25.17 Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

Licences granted by the Supplier: Supplier Existing IPR

25.18 Where the Authority orders Services which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Authority a Supplier Existing IPR Licence on the terms set out in Clause 25.19 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

25.19 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Authority to enable it:

25.19.1 or any End User to use and receive the Services; or

25.19.2 to use, sub-license or commercially exploit the New IPR and New IPR Items,

for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

Licences granted by the Authority and New IPR

25.20 Any New IPR created under the Contract is owned by the Supplier. The Authority gives the Supplier a licence to use any Authority Existing IPR for the purpose of fulfilling its obligations during the Term.

25.21 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

25.22 Unless otherwise agreed in writing, the Supplier and the Authority will record any New IPR in the table at Annex 1 to this Clause 25 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and keep this updated throughout the Term.

25.23 The Supplier hereby grants the Authority a licence to the New IPR on the terms set out in Clause 25.24 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.

25.24 The licence granted by the Supplier to the Authority pursuant to Clause 25.23 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any New IPR which is reasonably required by the Authority to enable it or any End User to use and receive the Services

Third Party IPR

25.25 The Supplier shall not use in the delivery of the Services any Third Party IPR unless Prior written consent of the Authority is granted by the Authority and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Clause 25.26 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions . If the Supplier cannot obtain for the Authority a licence on the terms set out in Clause 25.26 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions in respect of any Third Party IPR the Supplier shall:

25.25.1 notify the Authority in writing; and

25.25.2 use the relevant Third Party IPR only if the Authority has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

25.26 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Services under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

25.27 The Third Party IPR Licence granted to the Authority shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Authority to enable it or any End User to receive and use the Services and make use of the deliverables provided by a Replacement Supplier.

Termination of licences

25.28 The Supplier Existing IPR Licence granted pursuant to Clause 25.18 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and the Third Party IPR Licence granted pursuant to Clause 25.25 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall survive the Expiry Date and termination of this Contract.

25.29 The Supplier shall, if requested by the Authority in accordance with Schedule 12 (Exit Plan and Service Transfer Arrangements) of these Call-off Terms and Conditions and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

25.30 Any licence granted to the Supplier pursuant to Clause 25.20 (Licence granted by the Authority) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall terminate automatically on the Expiry Date and the Supplier shall:

25.30.1 immediately cease all use of the Authority Existing IPR (including the Authority Data within which the Authority Existing IPR may subsist);

25.30.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Existing IPR and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Existing IPR and the Authority Data (as the case may be); and

25.30.3 ensure, so far as reasonably practicable, that any Authority Existing IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Existing IPR or Authority Data.

Supplier Exploitation of New IPR

- 25.31 Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:
- 25.31.1 the Supplier must always offer a price and solution to the Authority which is in accordance with the Contract Price and must licence the New IPR and Supplier Existing IPR to the Authority on equivalent terms as apply under this Contract;
- 25.31.2 where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request; and
- 25.31.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Clause 25.31 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions have been applied to the price for the Services offered to the Authority and other potential End Users;
- 25.32 The Authority shall be under no obligation to:
- 25.32.1 offer the New IPR (where this is owned by the Authority) or the Authority Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or
- 25.32.2 accept any alternative arrangement proposed by the Supplier under this Clause and the Authority shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Authority) or Authority Existing IPR applies as applies under this Contract.
- 25.33 Such agreement does not confer any exclusive right on the Supplier to negotiate with the Authority in relation to the New IPR (where this is owned by the Authority), Authority Existing IPR or any Crown IPR and the Authority shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Authority has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).
- 25.34 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.
- 25.35 If within three years of its creation, any Intellectual Property in the New IPR has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by the Authority promptly assign the Intellectual Property Rights in the New IPR to the Authority. Each party shall bear its own costs in such assignment.

OPTION 4 ☐ (ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)*Intellectual Property Rights*

- 25.36 Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 25.37 Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

Licences granted by the Supplier: Supplier Existing IPR

- 25.38 Where the Authority orders Services which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Authority a Supplier Existing IPR Licence on the terms set out in Clause 25.39 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.
- 25.39 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Authority to enable it:
- 25.39.1 or any End User to use and receive the Services; or
- 25.39.2 to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,
- for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

Licences granted by the Authority and New IPR

- 25.40 Any New IPR created under the Contract is owned by the Supplier. The Authority gives the Supplier a licence to use any Authority Existing IPR for the purpose of fulfilling its obligations during the Term.
- 25.41 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 25.42 Unless otherwise agreed in writing, the Supplier and the Authority will record any New IPR in the table at Annex 1 to this Clause 25 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and keep this updated throughout the Term.
- 25.43 The Supplier hereby grants the Authority a licence to the New IPR on the terms set out in Clause 25.44 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions.
- 25.44 The licence granted by the Supplier to the Authority pursuant to Clause 25.43 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any New IPR which is reasonably required by the Authority to enable it or any End User to use and receive the Services or for any

purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

Third Party IPR

- 25.45 The Supplier shall not use in the delivery of the Services any Third Party IPR unless Prior written consent of the Authority is granted by the Authority and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Clause 25.46 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions. If the Supplier cannot obtain for the Authority a licence on the terms set out in Clause 25.46 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions in respect of any Third Party IPR the Supplier shall:
- 25.45.1 notify the Authority in writing; and
- 25.45.2 use the relevant Third Party IPR only if the Authority has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.
- 25.46 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Services under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
- 25.47 The Third Party IPR Licence granted to the Authority shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Authority to enable it or any End User to receive and use the Services and make use of the deliverables provided by a Replacement Supplier.

Termination of licences

- 25.48 The Supplier Existing IPR Licence granted pursuant to Clause 25.38 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and the Third Party IPR Licence granted pursuant to Clause 25.45 shall survive the Expiry Date and termination of this Contract.
- 25.49 The Supplier shall, if requested by the Authority in accordance with Schedule 12 (Exit Plan) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 25.50 Any licence granted to the Supplier pursuant to Clause 25.40 (Licence granted by the Authority) of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions shall terminate automatically on the Expiry Date and the Supplier shall:
- 25.50.1 immediately cease all use of the Authority Existing IPR (including the Authority Data within which the Authority Existing IPR may subsist);
- 25.50.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Existing IPR and the

Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Existing IPR and the Authority Data (as the case may be); and

- 25.50.3 ensure, so far as reasonably practicable, that any Authority Existing IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Existing IPR or Authority Data.

Supplier Exploitation of New IPR

- 25.51 Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:

25.51.1 the Supplier must always offer a price and solution to the Authority which is in accordance with the Contract Price and must licence the New IPR and Supplier Existing IPR to the Authority on equivalent terms as apply under this Contract;

25.51.2 where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request; and

25.51.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Clause 25.51 of this Schedule 1 (Key Provisions) of these Call-off Terms and Conditions have been applied to the price for the Services offered to the Authority and other potential End Users;

- 25.52 The Authority shall be under no obligation to:

25.52.1 offer the New IPR (where this is owned by the Authority) or the Authority Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or

25.52.2 accept any alternative arrangement proposed by the Supplier under this Clause and the Authority shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Authority) or Authority Existing IPR applies as applies under this Contract.

- 25.53 Such agreement does not confer any exclusive right on the Supplier to negotiate with the Authority in relation to the New IPR (where this is owned by the Authority), Authority Existing IPR or any Crown IPR and the Authority shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other

person (except to the extent that the Authority has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).

- 25.54 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.
- 25.55 If within three years of its creation, any Intellectual Property in the New IPR has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by the Authority promptly assign the Intellectual Property Rights in the New IPR to the Authority. Each party shall bear its own costs in such assignment.

OPTION 5 ☐ (ONLY APPLICABLE TO THE IF THIS BOX IS CHECKED)

Gain Share

- 25.56 The Supplier is permitted to commercially exploit the New IPR or any material reproducing the New IPR provided that it pays to the Authority an amount to be calculated using one of the following options, such option to be agreed in writing by the Parties prior to any commercial exploitation:

25.56.1 a levy for the use of the New IPR including copyright to be calculated at [...] % of the Supplier's selling/licensing price; or

25.56.2 a profit sharing arrangement on the basis of a levy payable to the Authority in respect of the Supplier's exploitation of the New IPR. This levy expressed as a percentage of the profit and shall be determined as follows:

gross sale or licence price, i.e. the price for which the Supplier invoices its customer

minus

the allowable costs as prescribed by the Authority for this purpose.

The profit so determined shall be shared between the Supplier and the Authority as below, but in no circumstances will any loss be shared:

The first [.....] per cent shall be retained by the Supplier;

The next [.....] per cent shall be shared between the Supplier and the Authority in the ratio of [.....]; The remaining profit shall be shared between the Supplier and the Authority in the ratio of [.....].]

25.57 The Supplier shall promptly inform the Authority if any of the New IPR is capable of exploitation outside of the Contract.

25.58 Sales involving, or licences to reproduce, adaptations, extractions, translations or enhancements of the New IPR shall attract levy in accordance with the Contract unless the Authority agrees in writing that an allowance may be made for software that was not developed at the Crown's or Authority's expense.

25.59 The following provisions shall apply to this Contract:

- (i) The Supplier shall provide as soon as possible after delivery of the sale/licensed articles a statement, in a form prescribed by the Authority, of the calculable profitability showing the gross selling/licence price and a summary of the allowable costs together with a certificate from its statutory auditors that the statement is correct and complete and that it complies with the accounting conventions agreed by the Authority for the purpose.
- (ii) The Supplier shall provide such facilities as may be necessary for the Authority, if it so desires, to verify the statements and for this purpose the Supplier shall maintain proper books of accounts and records at its premises and shall make them available for inspection whether physically or otherwise at all reasonable times by representatives of the Authority.
- (iii) The liability of the Supplier to the Authority for any sum due under this Contract including interim payment of levy for exploitation of the New IPR shall accrue on the date of delivery to the third party licensee/sub-licensee excluding the Supplier's works or, where the licence so prescribes, upon shipment.

ANNEX 1: NEW IPR

Name of New IPR	Details

SCHEDULE 2 CALL OFF GENERAL TERMS AND CONDITIONS

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 to a professional standard in their delivery and supply;

1.1.4 using reasonable skill and care to a professional standard 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 Key Provisions and/or in the Order Form.

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/or the Order Form (to include, without limitation, all obligations in relation to the quality standards, performance characteristics, supply, delivery, 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 Order Form and the Supplier's response to such requirements) and any applicable manufacturers' specifications.

- 1.4 The Supplier shall ensure that all relevant rights, consents, authorisations, licences and accreditations (including in relation to IPRs) to enter into this Contract, enable the Supplier to perform its obligations under the Contract and 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 (General Terms and Conditions) of these Call-off Terms and Conditions, 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.
- 1.8 The Supplier's supply of the Goods may be subject to Clause 1 of Schedule 4 (Additional Special Conditions) of these Call-off Terms and Conditions, where applicable.

2. Delivery of the Goods

- 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 Order Form, a Consignment Request, or an Order Form or as otherwise agreed with the Authority in writing.

Delivery and collection

- 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 (or by third

party collection agents appointed directly by the Authority from time to time (“**Authority Collection Agents**”)) 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, the Supplier shall (subject to any confidentiality obligations set out in this Contract) work directly with the Authority Collection Agents to ensure that they provide necessary support and assistance to the Authority Collection Agents in order to arrange such collection, and collection is deemed delivery for the purposes of the Contract.

Delivery note

- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information, or as otherwise agreed with the Authority in writing including (without limitation) any Order Form. 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, the quantity and specific storage instructions (if any) of the Goods, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the manufactured on and use by dates, the ASN number (where required) 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.

Part deliveries

- 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 (General Terms and Conditions) of these Call-off Terms and Conditions, 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.

Transport and other related costs

- 2.5 Unless otherwise 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 (General Terms and Conditions) of these Call-off Terms and Conditions, unless otherwise 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 Order Form.

Use of third party carriers

- 2.6 Save for any Authority Collection Agents, all third party carriers or any Sub-contractors 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 and Sub-contractors engaged to deliver the Goods to the Authority.

3. Passing of risk and ownership of the Goods

- 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 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 (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 of the Goods

- 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 with 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 (General Terms and Conditions) of these Call-off Terms and Conditions and subject to Clause 4.7 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions, if any) and may by written notice reject any Goods found to be damaged, or delivered late, 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 (General Terms and Conditions) of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 4.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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) Working Days of issue of written notice from the Authority rejecting the Goods and reimburse the Authority for any Contract Price paid in connection with the Goods (including without limitation any pre-payment or advance payments) along with any costs reasonably incurred by the Authority as a result of any such rejection; and
 - 4.3.2 without extra charge, promptly (and in any event within twenty (20) Working 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 (General Terms and Conditions) of these Call-off Terms and Conditions.

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 (General Terms and Conditions) of these Call-off Terms and Conditions; or (b) immediately following the expiry of ten (10) Working Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Working 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) Working 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 (General Terms and Conditions) of these Call-off Terms and Conditions 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 (in whole or in part) for such Rejected Goods the Supplier shall refund such payment along with any costs reasonably incurred by the Authority as a result of any such rejection 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 (General Terms and Conditions) of these Call-off Terms and Conditions, 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) Working 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 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 and/or Clause 4.5 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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 (General Terms and Conditions) of these Call-off Terms and Conditions 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 or within such other period as may be set out in the Key Provisions, if any. 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 Order Form.
- 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 of the continued use of the Goods on patients, service users and the Authority 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 (General Terms and Conditions) of these Call-off Terms and Conditions;
 - 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. Provision of the Services

- 5.1 The Supplier shall from Services Commencement Date and for the duration of the Contract supply the Services to the Authority in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order Form, or that the Authority notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the Authority in all matters relating to the Services, and comply with all reasonable instructions of the Authority;
 - 5.3.2 perform the Services with the best care, skill and diligence in accordance with Good Industry Practice;
 - 5.3.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification;
 - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.3.6 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 5.3.7 observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - 5.3.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier (the "**Authority Materials**") in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation; and

5.3.9 not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission, and the Supplier acknowledges that the Authority may rely or act on the Services.

5.4 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

5.5 The Supplier shall not remove or replace any Key Personnel unless:

5.5.1 requested to do so by the Authority;

5.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

5.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or

5.5.4 the Supplier obtains the Authority's prior written consent.

5.6 The Authority shall not unreasonably withhold its consent under Clause 5.6.4 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions. Such consent shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

5.7 Immediately following the Commencement Date, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan.

6. The Authority's obligations

6.1 Subject to the Supplier supplying the Goods and the Services in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 9 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

6.2 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 and the Services.

6.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.

- 6.4 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.

7. Term

- 7.1 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.
- 7.2 Subject to Clause 7.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the Authority shall be entitled to extend the Term as set out in the Order Form.
- 7.3 Where the Term or any extension of the Term expires at a date the same as or after the expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), the Authority shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.

8. Contract Management and Monitoring

- 8.1 The Authority Representative and the Supplier Representative shall meet at least monthly (unless otherwise notified by the Authority or agreed by the Parties) to discuss the Supplier's performance and other matters connected to the delivery of the Contract.
- 8.2 The Supplier shall comply with the monitoring arrangements set out in Schedule 9 (Contract Monitoring) of these Call-off Terms and conditions and any other monitoring arrangements that the Authority shall reasonably require from time to time. This shall include, but shall not be limited to, providing such information about the provision of the Goods and the Services or the obligations imposed on the Supplier under this Contract as the Authority may require the Supplier to produce under the Contract.
- 8.3 At the Authority's request, within five (5) Working Days of such request, the Supplier shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Supplier's supply chain and its compliance in relation to sustainability requirements).

- 8.4 The Supplier shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Supplier's levels of performance.

9. Price and payment

Contract Price

- 9.1 The Contract Price shall be calculated as set out in the Order Form or Schedule 8 (Pricing) of these Call-off Terms and Conditions as applicable.

- 9.2 Unless otherwise stated in the Order Form or Schedule 8 (Pricing) of these Call-off Terms and Conditions the Contract Price:

9.2.1 shall remain fixed during the Term; and

- (i) in respect of the Goods, is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
 - (a) 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;
 - (b) 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
 - (c) 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.
- (ii) in respect of the Services:
 - (a) shall be payable from the Services Commencement Date; and
 - (b) shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Authority, the Contract Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services;

Invoices

- 9.3 Unless stated otherwise in the Order Form:

9.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14)

days of the end of each calendar month, the Contract Price in respect of the Goods and the Services supplied in compliance with this Contract in the preceding calendar month;

9.3.2 where Consigned Goods are to be provided by the Supplier in accordance with the Key Provisions, the Supplier shall invoice the Authority in relation to such Consigned Goods in accordance with the relevant Key Provision applicable to such Consigned Goods; or

9.3.3 where Clauses 9.3.1 or 9.3.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions do not apply, the Supplier shall invoice the Authority for Goods at any time following completion of the supply of the Goods and Services in compliance with this Contract.

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 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.
- 9.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 9.5 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 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 (General Terms and Conditions) of these Call-off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. If there is undue delay in verifying the invoice in accordance with this Clause 9.7

of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purposes Clause 9.7 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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 9.8 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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 Authority reserves the right to retain or set-off:

9.9.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and

9.9.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.

9.10 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 thirty (30) days of the date of such invoice.

9.11 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 Order Form, 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 if confirmed by the Authority in writing (to include, without limitation, as part of the Order Form), it will ensure that the Goods and the Services comply with requirements five (5) to nine (9), 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 and/or Services;
- 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 to a professional standard and in accordance with Good Industry Practice;
- 10.1.4 without prejudice to the generality of the warranty at Clause 10.1.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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, such information shall be in English and 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 Order Form;
- 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 and/or Services 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 and/or Services without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, unless otherwise set out in the Order Form, any such changes or substitute goods and/or services, if accepted, shall not lead to an increase in the Contract Price;
- 10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods and or Services 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 and Services;
- 10.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods and Services (including any deliverables) 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 and the Services;
- 10.1.20 it will promptly (and in any event within one (1) Working Day) 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/or Services 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 that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with Clause 10.1.22 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.
- 10.1.23 it will fully and promptly respond to all requests for information regarding this Contract and the Goods and/or Services at the frequency and in the format that the Authority may reasonably require;

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 Order Form) and all accompanying materials is accurate and in English;

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 (or be subject to a Product Authorisation, as such term is defined in Schedule 4 (Additional Special Conditions) of these Call-off Terms

and Conditions) 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 Clause 10.1 and 10.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 Order Form shall be submitted to the Authority in the format and in accordance with any timescales set out in the Order Form.

10.6 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it is not and throughout the Term of this Contract it will not be, involved in any Occasion of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

10.6.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

10.6.2 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.

10.7 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 (General Terms and Conditions) of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.

10.8 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 otherwise specified in the Key Provisions:

11.1.1 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.

11.1.2 the Supplier hereby grants to the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both receive and use the Services.

11.1.3 each Party keeps ownership of its own Existing IPRs. Any New IPR created under the Contract is owned by the Authority. The Authority gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Term.

11.2 Where a Party acquires ownership of Intellectual Property Rights which is inconsistent with the allocation specified under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

12. Authority Data

12.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

12.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.

12.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format the Authority specifies.

- 12.4 Upon receipt or creation by the Supplier of any Authority Data and during any collection, Processing, storage and transmission by the Supplier of any Authority Data, the Supplier shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 12.5 The Supplier shall perform secure back-ups of all Authority Data. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request.
- 12.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 12.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's breach or default so as to be unusable, the Authority may:
- 12.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Authority Data and the Supplier shall do so as soon as practicable; and/or
 - 12.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 12.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

13. Protection of Personal Data

Status of the Controller

- 13.1 The Parties acknowledge that for the purposes of the Data Protection Laws, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Laws. A Party may act as:
- 13.1.1 "Controller" (where the other Party acts as the "Processor");
 - 13.1.2 "Processor" (where the other Party acts as the "Controller");
 - 13.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

- 13.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

- 13.2 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions by the Controller.

- 13.3 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Laws.

4.1

- 13.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

- 13.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;

- 13.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

- 13.4.3 an assessment of the risks to the rights and freedoms of Data Subjects;
and

- 13.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 13.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- 13.5.1 process that Personal Data only in accordance with Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;

13.5.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 12 (Authority Data) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

13.5.2.1 nature of the data to be protected;

13.5.2.2 harm that might result from a Data Loss Event;

13.5.2.3 state of technological development; and

13.5.2.4 cost of implementing any measures;

13.5.3 ensure that:

13.5.3.1 the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions);

13.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the Processor's duties under this Clause 12 (Protection of Personal Data), Clause 12 (Authority Data) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions and Clause 30 (Confidential Information) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

13.5.3.3 not transfer Personal Data outside of the EU, other than to the Controller, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or Section 75 of the DPA 2018) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and

13.5.3.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

13.6 Subject to Clause 13.7 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the Processor shall notify the Controller immediately if it:

- 13.6.1 receives a Data Subject Request (or purported Data Subject Request);
- 13.6.2 receives a request to rectify, block or erase any Personal Data;
- 13.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- 13.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

13.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

13.6.6 becomes aware of a Data Loss Event.

13.7 The Processor's obligation to notify under Clause 13.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall include the provision of further information to the Controller in phases, as details become available.

13.8 Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under Clause 13.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

13.8.1 the Controller with full details and copies of the complaint, communication or request;

13.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Laws;

13.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

13.8.4 assistance as requested by the Controller following any Data Loss Event; and/or

13.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

13.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

13.9.1 the Controller determines that the Processing is not occasional;

13.9.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

13.9.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.10 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.

13.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Laws.

13.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

13.12.1 notify the Controller in writing of the intended Sub-processor and Processing;

13.12.2 obtain the written consent of the Controller;

13.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 13 (Protection of Personal Data) of this Schedule 2 of these Call-off Terms and Conditions such that they apply to the Sub-processor; and

13.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

13.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

13.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

13.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

13.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions.

Where the Parties are Independent Controllers of Personal Data

13.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under a Joint Controller arrangement of the Parties, each Party undertakes to comply with the applicable Data Protection Laws in respect of their Processing of such Personal Data as Controller.

13.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Laws and not do anything to cause the other Party to be in breach of it.

13.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 13.17 of this Schedule 2 of these Call-off Terms and Conditions the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

13.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.

13.21 The Parties shall only provide Personal Data to each other:

13.21.1 to the extent necessary to perform the respective obligations under this Contract;

13.21.2 in compliance with the Data Protection Laws (including by ensuring all required fair processing information has been given to affected Data Subjects);
and

13.21.3 where it has recorded it in Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions.

13.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security

appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Laws, including Article 32 of the UK GDPR.

13.23A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.

13.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Laws in relation to the Personal Data provided to it by the other Party pursuant to this Contract (**"the Request Recipient"**):

13.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

13.24.2 where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:

13.24.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and

13.24.2.2 provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request.

13.25 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Contract and shall:

13.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

13.25.2 implement any measures necessary to restore the security of any compromised Personal Data;

13.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Laws (including the timeframes set out therein); and

13.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

13.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions.

13.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 13 (Processing, Personal Data and Data Subjects) of these Call-off Terms and Conditions.

13.28 Notwithstanding the general application of Clauses 13.2 to 13.15 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an independent Controller of Personal Data in accordance with Clauses 13.16 to 13.27 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

14. Records retention and right of audit

14.1 Subject to any statutory requirement and Clause 13 (Protection of Personal Data) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the Supplier shall in accordance with the UK GDPR 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 including records and accounts which the Authority has a right to audit.

14.2 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.

14.3 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) Working Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.

- 14.4 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) Working 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.
- 14.5 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:
- 14.5.1 the examination and certification of the Authority's accounts; or
 - 14.5.2 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.
- 14.6 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 14 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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.
- 14.7 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.
- 14.8 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.
- 14.9 The Parties will bear their own costs when an audit is undertaken unless the audit identifies a material Default by the Supplier, in which case the Supplier will repay the Authority's reasonable costs in connection with the audit.

15. Indemnity

15.1 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:

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

15.1.2 any loss of or damage to property (whether real or personal);

15.1.3 any breach of Clause 10.1.18 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions and/or Clause 11 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions; and/or

15.1.4 failure by the Supplier to commence the provision of the Services on the Services Commencement Date;

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 and the provision of the Services, 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.

15.2 Liability under the indemnities provided in Clauses 9.5, 15.1.1, 15.1.3 and 15.1.4 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, Schedule 5 (Staff Transfer) and the Annexes to Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall be unlimited. Liability under Clauses 4.9.4, 10.3 and 15.1.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be subject to the limitation of liability set out in Clause 16 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

15.3 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:

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

- 15.3.2 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).

16. Limitation of liability

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

- 16.1.1 for death or personal injury resulting from its negligence;
- 16.1.2 for fraud or fraudulent misrepresentation; or
- 16.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

- 16.2 Subject to Clauses 15.2, 16.1, 16.3 and 16.5 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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 the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods and Services.

- 16.3 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:

- 16.3.1 extra costs incurred purchasing replacement or alternative goods;
- 16.3.2 costs incurred in relation to any product recall;

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

16.3.4 the costs of extra management time; and/or

16.3.5 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.

16.4 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.

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

16.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);

16.5.2 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 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);

16.5.3 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 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

16.5.4 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 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 16.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and

Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

- 16.6 Clause 16 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

17. Insurance

- 17.1 Subject to Key Provision 12 of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, if applicable, and Clause 17.2 of this Schedule 2 (General Terms and Conditions) (General Terms and Conditions) of these Call-off Terms and Conditions and unless otherwise confirmed in writing by the Authority, the Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
- 17.2 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 Clause 17.1 of this Schedule 2 (General Terms and Conditions) (General Terms and Conditions) of these Call-off Terms and Conditions or Key Provision 12 (Different levels and/or types of insurance) of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, as applicable, 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.
- 17.3 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.
- 17.4 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.

- 17.5 The Supplier shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 17 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 17.6 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 until the expiry or earlier termination of this Contract. Except for professional indemnity insurance (where required) shall continue for the period of six (6) 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.

18. **Termination**

- 18.1 In the case of a breach of any of the terms of this Contract by the Supplier that is capable of remedy (including and not limited to any breach of any payment obligations, under this Contract), the Authority may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Supplier the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Supplier ("**Remedial Proposal**") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Supplier 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 Supplier to:

- 18.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant default or breach within a period of ten (10) Working Days (or such other period as the Authority may agree in writing) from the deemed date of receipt of the Breach Notice;
- 18.1.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be ten (10) days unless otherwise agreed between the Parties); and/or

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

shall be deemed a material breach of this Contract by the Supplier not remedied in accordance with an agreed Remedial Proposal.

18.2 The Authority may terminate this Contract, or terminate the supply of any part of the Goods and Services, with immediate effect by issuing a Termination Notice to the Supplier:

18.2.1 if the Supplier 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; or

18.2.2 the Supplier does not commence supply of the Goods and/or delivery of the Services by the Services Commencement Date;

18.2.3 if the Supplier has been served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Supplier has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.

18.2.4 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;

18.2.5 if the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract pursuant to and in accordance with the Key Provisions;

18.2.6 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; or

18.2.7 pursuant to and in accordance with the Key Provisions and Clauses 18.3, 23.2, 25.7, 29.2, and 29.4 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;

18.2.8 if the warranty given by the Supplier pursuant to Clause 10.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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 10.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable; or

18.2.9 any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Public Contracts Regulations 2015 applies; or

18.2.10 pursuant to and in accordance with any termination rights set out in the Data Protection Protocol, as applicable to this Contract.

18.3 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:

18.3.1 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; and

18.3.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 18.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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.

18.4 Notwithstanding any other provision in the Contract, the Authority shall be entitled to terminate this Contract with immediate notice should any information supplied by the Supplier, contained in this Contract or obtained by the Authority (including but not limited to certifications of the Goods and/or Services, financial or other due diligence information provided by the Supplier or obtained by the Authority) be inaccurate, misleading and/or otherwise give rise to reasonable suspicion by the Authority of fraud.

18.5 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds two quarterly payments and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights to set-off under Clause 9.9 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

19. Consequences of expiry or early termination of this Contract

19.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods and Services 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. The Supplier shall within thirty (30) days of the expiry or early termination of this Contract, reimburse the Authority for any Contract Price paid in connection with Goods and Services (including without limitation any pre-payment or advance payments) not delivered at the date of expiry or earlier termination of this Contract

- 19.2 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.
- 19.3 Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with Data Protection Laws.
- 19.4 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.
- 19.5 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.
- 19.6 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

20. Packaging, identification and end of use

- 20.1 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.
- 20.2 Unless 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 and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety

liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation.

20.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Order Form; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance and shall ensure that any labelling in respect of the Goods is in English.

20.4 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.

20.5 Unless otherwise set out in the Order Form 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 Clause 20.5 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

21. Dispute resolution

21.1 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).

21.2 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 and follow the procedure set out in Clause 20.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions as the first stage in the Dispute Resolution Procedure.

21.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve

the Dispute by escalation in accordance with the management levels (if applicable) as set out in the Order Form. Respective representatives at each level, as set out in the Order Form shall have five (5) Working Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Working Days following escalation to that level unless otherwise agreed by the Parties in writing.

21.4 If the procedure set out in Clause 21.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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) Working Days following the exhaustion of all levels of the escalation procedure at Clause 21.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

21.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 21.4 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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.

21.6 Nothing in this Contract shall prevent:

21.6.1 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 and Services; or

21.6.2 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.

21.7 Clause 21 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

22. Coding requirements

22.1 Unless otherwise confirmed and/or agreed by the Authority in writing the Supplier shall ensure full compliance with any Guidance issued by the Department of Health 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 in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling and purchase to pay transacting).

22.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to the Order Form, 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.

22.3 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.

23. Conflict of interest

23.1 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.

23.2 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 23.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

24. Change Management

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

24.2 Any change to the Goods and/or Services 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.

4.2 Change in Law

24.3 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:

24.3.1 a General Change in Law; or

24.3.2 a Specific Change in Law where the effect of that Specific Change in Law on the Goods and Services is reasonably foreseeable at the Commencement Date.

24.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 24.3.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions), the Supplier shall:

24.4.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(i) whether any variation is required to the Goods and Services, the Contract Price or this Contract; and

(ii) whether any relief from compliance with the Supplier's obligations is required; and

24.4.2 provide the Authority with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and Services; and
- (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the charges.

24.5 Any variation in the Contract Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 24.3.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions) shall be implemented in accordance with the Clause 24.2 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

25. Force majeure

25.1 Subject to the remaining provisions of this Clause 25 (Force Majeure) of these Call-off Terms and Conditions (and, in relation to the Supplier, subject to its compliance with its obligations in Key Provision 23 (Business Continuity and Disaster Recovery) of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions and Schedule 14 (Business Continuity and Disaster Recovery Plan) of these Call-off Terms and Conditions, if applicable), a Party may claim relief under this Clause 25 (Force Majeure) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

25.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

25.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 25 (Force Majeure) of this Schedule 2 (General Terms and Conditions) of these Call-off

Terms and Conditions to the extent that consequences of the relevant Force Majeure Event:

25.3.1 are capable of being mitigated, but the Supplier has failed to do so;

25.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods and services similar to the Goods and Services, operating to the standards required by this Contract; or

25.3.3 are the result of the Supplier's failure to comply with its Business Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Business Continuity Plan).

25.4 Subject to Clause 25.5 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and Services affected by the Force Majeure Event.

25.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

25.6 Where, as a result of a Force Majeure Event:

25.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 25.7 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions; and

(ii) neither Party shall be liable for any default arising as a result of such failure;

25.6.2 the Supplier fails to perform its obligations in accordance with this Contract the Supplier shall be entitled to receive payment of the Contract Price (or a proportional payment of them) only to the extent that the Goods and

Services (or part of the Goods and Services) continue to be supplied in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

25.7 If the Supplier is prevented from complying with its obligations under this Contract as a result of a Force Majeure Event, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier if the Force Majeure Event endures for a continuous period of thirty (30) days and this Contract shall terminate on the date specified in the Termination Notice.

25.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

25.9 Relief from liability for the Affected Party under Clause 25 (Force Majeure) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 25.8 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

26. Equality and diversity

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and Services 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 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 (General Terms and Conditions) of these Call-off Terms and Conditions.

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 (General Terms and Conditions) of these Call-off Terms and Conditions.

27. Notice

27.1 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 to the person referred to in the Key Provisions or such other 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 Working Day, at 9.00 am on the second Working Day subsequent to the day of posting, or, if the notice was not posted on a Working Day, at 9.00 am on the third Working 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 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.

28.2 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.

28.3 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.

28.4 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 or the provision of the Services, the Supplier shall include provisions in each such Sub-contract, 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 or the provision of the Services to the extent relevant to such Sub-contract;

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 Sub-contract (or part of it) upon expiry or earlier termination of this Contract;

28.4.5 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;

28.5 The Authority may require the Supplier to terminate a Sub-contract where:

28.5.1 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 18 (Termination) of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;

28.5.2 the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

28.5.3 the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

28.5.4 the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 28.6 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

28.6 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

28.6.1 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

28.6.2 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.

28.7 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.

28.8 If the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or, where Key Provisions 15.9 to 15.12 of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions apply, that it has failed to pay 95% or above of its Sub-contractors or Unconnected Sub-contractors within sixty (60) days after the date on which the Supplier receives an invoice

or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

28.9 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/or Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Working 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.

28.10 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.

28.11 The Supplier shall not without the prior written consent of the Authority change the Sub-contractor listed in the Order Form. If, due to unforeseen reasons, the replacement is requested by the Supplier, the Supplier shall inform the Authority via email as soon as possible. The Supplier shall be liable to provide the Authority with an updated Specification and shall ensure that the products to be provided pursuant to that Specification by the replaced Sub-contractor are of the same quality standard as the Goods and Services and the agreed delivery schedule remains unchanged. Should the updated Specification fail to meet the Authority's requirements, the Authority shall reserve the right to terminate the Contract.

29. Prevention of Fraud and Bribery

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 (General Terms and Conditions) of these Call-off Terms and Conditions 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 21 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions; 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.

29.3 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.

29.4 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.

30. Confidential Information

30.1 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 30 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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:

30.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

30.1.2 the provisions of Clause 30 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall not apply to any Confidential Information:

30.1.2.1 which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

30.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

30.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;

30.1.2.4 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

30.1.2.5 which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

30.2 Nothing in Clause 30 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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**”).

30.3 The Authority may disclose the Supplier’s Confidential Information:

30.3.1 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);

30.3.2 on a confidential basis, to any consultant, Supplier or other person engaged by the Authority, a Contracting Authority, or by any of the entities described in Clause 30.3.3 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, (or any benchmarking organisation) receiving such information for any purpose relating to or connected with this Contract;

30.3.3 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

30.3.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

30.3.5 to any relevant party for the purpose of the examination and certification of the Authority’s accounts;

30.3.6 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights under Clause 14 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions or 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;

30.3.7 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

30.3.8 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 30.3 of this Schedule 2 of these Call-off Terms and Conditions.

30.4 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 30 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions 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.

30.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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.

30.6 Clause 30 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall remain in force:

30.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and

30.6.2 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.

31. Freedom of Information Act

31.1 The Supplier acknowledges the duties of the Authority 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.

31.2 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:

31.2.1 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;

31.2.2 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;

31.2.3 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) Working Days) provide a copy of the request and any response to the Authority;

31.2.4 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) Working Days) transfer the request to the Authority;

31.2.5 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

31.2.6 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) Working Days of that request and without charge.

31.3 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.

32. Transparency

32.1 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.

32.2 In preparing a copy of this Contract for publication under Clause 32 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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.

32.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

32.4 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 31 of this Schedule 2 (General Terms and

Conditions) of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

33. Sustainability

33.1 The HM Government Supplier Code of Conduct setting out the standards and behaviours expected of Suppliers who work with government shall apply for the purposes of this Contract

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) ("**Code**").

33.2 Without affecting its other obligations under the Contract, the Authority expects the Supplier and any Sub-contractors to meet the standards set out in that Code. In addition, the Authority expects its Supplier and any Sub-contractors to comply with the standards set out in this Clause 33 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

33.3 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 33 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions within fourteen (14) days of such request, provided that such requests are limited to two each year.

Equality and Accessibility

33.4 In addition to legal obligations, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

33.4.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

33.4.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

33.5 In delivering the Goods and Services, the Supplier shall comply with the Authority's equality, diversity and inclusion requirements, to be provided to the Supplier by the Authority.

- 33.6 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

Employment Law

- 33.7 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Modern Slavery

- 33.8 The Supplier:

- 33.8.1 shall, and shall procure that each of its Sub-contractors shall, comply with the Modern Slavery Act 2015;
- 33.8.2 shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour or any practice that is considered to be an indicator of force labour as defined by the International Labour Organisation;
- 33.8.3 shall not require its Staff or Sub-contractor Staff to lodge deposits or identify papers with the Supplier or Sub-contractor as their employer and shall be free to leave their employer after reasonable notice;
- 33.8.4 warrants and represents that it has not been convicted of any slavery or human tracking offenses anywhere around the world;
- 33.8.5 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human tracking offenses anywhere around the world;
- 33.8.6 shall make reasonable enquiries to ensure that its Staff have not been convicted of slavery or human tracking offenses anywhere around the world;
- 33.8.7 shall have and maintain throughout the Term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions;
- 33.8.8 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;

33.8.9 shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Clause 33.8 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;

33.8.10 shall not use, nor allow its Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Staff;

33.8.11 shall not use or allow child or slave labour to be used by its Sub-contractors; and

33.8.12 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Authority and Modern Slavery Helpline.

33.9 The Supplier shall notify the Authority as soon as it becomes aware of:

33.9.1 any breach, or potential breach, of the Anti-slavery Policy and if Key Provision 15 of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions applies, any breach, or potential breach, of the Authority's Anti-slavery Policy;

33.9.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

33.10 The Supplier shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy and if Key Provision 16 applies, as a result of any breach of the Authority's Anti-slavery Policy.

4.3 Environmental Requirements

33.11 The Supplier shall comply in all material respects with all applicable environmental laws, permits and regulations in force in relation to the Contract.

33.12 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.

33.13 The Supplier shall meet the applicable Government Buying Standards applicable to services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

33.14 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Goods and Services.

33.15 The Supplier shall ensure that any Goods and Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.

33.16 In delivering the Goods and Services, the Supplier must comply with the Authority's sustainability requirements, to be provided to the Supplier by the Authority.

33.17 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority:

33.17.1 avoid consumable single use items (including packaging) unless otherwise agreed with the Authority, and unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Goods and Services;

33.17.2 demonstrate that the whole life cycle impacts (including end of use) associated with the Goods and Services that extend beyond direct operations into that of the supply chain have been considered and reduced;

33.17.3 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;

33.17.4 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;

33.17.5 enhance the natural environment and connecting communities with the environment; and

33.17.6 achieve continuous improvement in environmental (and social) performance.

33.18 The Supplier shall inform the Authority within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.

Sustainability

33.19 The Supplier shall:

33.19.1 meet the applicable Government Buying Standards applicable to the Goods and Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>; and

33.19.2 perform its obligations under the Contract in a way that:

- (i) conserves energy, water, wood, paper and other resources;
- (ii) reduces waste and avoids the use of ozone depleting substances; and
- (iii) minimises the release of greenhouse gasses, volatile organic compounds and other substances damaging to health and the environment.

34. Official Secrets Acts and Finance Act

34.1 The Supplier shall comply with, and shall ensure the Staff comply with, the provisions of:

34.1.1 the Official Secrets Acts 1911 to 1989; and

34.1.2 section 182 of the Finance Act 1989.

34.2 The Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier or any of the Staff do not comply with Clause 34.1 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.

35. Publicity

35.1 The Supplier shall not and shall procure that its Sub-contractors shall not:

35.1.1 make any press announcements or publicise the Contract in any way;
or

35.1.2 use the Authority's name or brand in any promotion or marketing or announcement,

4.4 without the prior written consent of the Authority.

35.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

35.3 The provisions of Clause 35 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

36. Supply of PPE Goods

Regulatory Requirements

36.1 The Supplier acknowledges and understands that when procuring PPE the Authority is required to ensure the PPE Goods are compliant with and meet applicable legal and regulatory requirements.

36.2 The Supplier shall supply the PPE Goods to Authority in accordance with the terms of this Contract and in accordance with the relevant requirements of applicable laws and regulations applicable to the supply of PPE, including, as applicable, the EU PPE Regulation 2016/425 and the European Commission Recommendation 2020/403 dated 13 March 2020, the Personal Protective Equipment (Enforcement) Regulations 2018 and the Medical Device Regulations 2002 (together the “**PPE Laws**”).

36.3 The Supplier shall ensure for PPE Goods supplied:

36.3.1 the appropriate conformity assessment procedure(s) applicable to the PPE Goods have been followed;

36.3.2 all declarations of conformity and approvals required by PPE Laws are in place prior to the delivery of any PPE Goods to the Authority. An EU declaration of conformity (DoC) is a mandatory document that a manufacturer or its authorised representative need to sign to declare that its products comply with the EU requirements. By providing a signed DoC you take full responsibility for the product's compliance with the applicable EU law - https://europa.eu/youreurope/business/product-requirements/compliance/technical-documentation-conformity/index_en.htm ;

36.3.3 where required by PPE Laws, there is a CE mark affixed to the PPE Goods in accordance with the PPE Laws;

36.3.4 it is in compliance with Office of Product Safety & Standards Covid-19 Guidance for Businesses - <https://www.gov.uk/guidance/opss-coronavirus-covid-19-guidance-for-business-and-local-authorities#opss-covid-19-guidance-for-businesses> ; and

36.3.5 where, necessary current EC-type examinations certificates are in place for the PPE Goods.

36.4 If there are any PPE Goods supplied to the Authority hereunder that require a CE mark under more than one set of regulations, due to the nature of those PPE Goods, including and not limited to:

- PPE Laws;
- Control of Lead at Work Regulations 2002;
- Ionising Radiations Regulations 2017;
- Control of Asbestos Regulations 2012;
- Control of Substances Hazardous to Health Regulations 2002; and
- any other relevant regulations,

the Supplier shall ensure that the CE marking for any such PPE Goods is affixed in accordance with the relevant requirements and shall indicate that the PPE Goods also fulfils the provisions of that other regulation or regulations.

Goods bought to the market before 21 April 2019

36.5 The Supplier shall provide details, including any EC-type examination certificates and approval decisions issued under Directive 89/686/EEC and Directive 93/42/EEC (if applicable), and corresponding national implementing legislation, of any PPE Goods supplied under this Contract that have been placed on the market before 21 April 2019 and products already in the distribution chain by that date confirming that these can continue to be supplied as PPE to the Authority until 21 April 2023, unless their certificate or approval will expire before that date.

Other Specific Requirements

36.6 The Supplier shall offer to the Authority spares and consumables required for any of the PPE Goods supplied to the Authority. The Supplier agrees any charging rate for the spares and consumables shall be inclusive of all packaging and standard delivery.

36.7 The Supplier shall ensure that each delivery of PPE Goods shall be properly labelled in accordance with PPE Laws and such labelling and any user instructions relating to the use of the PPE Goods is clearly legible and in English.

37. Application of TUPE

37.1 The Parties agree that:

37.1.1 Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall apply as follows:

(i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall apply;

(ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall apply;

(iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall apply; and

(iv) Part C of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall not apply;

37.2 Where the commencement of the provision of the Services or a part of the Service does not result in a Relevant Transfer, Part C of Schedule (Staff Transfer) of these Call-off Terms and Conditions shall apply and Parts A and B of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall not apply; and

37.3 Part D of Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions shall apply on the expiry or termination of the Services or any part of the Services.

38. General

4.5 Relationship of the Parties

38.1 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.

4.6 Waiver

38.2 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.

38.3 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.

4.7 Severability

38.4 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.

4.8 Entire Agreement

38.5 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 and Services 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.

38.6 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.

4.9 Expenses

38.7 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.

4.10 Cumulative remedies

38.8 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 38.8 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.

4.11 Rights of third parties

38.9 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.

4.12 Law and jurisdiction

38.10 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.

38.11 Subject to Clause 21 of this Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions, 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.

4.13 Communications

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

SCHEDULE 3 - DEFINITIONS AND INTERPRETATIONS

1. Definitions

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

“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event;
“ASN”	means advance shipping notice;
“Authority”	means the authority named on the Order Form;
“Authority Data”	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> a. supplied to the Supplier by or on behalf of the Authority; or b. which the Supplier is required to generate, process, store or transmit pursuant to the Contract; or any Personal Data for which the Authority is the Controller;
“Authority’s Anti-slavery Policy”	any anti-slavery policy of the Authority that is notified to the Supplier as provided to the Supplier.
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document, the Order Form and/or the Key Provisions;
“Authority Representative”	means the representative specified in the Order Form;
“Breach Notice”	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;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods and Services including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity and disaster recovery plan prepared in accordance with Key Provision 23 (Business continuity and disaster recovery) as amended from time to time which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;

“Call-off Terms and Conditions”	means these Call-off Terms and Conditions for the Supply of Goods and the Provision of Services;
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change in Law”	means any change in Law which impacts on the supply of the Goods and Services (including taxation or duties of any sort affecting the Supplier) which comes into force after the Commencement Date;
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under the Contract, as set out in the Order Form or Schedule 8 (Pricing) of these Call-off Terms and Conditions (as applicable) for the full and proper performance by the Supplier of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Key Provision 19 (Price Adjustment on Extension of Term) of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions, if applicable;
“Codes of Practice”	shall have the meaning given to the term in Clause 30.2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Commencement Date”	means the date of the Order Form;
“Comparable Supply”	means the supply of goods and services to another customer of the Supplier that are the same or similar to any of the Goods and Services;
“Component Part”	means any constituent element or part of the Goods including any raw materials which when processed or combined become part of the Goods or which are used in the process of the production or assembly of the Goods; and “Component Parts” shall be construed accordingly;
“Confidential Information”	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: (a) Personal Data (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 (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Consigned Goods”	means Goods delivered by the Supplier in response to a Consignment Request prior to their use by the Authority;

“Consignment Request”	the Authority's request for Goods to be delivered on a consignment basis;
“Contract”	means the Order Form, the provisions at the front of this document and includes all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
“Contract Year”	means: <ul style="list-style-type: none"> a. a period of twelve (12) months commencing on the Services Commencement Date; or b. thereafter a period of twelve (12) months commencing on each anniversary of the Services Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Term;
“Contracting Authority”	means any contracting authority as defined in regulation 2(1) of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing;
“Controller”	shall have the same meaning as set out in the UK GDPR;
“Cross-Government Decision Making Committee”	means the committee as referred to in the Guidance for new high volume manufacturers of COVID-19 Personal Protective Equipment, Office for Product Safety & Standards, April 2020;
“Data Loss Event”	any event that results, or may result, an unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“Data Protection Laws”	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the UK GDPR; (iii) the Data Protection, Privacy and Electronic Communication (Amendments etc) (EU Exit) Regulation 2019 and any applicable national implementing Law as amended from time to time; and (iv) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	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 the Framework Agreement;

“Data Subject”	shall have the same meaning as set out in the UK GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to their Personal Data;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute(s)”	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 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;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 21 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“DOTAS”	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;
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Environmental Regulations”	shall have the meaning given to the term in Clause 30.2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Equality Legislation”	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;

“Existing IPRs”	means any and all Intellectual Property Rights that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);
“Exit Day”	shall have the meaning in the European Union (Withdrawal) Act 2018;
“FOIA”	shall have the meaning given to the term in Clause 30.2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (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; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (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; (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; (h) industrial action which affects the ability of the Supplier to supply the Goods and Services, but which is not confined to the workforce of the Supplier or the workforce of any sub-contractor of the Supplier; and (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>but excluding, for the avoidance of doubt, any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union or as a result of or in connection with the COVID-19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Goods and Services cannot be provided as set out in this Contract (in all material respects) without such Laws and/or government guidance being breached, or if the Supplier can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Goods and Services due to the levels of COVID-19 infections in the population of the United Kingdom.</p>

“Force Majeure Notice”	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Framework Agreement”	means the Framework Agreement referred to in the Order Form;
“Fraud”	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;
“General Anti- Abuse Rule”	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	means a Change in Law where the change is of a general legislative nature or which affects or relates to a Comparable Supply;
“Good Industry Practice”	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 and services similar to the Goods and the Services 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;
“Goods”	means all goods (including PPE Goods), materials or items that the Supplier is required to supply to the Authority under this Contract (including, without limitation, as stated in the Order Form 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) and shall include parts of such Goods which have been repaired or replaced by or on behalf of the Supplier;
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, 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 and Social Care, the Health & Safety Executive, the Office for Product Safety & Standards, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;

“Implementation Plan”	means the implementation plan, if any, referred to in the Key Provisions;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Key Personnel”	means those persons named in Schedule 11 (Key Personnel) of these Call-off Terms and Conditions as being key personnel or such persons as shall be agreed in writing by the Authority from time to time;
“Key Provisions”	means the key provisions set out in Schedule 1 (Key Provisions) of these Call-off Terms and Conditions;
“KPI”	means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
“Law”	<p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (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); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“New IPR”	<p>means:</p> <ul style="list-style-type: none"> (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or (b) Intellectual Property Rights in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same; <p>but shall not include the Supplier's Existing IPR;</p>

“Occasion of Tax Non-Compliance”	<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 Commencement Date or to a civil penalty for fraud or evasion;</p>
“Order Form”	means the order form for the Goods and/or Services issued by the Authority in accordance with the Framework Agreement, the template for which is found at Schedule 7 of the Framework Agreement;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the UK GDPR;
“Personal Data Breach”	shall have the same meaning as set out in the UK GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“PPE”	shall mean personal protective equipment as defined in the EU PPE Regulation 2016/425.
“PPE Goods”	means PPE products supplied to the Authority under this Contract, as further described in the Order Form
“Processing”	shall have the same meaning as set out in the UK GDPR;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Key Provision 11 of Schedule 1 (Key Provisions) of these Call-off Terms and Conditions for inclusion in the Authority's product catalogue from time to time;
“Prohibited Act”	has the meaning given under Clause 29.1.1 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that

	availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Rejected Goods”	has the meaning given under Clause 4.2 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	means a transfer of employment to which the Employment Regulations applies;
“Remedial Proposal”	has the meaning given under Clause 18.1 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Requirement to Recall”	has the meaning given under Clause 4.9 of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
“Security Policy”	means the HMG Security Policy Framework (April 2014) available at https://www.gov.uk/government/publications/security-policy-framework , as amended by notification to the Contractor from time to time;
“Services”	means the services set out in this Contract;
“Services Commencement Date”	means the date specified in the Order Form from which the Supplier is required to commence the provision of the services;
“Specific Change in Law”	means in law a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractor(s) and person employed or engaged by such Sub-contractor(s);
“Specification”	means the specification for the Goods and Services as set out in the Order Form or Schedule 6 (Specification) of these Call-off Terms and Conditions, as applicable;
“Sub-contract”	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;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
“Supplier”	means the supplier named on the Order Form;

“Supplier Representative”	means the representative specified in the Order Form;
“Tender Response Document”	means the tender submitted by the Supplier to the Authority and annexed to Schedule 7 (Tender Response Document) of these Call-off Terms and Conditions;
“Term”	means the term as set out in the Order Form;
“Termination Notice”	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;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
“Unconnected Sub-contract”	means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	means any third party with whom the Supplier enters into an Unconnected Sub-contract;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.
“Working Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;

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 Reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):

1.3.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

1.3.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

- 1.4 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
- 1.5 References in this Contract to a “Schedule”, “Annex”, or to a “Clause” are to schedules, annexes and clauses of this Contract.
- 1.6 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 Working Day.
- 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 (the Supplier’s responses being set out in the order form) 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 guidance notes in grey text do not form part of this Contract.
- 1.13 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.

- 1.14 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 4 - ADDITIONAL SPECIAL CONDITIONS

1. Specific approval processes for medical devices that are not CE marked

- 1.1 The provisions of this Clause 1 of Schedule 4 of these Call-off Terms and Conditions apply where Goods are in-vitro diagnostic medical devices or general medical devices to which CE marking is not currently applied pursuant to Regulations 36 (CE marking of in-vitro diagnostic medical devices) and Regulation 10 (CE marking of general medical devices) of the Medical Device Regulations 2002 (the “**MDR**”). It is recognised by the Parties that such Goods, having only recently been developed, may not necessarily meet the requirements that an in-vitro diagnostic medical device that bears CE marking in accordance with Regulation 36 and a general medical device that bears CE marking in accordance with Regulation 10 MDR would meet (and shall not in any event be labelled with Conformity Marking) and instead must receive an authorisation from the Secretary of State for Health and Social Care pursuant to Regulation 39(2) and/or 12(5) MDR to be placed on the market in the United Kingdom and supplied to the Authority for use in a healthcare environment (“**Product Authorisation**”).
- 1.2 In relation to such Goods, the Supplier shall by dates agreed in writing with the Authority submit to the Authority:
- 1.2.1 such facilities that it will use for the manufacture and storage of the Goods in question for inspection by the Authority and any regulatory authority;
 - 1.2.2 details of any manufacturing processes and controls that it will use in connection with the manufacture and supply of any such Goods in such detail that the Authority shall reasonably require;
 - 1.2.3 for approval agreed quantities of pre-production samples of the Goods in question (“**Pre-Production Samples**”), such samples to be manufactured in conformance with the Specification; and
 - 1.2.4 such quantities of the Goods for testing in a healthcare environment that the Authority may reasonably require (“**Testing Samples**”).
- 1.3 Furthermore, the Supplier shall:
- 1.3.1 at the Authority’s request, provide reasonable support, cooperation and information to the Authority to assist the Authority in obtaining and maintaining a Product Authorisation for the Goods in question; and

1.3.2 promptly notify the Authority if it experiences or anticipates that it may experience any difficulties or challenges with respect to manufacturing Pre-Production Samples or Testing Samples and the Authority shall provide such reasonable assistance to the Supplier as it is able (taking into account the exceptional circumstances described in Clause 2 of this Schedule 4 of these Call-off Terms and Conditions).

1.4 It is a condition of this Contract that the Supplier shall not commence the manufacture and/or the supply of Goods for use generally by patients until the Supplier has:

1.4.1 obtained a relevant Product Authorisation and notified the Authority of the same; and

1.4.2 communicated its approval of the Pre-Production Samples to the Authority in writing (such approval not to be unreasonably withheld or delayed).

The Authority shall be entitled to waive the condition referred to in the preceding sentence by notice in writing to the Supplier subject to any requirements notified to the Supplier in writing by the Authority.

1.5 The Authority's approval of the Pre-Production Samples constitutes confirmation by the Supplier that the Goods shall be manufactured in conformity with those samples. The Supplier shall ensure that all such Goods manufactured include a type and serial number or batch number or other element allowing identification.

1.6 If the Supplier considers or has reason to believe at any stage that the Goods are no longer in conformity with the Product Authorisation it must immediately notify the Authority and take the corrective measures necessary to bring the Goods into conformity, to withdraw them or to recall them, as appropriate. Furthermore, where the Goods presents a risk, the Supplier shall immediately inform the enforcement authority in the UK to that effect, giving details, in particular, of the non-conformity and of any corrective measures taken.

1.7 The Supplier shall following the grant of a Product Authorisation for Goods strictly adhere to any conditions applying to such Product Authorisation in manufacturing and supplying those Goods and otherwise complying with this Contract, and shall cease manufacture and supply if or once the Product Authorisation in question is withdrawn or expires unless the Authority otherwise requires in writing. Following the withdrawal or expiration of the Product Authorisation for the Goods, the Supplier shall provide reasonable assistance and cooperation to the Authority in recalling the Goods and the Authority shall meet the Supplier's reasonable costs of such assistance and cooperation save where the

withdrawal of the Product Authorisation in question results from any breach by the Supplier of this Contract.

2. Exceptional circumstances as a result of the Covid-19 pandemic

2.1 The Parties recognise that the circumstances created as a result of the Covid-19 pandemic are exceptional and fast-moving. As a consequence, the Parties agree that they will act reasonably and in good faith together to seek to resolve any difficulties or challenges which may impact upon the manufacture and supply of Goods and in relation to the wider Covid-19 issues so as to ensure that public health is protected and preserved.

2.2 In this context:

2.2.1 the Supplier recognises that there may be a shortage of supply of Component Parts and accordingly, the Supplier shall take all reasonable steps to safeguard and protect all stocks of Component Parts held by it and its Group from time to time which may be required to manufacture the Goods;

2.2.2 the Supplier recognises and agrees that the exceptional circumstances referred to above may mean that it is necessary for the Authority to involve itself in the Supplier's inbound supply chain for Component Parts. The Authority shall notify the Supplier in advance if it considers that this step is reasonably necessary and the Supplier shall provide all information and assistance as the Authority may require in order for it to take this step;

2.2.3 the Supplier agrees to provide transparency to the Authority to ensure that the Authority has sufficient visibility of the Supplier's manufacturing processes and timelines for the manufacture and supply of Goods to allow it to plan and adjust order scheduling across the Authority's supply chain for products equivalent to or similar to the Goods;

2.2.4 the Supplier shall notify the Authority promptly of any exceptional events or circumstances which may impact upon the Supplier's ability to manufacture and supply Goods in accordance with this Contract and the Authority's requirements ("**Relevant Circumstances**"). If the Supplier is or is likely to be subject to delays in manufacturing and supplying any of the Goods to the Authority, the Authority shall be entitled by notice in writing to cancel all or part of an Order;

2.2.5 if the Relevant Circumstances apply or if any Pre-Production Samples of the Goods fail to gain approval in accordance with Clause 1.4.2 of this Schedule 4 of these Call-off Terms and Conditions then the Authority shall be entitled: (a) to have the Goods manufactured by an alternative manufacturer (and shall upon reasonable commercial terms be granted a licence of any relevant Intellectual Property Rights owned or licensed to the Supplier which are necessary for the manufacture of the Goods and the Supplier shall provide the Authority, upon request, with all relevant information necessary for such manufacture) and; (b) to purchase from the Supplier the Supplier's stocks of Component Parts to the extent that such quantities of Component Parts are held in line with the quantities required to fulfil an Order. The purchase price of such Component Parts shall be an amount equal to the price paid by the Supplier for such Component Parts. In addition, the Authority shall be entitled to purchase from the Supplier any tooling used or to be used exclusively for the manufacture of the Goods at the price paid by the Supplier, subject to any depreciation which would ordinarily be applied to such tooling in line with usual accounting practice; and

2.2.6 if the Authority exercises its rights under Clause 2.2.5 of this Schedule 4 of these Call-off Terms and Conditions, the Supplier will deliver up to the Authority the Component Parts and relevant tooling and title in such Component Parts and tooling shall immediately transfer to the Authority. The Supplier shall take all such steps and complete all such additional documentation as is necessary to transfer title in the Component Parts and tooling to the Authority.

SCHEDULE 5 - STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Admission Contract”	the agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
“Supplier’s Final Supplier”	a list provided by the Supplier of all Supplier Staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b. unfair, wrongful or constructive dismissal compensation; c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d. compensation for less favourable treatment of part-time workers or fixed term employees; e. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; f. employment claims whether in tort, contract or statute or otherwise; g. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
“Fair Deal Employee(s)”	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

“Former Supplier”	a Supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Goods and Services (or any part of the Goods and Services) and shall include any sub-contractor of such Supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	means HM Treasury Guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions” issued in June 1999 including the supplementary guidance “Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues” issued in June 2004;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);
“Replacement Supplier”	means any third party supplier of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;
“Replacement Services”	means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are provided by the Authority itself or by any Replacement Supplier;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

	<ul style="list-style-type: none"> a. their ages, dates of commencement of employment or engagement and gender; b. details of whether they are employed, self-employed Suppliers or consultants, agency workers or otherwise; c. the identity of the employer or relevant contracting Party; d. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; e. their wages, salaries and profit sharing arrangements as applicable; f. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; g. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); h. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; i. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and j. any other “employee liability information” as such term is defined in Regulation 11 of the Employment Regulations.
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date; and
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

4.13.1

2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

4.13.2

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms dis-applied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.1.3 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2. AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Authority occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Authority Employees; and/or
- (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

2.1.5 a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;

2.1.6 any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be

liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

2.1.7 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with Regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority; and

2.3.2 the Authority may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (i) any claim for:
 - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - 2.7.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
 - 2.7.3 shall apply only where the notification referred to in Paragraph 2.32.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within six (6) months of the Services Commencement Date.

- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their

resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under Regulation 13 of the Employment Regulations.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4. INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under Regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.2.2 Old Fair Deal; and/or

5.2.3 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in writing by the Parties.

6. PENSIONS

6.1 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

5. ANNEX TO PART A: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Contract.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Contract) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Contract and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

- 4.1 The Supplier and the Authority respectively undertake to each other:
- 4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Contract, and to supply the information as expeditiously as possible; and
- 4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

5.1.1 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

5.1.2 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

- 7.1 The Supplier shall:

7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

7.1.3 for the period either:

- (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
- (ii) after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Contract.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of Regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2 the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
- (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with Regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and

2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (i) any claim for:
 - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six (6) months of the Services Commencement Date.

- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material

detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment

Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under Regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.1.2 Old Fair Deal; and/or

5.1.3 the New Fair Deal.

- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in writing by the Parties.

6. PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority:

1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement; and

1.2.3 agree that notwithstanding sub-paragraph 1.2.2 of this Annex to Part B: Pensions the Supplier shall notify the Authority in the event that it breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

- 4.1 The Supplier and the Authority respectively undertake to each other:
- 4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

- 5.1 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any losses whatsoever arising out of or in connection

with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

7.1 The Supplier shall:

7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

7.1.3 for the period either:

- (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
- (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

7.2 ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

5.1.3

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved;

5.1.4 the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (i) any claim for:
 - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (c) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within six (6) months of the Services Commencement Date.

3. PROCUREMENT OBLIGATIONS

- 3.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: EMPLOYMENT EXIT PROVISIONS

6. PRE-SERVICE TRANSFER OBLIGATIONS

6.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

6.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

6.1.2 receipt of the giving of notice of early termination of this Contract;

6.1.3 the date which is twelve (12) months before the end of the Term; and

6.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

6.1.5 it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

6.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

6.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

6.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

6.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

6.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub Supplier shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

6.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

6.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

6.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

6.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

6.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

6.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

6.5.7 and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

6.6 During the Term, the Supplier shall provide, and shall procure that each Sub contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

6.6.1 the numbers of employees engaged in providing the Services;

6.6.2 the percentage of time spent by each employee engaged in providing the Services; and

6.6.3 a description of the nature of the work undertaken by each employee by location.

6.7 The Supplier shall provide, and shall procure that each Sub Supplier shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

6.7.1 the most recent month's copy pay slip data;

6.7.2 details of cumulative pay for tax and pension purposes;

6.7.3 details of cumulative tax paid;

6.7.4 tax code;

6.7.5 details of any voluntary deductions from pay; and

6.7.6 bank/building society account details for payroll purposes.

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations

and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 7.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 7.3 Subject to Paragraph 2.4 the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 7.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - 7.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

7.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

7.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

7.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to and including the Service Transfer Date;

7.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

7.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment

Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with Regulation 13(4) of the Employment Regulations.

- 7.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

7.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or

7.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

- 7.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

7.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

7.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or

procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

7.7.1 no such offer of employment has been made;

7.7.2 such offer has been made but not accepted; or

7.7.3 the situation has not otherwise been resolved;

7.7.4 the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

7.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in Paragraph 2.8:

7.9.1 shall not apply to:

(i) any claim for:

- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

7.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (6) months of the Service Transfer Date.

7.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

7.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

7.11.1 the Supplier and/or any Sub-contractor; and

7.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

7.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

7.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each

Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- 7.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- 7.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- 7.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 7.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 7.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

7.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

7.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

7.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.

7.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

7.14.1

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

SPS Facilities LLP and Southwest Pathology Services LLP (trading as SYNLAB) with registered office on Francis House, London, SE1 1NA and company numbers: **SPS Facilities LLP** (OC397788), **Southwest Pathology Services LLP** (OC370482). Their registered vat number **SPS Facilities LLP** (GB2067755 96)

SCHEDULE 6 SPECIFICATION

SPECIFICATIONS

**THE NATIONAL HIV/SYPHILIS SELF-
SAMPLING AND SELF-TESTING
SUPPLY OF GOODS AND SERVICE S
FRAMEWORK**

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1. Executive Summary

7.15 1.1 Overview

In November 2015, based on the success of two national pilots, Public Health England (PHE) and local authorities co-commissioned and launched a nation-wide HIV Self-Sampling Service for most at risk populations for HIV acquisition. The Service has continued to run successfully and the current Framework 3173_19 comes to an end on 31 December 2022. The Department of Health and Social Care, the lead Authority, wishes to renew this Framework and is undertaking this procurement process to identify and appoint a single Supplier to continue the Service provision, with the addition of an HIV Self-Testing Service from 1 January 2023.

The Service, which will complement other local HIV testing services, will be run entirely by the appointed Supplier, who will respond directly to individual Service Users' in the geographical areas where the Service is commissioned.

Under the current Framework the service includes HIV self-sampling, optional syphilis testing, and optional offline distribution of self-sampling kits. The new HIV Self-Sampling and Self-Testing Service will include three components:

- 1) Online ordering and fulfilment of orders for HIV self-sampling (with optional add on syphilis testing)
- 2) Online ordering and fulfilment of orders for HIV self-testing
- 3) Offline distribution of HIV self-testing kits (offline bulk order service)

A summary of the service models is outlined in section 1.3. The Supplier must have the capability to deliver all components of the service, and it is up to the Participating Authority which of the services to select.

There are four main functions of the Service and care pathway (all of which are described in greater detail in Section 4. Service Requirements:

- User interface and access
- Fulfilment of orders
- Pathology
- Results management

7.16 1.2 Objectives

The objectives of the Framework are:

- To have a Framework that is awarded to a single, suitably qualified Supplier which will offer a low cost and clinically robust remote HIV Self-Sampling and Self-Testing Service that will complement current service provision to key populations;
- To establish a clear specification, quality standards and Call-Off Terms;
- To create efficiencies for the Participating Authority when the Service is procured and awarded.

The Framework is primarily intended to be accessed by the Department of Health and Social Care and English local authorities; however it will be open for use by any public body/contracting authority being either:

- Department of Health and Social Care;
- any local authority in England;
- NHS England and NHS Improvement;
- any Integrated Care Board, NHS Trust or NHS Foundation Trust in England

7.17 1.3 Summary of services

HIV Self-Sampling

The online self-sampling service is a continuation of the service that has been in place since 2015. The Supplier is required to put in place an effective mechanism for service users to order self-sampling kits to an address of their choosing within England, use the kits to collect a sample, and then send the sample to a laboratory for testing and analysis. Results are then provided by the service, along with advice on what to do next. www.freetesting.hiv will be the URL used to access the Service.

All self-sampling kits that are returned will be tested for HIV, however, in addition to this, the Supplier must provide an option for Participating Authorities to offer users testing for Syphilis (at an additional cost). The Supplier is required to carry out the test on the same sample returned from the Service User without requiring additional sampling equipment to be included in the kits.

Participating Authorities can customise the eligibility criteria for HIV self-sampling and syphilis testing as part of their agreement with the Supplier. Participating Authorities can choose to offer this service to all residents or select from a range of options for eligibility including but not limited to a) gender and gender identity; b) sexual orientation; c) ethnicity; d) age, and behavioural factors including involvement in sex work.

Online HIV Self-Testing

HIV self-testing will be introduced as a new component to this service from 2023. This is in response to growing appetite for this service among both Participating Authorities and users. Self-testing for HIV is not the same as self-sampling (where the specimen is sent to a laboratory). The Supplier is required to put in place an effective mechanism for Service Users to order self-testing kits to take a sample, and then test the sample and obtain the result immediately. There is no need to send the sample to a laboratory, as the Service User can read the result themselves. The Supplier is required to put in place a mechanism to allow Service Users to report their results.

The Supplier is required to deliver this Service with appropriate support to Service Users to use the self-test device, interpret their results (negative or reactive) and understand next steps.

Participating Authorities can customise the eligibility criteria for HIV self-testing as part of their agreement with the Supplier. Participating Authorities can choose to offer this service to all residents or select from a range of options for eligibility including but not limited to a) gender

and gender identity; b) sexual orientation; c) ethnicity; d) age, and behavioural factors including involvement in sex work.

Where Participating Authorities have opted to provide both self-sampling and self-testing services as part of the agreement with the Supplier, Service Users will have the option of choosing an HIV self-sampling kit or an HIV self-testing kit. www.freetesting.hiv will be the URL used to access the Service. Clear information must be provided on the services available to Service Users, including the differences between the testing options.

Offline Self-Testing Kits (offline bulk order service)

Whilst the majority of the Service will be providing self-sampling and self-testing kits ordered online by Service Users, the Supplier is required to put in place an effective mechanism for Participating Authorities to order offline self-testing kits for local distribution and use in outreach situations. These kits can be purchased in bulk by Participating Authorities and delivered to a single location, or directly to outreach providers they have selected.

Outreach providers can provide the self-testing kits directly to users. The test kits will include all same information as received by users of the online service. They can also include information customised by Participating Authorities.

The Supplier is required to put in place a mechanism to allow Service Users to Report their results. Offline Service Users will have the option to use the test and report their results (if they wish) privately. Alternatively, the outreach provider may support the Service User to carry out their test, interpret their result (negative or reactive), and report their result (if they wish).

The Supplier is required to deliver this Service with appropriate support to Service Users to use the self-test device, interpret their results (negative or reactive) and understand next steps.

7.18 1.4 Marketing and Promotion

A User Guide for the Framework will be marketed on GOV.UK. The Department of Health and Social Care will promote the use of the Framework to Participating Authorities through their regional networks.

The Supplier will not be required to produce or provide any written marketing material for public distribution. The Supplier shall obtain approval from the Department of Health and Social Care and/or the Participating Authority (as applicable) before any marketing material is distributed. This includes all press releases, adverts, online marketing etc. using and/or mentioning the

name (s) or logo(s) of the Department of Health and Social Care and/or the Participating Authority.

7.19 1.5 Operation of the Framework

Participating Authorities wishing to procure via the Framework will do so by entering into agreements with the appointed Supplier, on the terms set out in Call-Off Terms. The Supplier will make the Service available to Service Users in the Participating Authority's geographical area.

Each request for a test kit, and the subsequent pathology and results handling, ordered by an individual Service User will be deemed to be an order placed under the Call-Off Terms between the Participating Authority and the Supplier. The Supplier will invoice the Participating Authority (typically monthly in arrears) for all kits and related services which have been supplied to Service Users in the Participating Authority's area.

The Supplier will keep the Participating Authority informed as to how many kits have been supplied and how much expenditure has been incurred in their (i.e. the Participating Authority's) area, and will alert the Participating Authority as the limits specified in the Call-Off agreement are approached.

When providing offline HIV self-test kits and the Supplier applies a separate cost for the follow-up and support of service users that have a reactive HIV self-test, the Supplier must have a mechanism to ensure that the correct Participating Authority (i.e. the Participating Authority that purchased the kit regardless of the area of residence of the service user) is invoiced.

7.20 1.6 Information and Advice

The Supplier is responsible for ensuring Service Users have adequate information and advice to select an appropriate testing service, including clear guidance on the difference between testing options available to them. All orders must be followed up with health promotion information including signposting to PrEP services. All test kits will include easy-to-read and comprehend quality instructions for testing and interpreting results. This should include printed instructions, supported with links to videos or other media (produced to reflect the diversity of Service Users). Information must also be available on how to access support following test results.

7.21

7.22 1.7 Service Delivery and Charges

The Service will be free of charge to eligible individual Service Users electing to use it, and who have an address that falls within an area where the Service has been commissioned.¹

Participating Authorities can contract with the Supplier for any or all of the services, and the customised offer must be displayed clearly for Service Users during the ordering process.

¹ For the offline distribution of self-testing kits it is up to the outreach provider to determine residential eligibility which may include residents from outside the geographical locality stipulated by the relevant Participating Authority or those without a postcode. In this situation the costs will be paid by the Participating Authority authorising the outreach provider to order and use the kits.

Where Participating Authorities have opted to provide both self-sampling and self-testing services as part of the agreement with the Supplier, Service Users will have the option of choosing an HIV self-sampling kit or an HIV self-testing kit. www.freetesting.hiv will be the URL used to access the Service. Clear information must be provided on the services available to Service Users, including the differences between the testing options.

The Supplier will invoice the appropriate Participating Authority for the services provided. It is therefore, responsibility of the Supplier to keep up-to-date postcodes of all contracted Participating Authorities to direct invoices accordingly.

The Department of Health and Social Care may run HIV testing campaigns. For campaign periods during which the Department of Health and Social Care is a 'Participating Authority', the Service will be available to Service Users in all parts of England, regardless of which local authority area they reside in. The Supplier will be notified by the Department of the time period in which the campaign will be live. The Department will also notify what testing would need to be available during these campaign periods and if applicable, maximum budget available to run the campaign. All testing requested during campaign periods and if applicable, up to the maximum budget available, will be invoiced to the Department of health and Social Care.

It should be recognised that the appointed Supplier will need to work collaboratively across a number of national, regional and local providers and other organisations responsible for both commissioning and delivery of different elements of the HIV clinical pathway.

Tenderers should be aware that a significant aspect of the requirement will be to manage peaks in demand efficiently and effectively. One such peak will be the annual National HIV Testing Week, when up to 30,000 kits could be requested, requiring samples and results to be processed within a very short period of time. In previous years this has been a self-sampling service but in future years this could potentially include a combination of self-sampling and self-testing.

7.23

7.24 1.8 Estimated Volumes

7.25

The value of the Framework is estimated to be £250k to £500k per annum. Tenderers should be aware that this figure is only an estimate and could fluctuate up or down, depending on budgets, Participating Authority and Service User demand.

The current framework 3173_19 has shown that the demand for HIV Self-Sampling Service is relatively constant. However, the Supplier must have the flexibility to adapt to surges in demand as high numbers of kits are ordered during national campaign periods (for example, the weeks immediately before during and after National HIV Testing Week). Between November 2015 and March 2022, a total of 299,543 kits were ordered of which 177,933 kits were returned for testing (59%). During periods of normal activity the estimated number of kits requested is approximately 3,000 per month. This compares to periods of peak demand when the number of kits requested increases to around 30,000 per month.

Since the current Service has been in place, a total of 56 Local Authorities have entered into Call-Off agreements under the Framework. Many current Participating Authorities have reported to the Department of Health and Social Care that they intend to continue commissioning the service in the future and have expressed interest in the introduction of an HIV self-testing service. Tenderers should however note that this information is provided for guidance and does not constitute a binding commitment at this stage. Such binding agreements will be created by each Participating Authority at the point at which they enter into a Call-Off agreement under the Framework. Whilst neither the Department of Health and Social Care funding, which is subject to ongoing central government review, nor that of individual local authorities can be guaranteed for the duration of the new Framework, there is an expectation that funding in this important area of public health will be maintained.

There will be no compulsion on the part of potential Participating Authorities to use the Framework. **For this reason, no guarantee of business value or volume can be given.** The actual Framework usage is also dependent upon uptake by individual Service Users, so the specification calls for a proactive approach by the Supplier, working with relevant local and national agencies, in helping ensure that kits which are issued are used and returned.

2. Background

2.1 HIV in England

In the UK there are an estimated 97,740 people living with HIV of whom an estimated 4,660 are unaware of their infection.² The two populations most at-risk from HIV infection in the UK are men who have sex with men (MSM) and black African heterosexuals. Gay, bisexual and other MSM are advised to test for HIV at least annually and every three months if accessing PrEP or having sex without condoms with new or casual partners.³ Black African men and women are advised to test for HIV regularly if having sex without condoms with new or casual partners.⁴ Despite recent declines in the numbers of new diagnoses in England late diagnosis remains a challenge. In 2020 42% of all HIV diagnoses in England were made at a late stage of infection.⁵

The Government is committed to getting to zero new transmissions of HIV by 2030. Providing a range of testing options and approaches in a variety of settings is an important component of the combination prevention approach required to achieve this goal. On 1st December 2021 The Government published an HIV Action Plan⁶ that outlined commitments to increase equitable

² UK Health Security Agency, 'HIV testing, new HIV diagnoses, outcomes and quality of care for people accessing HIV services: 2021 report', 1 December 2021

³ British HIV Association, 'Standards of care for people living with HIV', 2018

⁴ NICE, 'HIV testing: increasing uptake among people who may have undiagnosed HIV. NICE guideline [NG60]', 1 December 2016

⁵ UK Health Security Agency, 'HIV testing, new HIV diagnoses, outcomes and quality of care for people accessing HIV services: 2021 report', 1 December 2021

⁶ DHSC, 'Towards Zero: the HIV Action Plan for England 2022-2025. 1 December 2021

access to HIV testing services. This plan outlined a commitment to ensure that innovative online postal and/or collection HIV self-sampling services are available in all areas of England.

Online HIV testing services are increasing important as the coronavirus (COVID-19) pandemic changed how people accessed HIV testing and sexual health and HIV services in 2020. Compared to 2019, the number of people tested for HIV at sexual health services decreased by 30% in 2020 and almost half (47%) of the 927,760 people testing in 2020 did so online.⁷

2.2 The National HIV Self-Sampling Service

Between November 2015 when the service began and March 2022 a total of 299,543 kits were ordered. The overall return rate has increased from 56.7% (November 2015 to October 2019) to 63% (November 2019 to March 2022). The Service has been successful at engaging first time testers (25% of Service User) and people who have not tested for more than a year (33% of Service Users). The majority of Service Users are gay and bisexual men (67%), with fewer black African Service Users (8%).

The current Framework Agreement comes to an end on 31 December 2022 and following a review, the multi-disciplinary Steering Group has decided to proceed with procuring a new Framework Supplier, and to add HIV self-testing as a new component of the Service. A single Supplier will be appointed to provide a remote HIV Self-Sampling and Self-Testing Service to the most at risk adult populations across England. As already outlined in the introduction to this document, the Service will be procured and performance managed by the Department of Health and Social Care and the individual Participating Authorities. It is recognised that the Supplier will need to work collaboratively across a number of national, regional and local providers as well as organisations responsible for both commissioning and delivery of different elements of the HIV clinical pathway.

3. **The Service Requirements (General)**

7.26 3.1 Aims and Objectives of Service

The aim of this Service is to improve the uptake of HIV testing in England via the provision of a cost effective and clinically robust online HIV self-sampling and self-testing service, as well as offline distribution of self-testing kits. The service will be available for individuals aged 16 years and over. Emphasis will be placed on increasing HIV testing among communities most at-risk of HIV including men who have sex with men and black African populations.

Service objectives include but are not limited to:

- Access to free remote sampling services that allows people to self-sample independently
- Online and offline distribution of self-testing services that allows people to self-test, and interpret their results (negative or reactive) independently

⁷ UK Health Security Agency, 'HIV testing, new HIV diagnoses, outcomes and quality of care for people accessing HIV services: 2021 report', 1 December 2021

- Develop and maintain a website that allows Service Users to order Services and report results
- Appropriate onward referral for treatment and care following diagnosis with timely initiation of treatment when clinically indicated⁸
- Rapid referral and signposting to free services local to the Service User for the prevention, detection and management (treatment and partner notification) of HIV, BBVs and other STIs to reduce population prevalence and onward transmission
- Ensuring appropriate sexual health and service information (including vaccination, combination prevention, and treatment) is provided to all Service Users including those not eligible to access the Service and following non-reactive result
- Ensuring services are acceptable and accessible to people disproportionately affected by sexual ill health
- Engaging national prevention bodies and non-governmental organisations to facilitate promotion, Service delivery and development
- Supporting evidence-based practice in sexual health including participation in audits and external Service evaluations and may include research.

7.27 3.2 Key Service Outcomes

The Supplier will contribute to the following outcomes to improve the sexual health in the populations as a whole:

Direct Outcomes:

- Improved access to HIV and syphilis testing for those at highest risk of sexual ill health
- Increased uptake of HIV and syphilis testing with particular emphasis on those who have not accessed other sexual health services in the last year, first time Service Users, and repeat testing of those that remain at risk
- Reduced sexual health inequalities amongst communities most at risk of HIV infection including black Africans, MSM, sex workers, drug users and trans communities
- Reduced number of undiagnosed cases of HIV
- Reduced late diagnoses of HIV

Indirect Outcomes:

- Increased number of those newly diagnosed routinely accessing treatment and care
- Reduced onward transmission of HIV and other sexual transmitted infections
- Improved health and wellbeing of people living with HIV
- Increased development of evidence-based practice
- Increased knowledge and awareness of HIV

⁸ HIV Standards suggest that people who have a new diagnosis of HIV should be informed of their CD4 count and have the opportunity to discuss management, antiretroviral therapy and opportunistic infection prophylaxis (if indicated) within 2 weeks of this initial assessment (i.e. within 1 month of initial diagnosis) British HIV Association Standards of Care for People Living with HIV (2018) <https://www.bhiva.org/standards-of-care-2018>

4. The Service Requirements (Functions)

The Service is characterised by the following:

7.28 4.1 User Interface and Access

The Supplier will be responsible for designing, hosting, managing and maintaining a branded, secure and accessible⁹ user- friendly interface that facilitates remote ordering of an HIV self-sampling or self-testing kit without the need to see a healthcare practitioner. The User Interface should be tested with users with accessibility needs to help achieve conformance with the Web Content Accessibility Guidelines (WCAG) Guidelines 2.1 AA standard. The security, accessibility and user experience will be assessed by the multi-disciplinary Steering Group.

The Service User interface must be fit for purpose on the day it is launched (1 January 2023) and will include, but not be limited to the following requirements:

Branding

- The Supplier will develop a brand for the platform in partnership with the Department of Health and Social Care using supplied branding guidelines.
- The Department of Health and Social Care will own the brand developed for the Service but not the platform through which the Service is delivered. www.freetesting.hiv will be the URL used to access the Service.

Data Protection and Security

- Comply with security standards at all times and should be registered with the Information Customers' Office (ICO)
- Comply with the UK General Data Protection Regulation 2018
- Must assure and inform Service Users of their privacy and confidentiality
- Comply with the Information Standards, NHS England. [NHS England » Accessible Information Standard](#)

Access

The user interface must:

- be accessible 24 hours a day, 7 days a week with the exception of planned downtime for maintenance. Any periods of downtime should be kept to a reasonable minimum, and a suitable message should be displayed to Service Users visiting the site during this period.
- be able to process high volumes of kit requests simultaneously and be able to accept orders from Service Users 24 hours a day, 360 days a year
- be accessible to all Service Users including those with visual impairments, learning difficulties and those with a preference for information in other languages other than English

⁹ For the purposes of this contract "accessible to all Service Users" including those with limited literacy, visual impairments, learning difficulties and those with a preference for information in other languages other than English. This may include but will not be limited to the following for Suppliers considering digital platforms: The ability to change text size; Instructions in video form; Use standard UK Government Access Keys Systems; Is compatible with any browser; Web Content Accessibility Guidelines (WCAG) Guidelines 2.1 conformance to level 'AA' standard; Embed a multilingual translator into the website with English as the default language. Where communication with Service Users is via a telephone, services for the purpose of language translation would be acceptable.

- have functionality for Service Users (or outreach workers supporting Service Users) to use the interface to self-report their results (when self-testing) via a URL and/or QR code
- Provide an alternative offline mechanism for Service Users to self-report results (for example, those without online access)
- have functionality for outreach workers to register information on recipients (Service Users) of self-test kits delivered offline via a URL and/or QR code
- signpost individuals not eligible for the services to obtain an HIV test from an alternative provider – this should include signposting to sexual and reproductive health services as well as other options for free self-sampling or self-testing.
- provide information in a format designed to inform and support decision making by Service Users, including clear information on the Services available to them and the differences between the testing options.
- Provide online information and guidance for using the self-sampling and self-testing kits (including instructional videos produced to reflect the diversity of Service Users).

Customisation of offer

- Participating Authorities must be able to customise eligibility criteria for the different services offered as part of their agreement with the Supplier, and the user interface must provide functionality for the offer to be displayed to Service Users according to this criteria.
- Participating Authorities must be able to select from a range of options for eligibility including but not limited to a) gender and gender identity; b) sexual orientation; c) ethnicity; d) age, and behavioural factors including involvement in sex work. This is essential to allow Participating Authorities to put in place a service that is appropriate for their area and residents.

7.29 4.2 Fulfilment of Kit Orders

Coordination and management functions of the Service (including dispatch of kits) should be delivered, as a minimum, during business operating hours 9am-5pm (GMT) Monday to Friday.

The Supplier is responsible for meeting the following requirements:

7.29.1 4.2.1 Online Ordering of Self-Sampling Kits (main service)

- Delivery of a sampling kit to the Service Users' preferred address which may, given the option, differ from their place of residence, in discrete and unbranded packaging. Fulfilment of HIV self-sampling kit orders free of charge to the Service User.
- Collation of adequate Service User information during the online order to facilitate remote HIV-sampling, pathology, reactive and negative results notification, recall and repeat testing.
- Supply of self-sampling kits containing: in-date consumables for capillary or finger- tip blood sampling; easy-to-read and comprehend sampling instructions (produced to reflect the diversity of Service Users); sexual health promotion messaging and Service information leaflets; branded microbiology form; prepaid postage return envelope suitable for Category B UN 3373,

diagnostic and clinical specimens containing biological and infectious substances.¹⁰

- Facility for Participating Authorities to add in local information leaflets (provided by Participating Authority) on request.
- Online order followed up with health promotion information including signposting to PrEP services.
- Maintaining and improving on a >60% return rate for Self-Sampling.

7.29.2 4.2.2 Online Ordering of Self-Testing Kits

- Collation of adequate Service User information to facilitate remote HIV-testing and follow up.
- Delivery of a testing kit to the Service Users' preferred address which may, given the option, differ from their place of residence, in discrete and unbranded packaging. Fulfilment of HIV self-testing kit orders free of charge to the Service User.
- Online order followed up with health promotion information including signposting to PrEP services

Supply of HIV self-testing kits containing:

- in-date CE marked third-generation self-tests (sensitive to both IgG and IgM antibodies), including in-date consumables for finger-tip blood sampling
- easy-to-read and comprehend quality instructions for testing and interpreting results. This should include printed instructions, supported with links to videos or other media (produced to reflect the diversity of Service Users).
- information on how to access support for Service Users following their test results.
- Individual test codes to use for test kit registration (offline kits) and/or reporting of results
- a direct URL as well as a QR code that Service Users can scan to access an online portal to voluntarily report their result (via their unique test kit code). Service Users reporting reactive tests will be called by a trained and clinically competent advisor within 48 hours to arrange a confirmatory test.
- Directions for an alternative offline method for Service Users to self-report results (for example, those without online access to self-report their results)
- General sexual health promotion messaging and Service information leaflets.
- Facility for Participating Authorities to add in local information leaflets (provided by Participating Authority) on request.

7.29.3 4.2.3 Offline Distribution of Self-Testing Kits (offline bulk order service)

- Supply of Self-Testing kits (same as above) for offline distribution where requested by Participating Authorities. These kits can be purchased in bulk by Participating Authorities and delivered to a single location, or directly to outreach providers they have selected.
- The test kits will include all same information as received by Service Users ordering self-testing kits via the online service, as well as printed information

¹⁰ Department for Transport. Guidance. Packaging and transport requirements for patient samples – UN3373. March 2020.

on PrEP and signposting to PrEP services. They can also be customised by Participating Authorities.

- Each test kit will come with a card for outreach providers delivering the kit. The card will include a direct URL as well as a QR code that the providers can use to access an online portal to capture key information on the Service User receiving the test and using the test kit's unique code. Answering the questions will be voluntary and each question can be skipped, although at minimum a phone number and one other form of contact (address or email) will be required. When the outreach worker registers the details, they will register an individual test kit code.
- Service Users accessing self-testing via offline distribution will have the option to use the test and report their results (if they wish) privately. Alternatively, the outreach provider may support the Service User support to carry out their test, interpret their result, and report their result (if they wish).

7.29.4 4.2.4 Packaging

Sustainability and Net Zero is a key aspiration of the NHS. The packing and contents of the kit must as much as practical use recycled materials and be recyclable.

Packaging must ensure discretion of the Service User receiving the kit, so any reference to a return address must be genericised as much as practical.

Return packing must also be provided which will include the relevant pre postal costs for the samples to be returned to the laboratory. Samples must not be identifiable from the packing design

All packaging must conform with UN3373 packing instruction 650.¹¹

7.29.5

7.29.6 4.2.5 Multiple Orders from the Same Service User

The Supplier must contact an individual that has accessed the Service more than four times in a six month period. Where this is the case, the Supplier is required to intervene not in order to prevent them using the Service, but to facilitate a one-to-one consultation for an individual who appears to be at a very high risk of infection.

7.29.7 4.2.6 Multiple Orders from the Same Address

The Supplier must alert the Participating Authority concerned in the event that a non-residential address is used multiple times to place a kit order. Where a Participating Authority has set their testing threshold at less than 500 per annum, no more than 10% of the kit orders should have the same commercial address recorded as a residential address. Should a testing threshold exceed 500 per annum no more than 5% of the kit orders should have the same commercial address recorded as a residential address. The purpose is not to prevent the Service being used by residents, but to encourage local conversations between Participating Authorities and the Service about self-sampling provisions.

7.30 4.3 Pathology (self-sampling service)

¹¹ Department for Transport. Guidance. Packaging and transport requirements for patient samples – UN3373. March 2020.

The Supplier is responsible for providing or sub-contracting for the provision of accredited laboratory pathology services in order to deliver the self-sampling service. The pathology services must be fit for purpose on the day the Service is launched.

The Supplier is responsible for ensuring the laboratory pathology services meets the following requirements:

- capacity to perform high volume pathology on specimens with capability to cope with surges in demand during peak times such as National HIV Testing Week
- registered with the Care Quality Commission (CQC) and be enrolled in a recognised quality assurance scheme
- offers 'gold standard' tests wherever possible and adhere to national standard operating procedures where these are available
- use of CE marked 4th generation assay testing for HIV antibody and p24 antigens simultaneously as a minimum
- employ HIV testing algorithms and confirmatory strategies (agreed with the multi-disciplinary Steering Group) that arrive at either seroconcordant reactive diagnoses or absence of infection i.e. negative results
- use of CE marked total antibody testing for syphilis to report reactive results requiring further tests, or non-reactive results
- capacity to include further serology tests for Syphilis
- compliant with UK Standards for Microbiology Investigations – Syphilis.¹²
- full participation in the UK NEQAS for HIV serology
- full participation in the UK NEQAS for syphilis serology
- accredited with either ISO 15189 or ISO 17025 under the United Kingdom Accreditation Service (UKAS) and shall comply with any requirements for the handling, processing and storage of samples.

The Provider is also responsible for:

- developing and adopting business continuity plans in the event that the laboratory is unable to provide contracted service
- quality assuring and evidencing pre and post analytical elements of the service
- registration with the Care Quality Commission (CQC) for provision of the entire Service and adhere to its incidence reporting policy

7.31 4.4 Results Management

The Supplier is required to operate the results management function, as a minimum, during business operating hours 9am-5pm (GMT) Monday to Friday.

Service Users who contact the Service out of hours should be sign posted to an appropriate 24 hour service such as NHS 111 or equivalent, and in case of emergency, sign posted to where Post-exposure prophylaxis (PEP) is available for free on the NHS.

Results Management HIV (and Syphilis) Self-Sampling

¹² <https://www.gov.uk/government/publications/smi-v-44-serological-diagnosis-of-syphilis>

Following a result that has been confirmed reactive as per section 4.3 the Supplier must provide the following:

- Secure return of Service User results to the part of the service that delivers the results to the Service User and to the Service User themselves, through agreed methods of communication, in an appropriate manner.
- Provision of reactive results with clear explanation of need for confirmatory testing and false positivity, health promotion advice, and referral pathways by trained and clinically competent advisory services.
- Pro-active referral (with the Service User's consent which the Supplier must obtain) for confirmatory testing to a specialist sexual health service chosen by the patient, with Service User confirmation of attendance.
- Pro-active follow up of Service Users referred for confirmatory testing in order to establish the number of confirmed positive and negative cases, and number of HIV positive individuals linked into care.
- Please note that the Supplier will not be required to provide follow-up testing as part of the service pathway.
- Standard operating procedures for issues that may arise when informing Service Users of their results including (but not limited to) child protection and safeguarding, human trafficking, A&E and sexual assault services.

Following a result that has returned as non-reactive as per section 4.3 the Supplier must provide the following:

- Provision of negative results via text message with signposting to appropriate local sexual health services local to the address the kit was ordered to and further sexual health and HIV information sources, including signposting to PrEP services.

If a sample is unable to be processed or a test result is invalid, the Provider must contact the Service User to arrange a repeat test.

Results Management HIV Self-Testing

The Supplier will put in place a mechanism for Service Users of the HIV Self-Testing Service to report their results. Users should have the option of reporting their test result online via a direct URL or QR code supplied with their kit. The Supplier must also provide an alternative offline mechanism for Service Users to self-report results (for example, those without online access to self-report their results). Results will be reported using the individual test kit code so that results are linked with the original information provided during registration of the kit.

Offline Service Users will have the option to use the test and report their results (if they wish) privately. The portal accessed by the Service User will have an option to notify their outreach provider that they wish to be contacted to discuss their result. Alternatively, the outreach provider may support the Service User to report their result (if they wish).

If the Supplier receives a self-report of a reactive result from a Service User self-testing, or an outreach worker supporting them, the Supplier must provide the following:

- Follow up Service User by phone within 48 hours by trained and clinically competent advisory services, with clear explanation of need for confirmatory testing and false positivity, health promotion advice, and referral pathways
- Pro-active referral (with the Service User's consent which the Supplier must obtain) for confirmatory testing to a specialist sexual health service chosen by the patient, with Service User confirmation of attendance
- Please note that the Supplier will not be required to provide follow-up testing as part of the service pathway
- Notification sent to outreach provider (if requested by Service User) Pro-active follow up of Service Users referred for confirmatory testing to establish the number of confirmed positive and negative cases, and number of HIV positive individuals linked into care
- Standard operating procedures for issues that may arise when discussing results with Service Users including (but not limited to) child protection and safeguarding, human trafficking, A&E and sexual assault services.

If the Supplier receives a report of a negative result from a Service User self-testing, or an outreach worker supporting them, the Supplier must provide the following:

- Text message confirmation that the result has been received with signposting to appropriate local sexual health services and further sexual health and HIV information sources, including information on PrEP.

5. **Management Information**

The Supplier is required to develop, launch and manage an online portal to allow nominated individuals from Participating Authorities (and their nominees such as providers) to view real-time management information on the uptake and usage of the Service.

The Supplier is also required to provide Participating Authorities with additional management information including for the purpose of monitoring spend and for invoicing.

The Department of Health and Social Care also requires access to the portal for contract monitoring, invoicing, and evaluation of the service.

The management information required includes:

HIV self-sampling and Syphilis

- Number of Service Users ordering a HIV sampling kit and how they ordered
- Service User demography, sexual orientation, ethnicity, age, and sexual behaviour
- Number of (self-sampled) specimens not viable for processing at laboratory
- Number of HIV samples returned and processed
- Turnaround times (from order – dispatch; receipt of returned sample – reporting of results)
- Number of HIV reactive samples
- Number of syphilis reactive samples

- Number of Service Users contacted with reactive results and referred to specialist services for a confirmation test
- Number of reactive results where a confirmed result is recorded (positive and negative)
- Percentage of referred Service Users that self-report attendance at specialist services
- Flexibility to explore data including reactivity by Service User demography

HIV self-testing

- Number of Service Users ordering a HIV self-testing kit online
- Number of Service Users accessing an HIV self-testing kit offline (via outreach worker)
- Service User demography, sexual orientation, ethnicity, age, and sexual behaviour
- Number of Service Users self-reporting a reactive self-test
- Number of Service Users contacted following self-reporting a reactive self-test
- Number of Service Users that self-reported a reactive self-test referred to specialist services for confirmatory testing
- Percentage of referred Service Users that self-report attendance at specialist services
- Number of reactive results where a confirmed result is recorded (positive and negative)
- Flexibility to explore data by Service User demography.

The Provider will also prepare and share anonymised, disaggregate datasets with the Department of Health and Social Care on a quarterly basis. These datasets will include but not be limited to, HIV result, Service User demographics, sexual behaviour and how they linked to the service.

The Service will be delivered in accordance with the quality outcomes indicators stipulated in this specification.

6. Population Covered

All online HIV self-sampling and self-testing Service Users must reside within the geographical locality stipulated by the relevant Participating Authority (i.e. the body with whom the Supplier has entered a Call-Off agreement under the Framework Agreement or the Department of Health and Social Care during times of national campaign, such as National HIV Testing Week, during which times Service Users can reside anywhere in England).

For the offline distribution of self-testing kits it is up to the outreach provider to determine residential eligibility which may include residents from outside the geographical locality stipulated by the relevant Participating Authority or those without a postcode. In this situation the costs will be paid by the Participating Authority authorising the outreach provider to order and use the kits.

The service will operate at no expense to the Service User and will run independently from all other online STI remote sampling services.

7. **Acceptance and Exclusion Criteria and Thresholds**

The following exclusion criteria will be applicable to the online Service Users:

- Those under the age of 16 years
- Those without a valid postcode of residence within the relevant Participating Authority area (with the exception of offline self-testing kits)¹³
- Those unwilling to provide at least one means of contact for their results

Participating Authorities can choose to offer this service to all residents or select from a range of options for eligibility including but not limited to:

- gender and gender identity
- sexual orientation
- ethnicity
- age
- behavioural factors including involvement in sex work.

8. **Activity Planning Assumptions**

Service planning and improvement should always include Service Users and public engagement.

9. **Dependencies and Interdependencies**

The Supplier must ensure that Service Users receive consistent and continuous care through the establishment of data and care pathways. Data and information needs to flow rapidly and seamlessly between the user interface, fulfilment of orders, pathology services and the results advisory function.

The Service will need to interface with local specialised HIV services, local sexual health services as well as locally driven campaigns and activities. To achieve this, the Service is dependent upon up-to-date lists of local sexual health services and specialised HIV services within and beyond commissioned localities. The Supplier will source these lists from approved sources (for example, NHS choices) and supplemented by the multi-disciplinary Steering Group and Participating Authorities.

The Supplier is expected to actively participate in regional and national networks, relevant trials, training, as well as research and audit programmes where applicable.

¹³ For the offline distribution of self-testing kits it is up to the outreach provider to determine residential eligibility which may include residents from outside the geographical locality stipulated by the relevant Participating Authority or those without a postcode. In this situation the costs will be paid by the Participating Authority authorising the outreach provider to order and use the kits.

10. **Link into Clinical Services**

The Supplier must provide an efficient and effective method for the follow-up of Service Users with reactive results. Those with reactive specimens (reported by laboratory or self-reported by Service User) should be contacted by telephone at the earliest opportunity followed by multiple attempts should the Service User not answer the call. The Supplier may use discreet text messaging and letters to contact Service Users if telephone contact proves difficult. The Supplier must facilitate the transfer of Service User into a clinical service and any local support services most convenient for the Service User, liaising with the Service User to remove or reduce barriers to this transfer. The Supplier will provide general support throughout this process as required. The Supplier will request confirmation from the Service User of their attendance at clinical services.

11. **Applicable Service Standards**

The Service is to be underpinned by the following national standards and guidelines:

- Standards for Online and Remote Providers of Sexual and Reproductive Health Services (FSRH/BASHH 2020)
- Standards for the management of sexually transmitted infections (BASHH 2019)
- HIV testing: increasing uptake among people who may have undiagnosed HIV (NICE 2016)
- Service Standards for Sexual and Reproductive Healthcare (FSRH 2016)
- British HIV Association Standards of Care for People Living with HIV (BHIVA 2018)
- UK National Guideline on Safer Sex Advice (BASHH & BHIVA 2012)
- Standards for psychological support for adults living with HIV (British Psychological Society, BHIVA & MEDFASH 2011)
- PH34 Increasing the uptake of HIV testing among men who have sex with men (NICE 2011)
- PH33 Increasing the uptake of HIV testing among black Africans in England (NICE 2011)
- Adult HIV Testing guidelines (BHIVA/BASHH/BIA 2020)
- Progress and Priorities - Working Together for High Quality Sexual Health (MEDFASH 2008)
- Recommended Standards for Sexual Health Services (MEDFASH 2005)
- Research Governance Framework for Health and Social Care (Department of Health 2005)
- Government Technology Code of Practice (2021)
- UK national guidelines on the management of syphilis (BASHH 2015)

Relevant UK clinical guidance covering the specialities of Sexual & Reproductive Healthcare and Genitourinary Medicine can be found at www.fsrh.org and www.bashh.org. The Supplier must ensure Services reflect updates in guidance and recommendations as and when produced.

The Supplier will be required to demonstrate that they have a named lead, together with systems, processes and plans to ensure sound clinical governance. These systems,

processes and plans should be in line with and adhere to NHS Clinical Governance Frameworks.

12. **Applicable Local Standards**

Individual Participating Authorities may require the Supplier to operate in accordance with their own (i.e. the Participating Authority's) local standards. Unless such standards are demonstrably outside whatever would reasonably have been taken into account by the Supplier in Tendering, then the Supplier must comply with such standards.

13. **Data Requirements**

Provision of data within the Service should flow securely. Service Users must receive appropriate care as swiftly as possible.

The appointed Supplier will also ensure data (including aggregate Service User demography and diagnoses, including confirmed diagnoses) is provided to the relevant Participating Authority via an online portal or platform controlled by usernames and passwords. These data should be for contract monitoring and evaluative purposes and will include, but is not limited to, the number of website visits, number of kit requests, number of kit orders and the number of reactive results and the demographic details of the Service User (see section 5. Management Information)

7.32 13.1 Security

The Supplier shall deliver the service in accordance with the HMG Security Policy Framework. <https://www.gov.uk/government/publications/security-policy-framework>

The Supplier shall have a Cyber Essentials Scheme Basic Certificate or equivalent at point of submitting their bid. Cyber Essential Scheme requirements can be located at:

<https://www.ncsc.gov.uk/cyberessentials/overview>.

The Supplier shall ensure that Participating Authority's and Service Users information and Data is secured in a manner that complies with the Government Security Classification Policy rating of OFFICIAL-SENSITIVE.

[May-2018 Government-Security-Classifications-2.pdf \(publishing.service.gov.uk\)](#)

The Supplier shall ensure that the Government Security Classification Policy rating is also applied when information and Data is transmitted across all applicable networks and/or in line with the Participating Authority's requirements.

The Supplier shall, where required, have the capability to employ encryption to information / Data which shall be sent across a network or extracted by electronic means. The Supplier shall ensure that the level of encryption complies in full with the Government Security Classification Policy rating of OFFICIAL-SENSITIVE and/or in line with the Buyers' requirements.

The Supplier shall ensure that any suspected or actual security breaches are reported to the Participating Authority's representative immediately and depending on the impact of the breach, shall be included in monthly/quarterly performance reporting to the Authority.

The Supplier shall comply with all relevant legislation, organisational and cross Government policy and guidelines in relation to Data and asset security.

7.33 13.2 Data Processing

The supplier should have robust procedures in place for identifying, assessing, and reporting any personal data breaches. The Supplier should have appropriate Privacy Notices in place to ensure that all individuals whose personal information you will process in the delivery of the service are informed of why it is needed, how it is used, what their rights are, and who the information is disclosed to. The supplier must have sound processes for recording consent, making sure that you can evidence an affirmative opt-in, along with time and date records; and an easy to see and access way to withdraw consent at any time.

7.34

7.35 13.3 Standards

The Supplier shall provide secure solutions that comply with any restrictions or requirements arising out of Participating Authority's security policies. This shall include, but not be limited to:

Cyber Essentials Scheme Basic Certificate; or

NHS Data Security and Protection Toolkit; or

ISO 27001 Information Security Management;

Participating Authorities may require the Supplier to undertake Check Assurance with a National Cyber Security Centre (NCSC) approved provider, this will be specified by Buyers at call off stage. Further information on NCSC penetration testing can be found at:

<https://www.ncsc.gov.uk/information/using-check-provider>

<https://www.ncsc.gov.uk/guidance/penetration-testing>

The Supplier shall not charge a premium to Buyers for any additional standards and/or security compliance applicable to a Call Off contract, unless otherwise agreed in advance by Buyers.

14. **Location of Supplier Premises and Liability for Sub-contractors**

The location of the Supplier's premises (including the location of premises at which any subcontracted components of the Service are provided) is not critical to this contract. It is however essential that regardless of such locations, the Service is delivered entirely in accordance with this specification. This includes an obligation on the Supplier to ensure that any sub-contractors comply fully with the requirements of the specification and the contract (the Supplier will be held liable for the failure to comply by any sub- contractor). The Supplier will be required to attend quarterly Framework management meetings with the multi-disciplinary Steering Group. The Steering Group may also pay a visit to the Supplier site at least once during the period of the Framework.

15. **Safeguarding Policies**

The service must have a safeguarding policy. This policy must include clear protocols to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all of the Supplier's Staff to develop appropriate skills and knowledge. The Supplier shall have in place and implement robust up-to-date procedures, (including, disciplinary procedures, whistle-blowing policy and recruitment checks), for avoiding and responding to actual or suspected physical,

sexual, psychological, financial or material and discriminatory abuse and acts of neglect or omission. Such procedures shall be reviewed at least once every year.

The Supplier will be required to ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the barred lists. The Supplier will be responsible for ensuring that it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006.

In dealing with Service Users under the age of 16, the Supplier must ensure that they adhere to the Department of Health's guidance document Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health. The Supplier should put in place reasonable steps agreed with the service multi-disciplinary Steering Group to facilitate the identification of under-age Service Users. In the event it is discovered a Service User is under the age of 16, practitioners also need to be aware of the specific responsibilities that they have for young people aged 13-15 and for those under the age of 13.

The Supplier must ensure that they adhere to Department of Health's guidance document Safeguarding adults: The role of Health Service Practitioners. The Supplier should put in place reasonable steps agreed with the service multi-disciplinary Steering Group to facilitate the identification of vulnerable Service Users over the age of 16.

The Supplier shall have in place a robust safeguarding training programme for all Staff (including volunteers) appropriate to their level of responsibility. Further the Supplier shall maintain appropriate records of training for audit purposes.

16. Incident Reporting

All safeguarding incidents should be reported immediately to the Department of Health and Social Care and the authority under which the care was provided (i.e. the Local Authority from which the service was ordered). In participating in the framework, Participating Authorities may acquaint the Supplier with their own safeguarding protocols and requirements, with which the Supplier must act in accordance.

The Supplier will produce a quarterly summary report providing full details of all complaints and how they were resolved. The Supplier will have awareness of, and will respond to, infectious diseases outbreaks and other threats to health. A clinical governance report will be submitted to the Department of Health and Social Care on an annual basis and full details of any Serious

Incidents (SIs) will be communicated to the relevant Local Authority and the Department of Health and Social Care without delay.

17. Social Value

The Authority have set out what they see as the priority Social Value areas for this Framework Agreement. The Authority expects that the Supplier will primarily deliver Social Value as part of the Framework administration and not for individual call-off agreements.

The contract will support Social Value **Theme 3 Fighting climate change: Effective stewardship of the environment.**

Measurement and reporting

Suppliers are required to develop and maintain a plan throughout the life of the Framework Agreement detailing how the Supplier will contribute to the overall achievement of our Social Value priorities. Specifically, the Supplier will need to submit and report during the life of the contract on the following metrics:

- Supplier to initially submit the annual forecasted baseline for every different type of emissions generated in the delivery of the contract
- Supplier to detail quarterly (or as appropriate) the activities being undertaken to reduce this impact
- Supplier to detail the proportion of materials sourced from and/or products manufactured in the UK (or relevant region)
- Supplier to reduce the packaging provided with the product
- Supplier to detail the changes or reductions in materials for packaging
- Supplier to report on the annual saving in materials / emissions through the changes

18. Prices and Costs

Tenderers are advised that the ONLY costs which Participating Authorities will pay will be the costs for the services provided to Service Users. No separate payment will be made for any other functions of the Service (for instance, setting up the necessary infrastructure, creating a website, promotional activity, etc). All costs associated with setting up and providing the entire Service, as described in this invitation to Tender, must be included within the unit costs Tendered. Unit costs Tendered include:

HIV self-sampling unit costs:

- Fee per self-sampling kit issued
- Fee per self-sampling kit returned – specimen tested for HIV and syphilis
- Fee per self-sampling kit returned – specimen tested for HIV only
- Fee per self-sampling kit returned – specimen could not be processed

- Fee per repeat self-sampling kit issued (in cases where returned sampled specimen could not be processed)

HIV self-testing unit costs:

- Fee per self-testing kit issued (online)
- Fee per self-testing kit issued (offline)
- Fee for managing Service Users that report a reactive self-test result

19. **Contract Period**

The Framework will be in place for an initial period of 2 years, with an option to extend for a further period or periods to a maximum of 24 months, taking the contract term to a maximum of 4 years. The Framework is intended to start on 1 January 2023.

Any subsequent extension to the Framework will be agreed between the Department of Health and Social Care and the Supplier. For any extension(s) to the Framework, discussions with Suppliers shall be conducted sufficiently far in advance of the Framework expiry date to arrive at an agreed position.

20. **Contract Management and Reporting**

A Department of Health and Social Care representative will act as the Framework contract Manager.

The Framework Service general provision, delivery and compliance will be contract managed by the Department of Health and Social Care. Participating Authorities will however be responsible for the day-to-day management of their individual Call-Off Contracts, including the monitoring and payment of invoices.

A multi-disciplinary Steering Group representing the Department of Health and Social Care, the UK Health Security Agency, local authorities and other Participating Authorities of the Framework will also be involved in managing the contract. On a quarterly basis, the multi-disciplinary Steering Group will hold review meetings with the Supplier to formally performance review the operation of the Service and discuss matters which may include but are not be limited to;

- Framework Key Service Outcomes;
- A review of the amount of business transacted under the Framework as per the Management Information;
- Feedback from Participating Authorities;
- Discuss any complaints of poor performance and agreement of actions to address those;
- Consideration of any improvements or developments;
- Any changes in key personnel, business structure and in the market.

The Supplier will be expected to field the appropriate personnel accordingly.

21. Contractor General Responsibilities

The Contractor shall:

- Appoint a contact to oversee the Framework and liaise with and report to as the Department of Health and Social care requires
- Produce performance reports against KPIs quarterly and as required by the Department of Health and Social Care
- Attend performance review meetings quarterly and as required
- Perform quality assurance on all aspects of the service
- Provide timely and on-going evaluation and quality assurance information relating to the programme
- Provide updates on a monthly basis on volume of usage per Participating Authority to the Department of Health and Social Care
- Share their annual UKAS reports and reports from any other accreditation inspection
- Be subject to annual, formal visits from a team of pathology services quality management experts
- Provide management information when required to support Government reporting obligations or initiatives which currently include increasing direct and indirect expenditure with Small and Medium Enterprises (SMEs), meeting the Public Sector Equality Duty and complying with Government Buying standards around environmental performance.

22. Personnel Skills and Knowledge

The Supplier will be expected to field the appropriate personnel accordingly.

The Supplier shall ensure that all Supplier Staff are suitably experienced, skilled and/or qualified to deliver the Services for which they are employed.

Supplier staff delivering the HIV Self-Sampling and Self-Testing services must have successfully completed nationally accredited training according to their scope of practice, and fulfilled relevant update requirements.

Supplier staff delivering the HIV Self-Sampling and Self-Testing services must undertake safeguarding training.

23. Contract monitoring

At a Framework level, the Service and Supplier compliance will be contract managed by the Department of Health and Social Care. Participating Authorities will however be responsible for the day to day management of their individual Call-Off Contracts, including monitoring and payment of invoices.

On a quarterly basis, the Department of Health and Social Care, with representatives from local authorities, will hold review meetings with the Supplier to formally performance review the operation of the Service and discuss matters which may include but are not be limited to;

- Framework Key Service Outcomes;

- A review of the amount of business transacted under the Framework as per the Management Information;
- Feedback from Participating Authorities;
- Discuss any complaints of poor performance and agreement of actions to address those;
- Consideration of any improvements or developments;
- Any changes in key personnel, business structure and in the market.

The Supplier will be expected to field the appropriate personnel accordingly.

The Supplier may be subject to annual, formal visits from a team of pathology services quality management experts convened by the multi-disciplinary Steering Group.

Information provision

On a quarterly basis, the Supplier will be required to report progress against all the Quality Outcome Indicators detailed under section 24. KPIs of the requirement (or as otherwise agreed within the Framework Agreement) to The Department of Health and Social Care. The information will also be available to Participating Authorities.

The Department of Health and Social Care and other Participating Authorities, will require the Supplier to produce and submit reports detailing their performance against the service quality indicators (as described in section 24. KPIs). The right is reserved to amend the indicators from time to time to monitor different aspects of the Service and also to undertake verification audits if required

Separately, reports may be required by individual Participating Authorities detailing activity within the areas for which they are each responsible.

Where any Participating Authority (including the Department of Health and Social Care) has stipulated a maximum level of expenditure or maximum number of test kits, the Supplier shall provide a monthly report to that Participating Authority detailing recent and cumulative activity under the Framework payment for which that Participating Authority is responsible. Additionally, an alert shall be sent to the Participating Authority when such activity reached 95% of the specified maximum.

Participating Authorities and the Department of Health and Social Care shall have secure access (controlled by logins and passwords) to an online database so that they may monitor Framework usage. Levels of access shall be controlled to limit the data visible (in particular such access shall automatically manage controls required under relevant legislation, for example, as applies to data protection and patient confidentiality).

The Supplier will meet quarterly with the Department of Health and Social Care and the multi-disciplinary Steering Group to review performance, and at least ten working days ahead of such meetings provide or provide access to disaggregate data for all Service Users to the Department of Health and Social Care service manager. Five working days ahead of each such meeting the Supplier shall also send to the Department of Health and Social Care a report which includes at least the following information:

- 1) How the Service User had found out about the Service

2) Where there is an online Service provision:

- List of referrers and their volume of click-throughs to website
- Total number of website visitors
- Proportion of website visitors that result in a kit being requested
- Aggregate summary of where ineligible Service Users reside by Lower-tier Local Authority of residence

3) Number of first and follow up Service Users ordering a HIV self-sampling kit or HIV self-testing kit and how they ordered

4) Number of Service Users ordering and returning HIV sampling kits by:

- Kit ordering channel
- Age (Bands)
- Gender and gender identity
- Ethnicity
- Sexual orientation
- Lower-tier Local Authority of residence

5) Number of first and follow up Service Users ordering a HIV self-sampling kit opting for Syphilis testing

6) Number of Service Users ordering and returning Syphilis test samples by:

- Kit ordering channel
- Age (Bands)
- Gender and gender identity
- Ethnicity
- Sexual orientation
- Lower-tier Local Authority of residence

7) Number of Service Users ordering HIV self-testing kits by:

- Kit ordering channel
- Age (Bands)
- Gender and gender identity
- Ethnicity
- Sexual orientation
- Lower-tier Local Authority of residence

8) Number of self-test kit Service Users self-reporting results

9) Sexual History and Risk Assessment Questions

- Number and gender of recent sexual partners
- Number of recent unprotected sexual partners
- Last time of an HIV test

- 10) Number of HIV self-samples processed by the Service
- 11) Number of reactive samples (number of reactive self-samples reported by lab; number self-reported as reactive by those self-testing)
- 12) Provision of data on discrepant HIV laboratory results
- 13) Number of referrals of Service Users with reactive results to sexual health services
- 14) Total referrals by sexual health service
- 15) Percentage of Service Users referred to chosen sexual health services as confirmed by the Service
- 16) Quarterly NEQAS reports on laboratory performance
- 17) Quarterly Laboratory summary report on the rate of initial 'Reactive' HIV test results and the rate of 'repeat reactives' found from among the initially 'reactives'
- 18) Outcome of additional analysis on specimens undertaken in a recognised reference laboratory The Supplier will also be expected to share their annual UKAS reports and reports from any other accreditation inspection with the multi-disciplinary Steering Group.

Service User Survey

The Supplier will conduct an annual anonymised survey with a sample of Service Users to assess both Service satisfaction and trends in relation to uptake of the Service. The survey will assess Service User satisfaction with the Service provided and the results are to be made available in a timely manner to the Department of Health and Social Care for dissemination to the Participating Authorities as part of the process of evaluating the Service and to inform and reshape this specification and Service delivery.

Whilst the use of Patient Reported Experience Measures (PREMs) would be preferred, the appropriate methodology for the survey will be agreed with the Department of Health and Social Care and the Participating Authorities. This will include setting adequate sample sizes to provide statistical confidence in the results.

24. **KPIs**

Quality Outcomes Indicators

In order to secure maximum effectiveness from the Framework in terms of delivering against its overarching objectives, the Supplier's performance will be monitored against relevant quality outcomes indicators. The following table sets out various such indicators, based on national standards and experience from the current Framework.

#	Indicator	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy (=Critical Service Level Failure)
1	Percentage of individuals accessing the online Service who have sexual history and STI/HIV risk assessment undertaken	>95%	95-90%	<90-80%	<80%*
2	Percentage of kits packaged and posted to Service User within 2 working days of request	95%	95-90%	<90-80%	<80%*
3	Percentage of self-sampling specimens returned to the laboratory by Service User for processing within 30 days of receipt	>60%	60-50%	<50-40%	<40%
4	Percentage of self-sampled specimens that could not be processed by the laboratory therefore requiring a repeat kit	<8%	8-10%	>10-15%	>15%
5	Percentage of negative Service Users receiving sexual health promotion messaging and signposting where to access information for other sexual health services	100%	<100-90%	<90-80%	<80%
6	Percentage of self-sampling Service Users with negative results that received their results through their preferred method of contact within 5 working days of receiving sample	100%	<100-90%	<90-80%	<80%
7	Percentage of reactive results attempted to be communicated to Service Users within 5 working days of receiving the self-sample	100%	<100-90%	<90-80%	<80%*
8	Percentage of reactive results actually communicated to Service Users within 5 working days of receiving self-sample	75%	<75-70%	<70-65%	<65%*

#	Indicator	Good (=Target)	Approaching Target	Requires Improvement	Inadequacy (=Critical Service Level Failure)
9	Percentage of self-testing Service Users reporting a reactive result contacted within 48 hours for follow up	>95%	95-90%	<90-80%	<80%*
10	Percentage of reactive Service Users self-reporting attendance at chosen sexual health service in less than 10 working days from receiving a reactive result	>70%	70-60%	<60-50%	<50-40%
11	Percentage of self-testing Service Users self-reporting attendance at chosen sexual health service in less than 10 working days from self-reporting a reactive self-test	>70%	70-60%	<60-50%	<50-40%
12	Percentage of staff undertaken safeguarding training	90%	<90-80%	<80-70%	<70-60%*

Participants Authorities may decide to attach service credits to specific KPIs (*) at the point of call off contract.

25. Representatives and Contact Points

The key Framework representative is set out below. Each participant authority may appoint their own representative at point of call off contract.

Louise Logan Programme Manager Sexual Health, Reproductive Health and HIV Evidence and Delivery Office for Health Improvement and Disparities Department of Health and Social Care	Adam Winter National Lead Sexual Health, Reproductive Health and HIV Evidence and Delivery Office for Health Improvement and Disparities Department of Health and Social Care
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SCHEDULE 7 TENDER RESPONSE DOCUMENT

As Set out in the Framework schedule 5. Tender response to the Framework will apply to this call off contract and delivery model will be carried out in the same manner as specified on such a schedule.

SCHEDULE 8 PRICING (COMMERCIAL ENVELOPE)

The price is determined by the Framework agreement.

SCHEDULE 9 CONTRACT MONITORING

As set out in the Specifications Document and the Call off contracts KPI and Service Credits.

SCHEDULE 10 VARIATION FORM

VARIATION FORM

No of Contract being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("the **Authority**")

and

[insert name of Supplier] ("the **Supplier**")

1. The Contract is varied as follows and shall take effect on the date signed by both Parties:

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

.....

Date

Name (in Capitals)

Address

SCHEDULE 11 KEY PERSONNEL

Key Role	Name of Key Personnel	Responsibilities / Authorities	Minimum period in Key Role
NA			

8. **SCHEDULE 12 EXIT PLAN AND SERVICE TRANSFER ARRANGEMENTS**

1. **Definitions**

1.1 In this Schedule, the following definitions shall apply:

"Documentation"		any descriptions of the Services, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) which is required to be supplied by the Supplier to the Authority under the Contract as:
	(a)	would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;
	(b)	is required by the Supplier in order to provide the Services; and/or
	(c)	has been or shall be generated for the purpose of providing the Services;
"Ethical Wall Agreement"		means an ethical wall agreement in a form similar to the draft ethical wall agreement set out in the Model Services Contract or an alternative form of ethical wall agreement agreed between the Parties;
"Model Services Contract"		means the Model Services Contract published and maintained by Cabinet Office, as update from time to time, the current version of which is published at https://www.gov.uk/government/publications/model-services-contract
"Registers"		means the registers and database referred to in Paragraph 4.2.1 and Paragraph 4.2.2 of this Schedule 12;
"Transferable Contracts"		Sub-contracts, licences or other agreements which are necessary to enable the Authority or any Replacement Supplier to provide the Replacement Services, including in relation to licences all relevant Documentation;
"Transitional Assistance Notice"	Assistance	has the meaning set out in Paragraph 5.1 of this Schedule 12;
"Transitional Assistance Period"	Assistance	has the meaning set out in Paragraph 5.1.3 of this Schedule 12.

2. PURPOSE OF THIS SCHEDULE

- 2.1 The Supplier is required to ensure the orderly transition of the Services from the Supplier to the Authority or any Replacement Supplier in the event of any termination (including partial termination) or expiry of this Contract. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 2.2 For the avoidance of doubt the Supplier is responsible for the overall management of the exit and Service transfer arrangements.

3. EXIT

- 3.1 The Exit Plan shall:
- 3.1.1 address each of the issues set out in this Schedule 12 (Exit Plan and Service Transfer Arrangements) to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
 - 3.1.2 detail how the Services will transfer to the Replacement Supplier and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Supplier or any of its Sub-contractors (where applicable);
 - 3.1.3 specify the scope of the Transitional Assistance Services that may be required by the Authority, any charges that would be payable for the provision of Transitional Assistance Services and detail how such services would be provided (if required) during the Termination Period;
 - 3.1.4 provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
 - 3.1.5 set out the management structure to be put in place and employed during the Termination Period.

4. OBLIGATIONS DURING THE TERM

- 4.1 The Supplier and the Authority shall each appoint an exit manager and provide written notification of such appointment to each other within six (6) Months after the Commencement

Date. The Supplier's exit manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with this Paragraph 4.1. The exit managers shall liaise with one another in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 12 and each Party's compliance with it.

4.2 During the Term, the Supplier shall:

4.2.1 create and maintain a register of:

4.2.2 all assets, detailing their ownership status; and

4.2.3 all Sub-contracts and other agreements required to perform the Services;

4.2.4 create and maintain a database setting out the Supplier's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Supplier and/or the Authority to acquire sufficient technical understanding of how the Supplier provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and

4.2.5 at all times keep the Registers up to date and shall maintain copies of any agreements referred to in any Register.

4.3 The Parties shall agree the format of the Registers as part of the process of agreeing the first Exit Plan.

4.4 At the same time as the Supplier submits a revised Exit Plan, it shall also submit to the Authority up-to-date Registers.

4.5 On reasonable notice, the Supplier shall provide to the Authority and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence.

5. **TRANSITIONAL ASSISTANCE SERVICES**

5.1 The Authority shall be entitled to require the provision of Transitional Assistance Services by sending the Supplier a notice to that effect (a "**Transitional Assistance Notice**") at any time

prior to the termination or expiry of the Contract. The Transitional Assistance Notice shall specify:

- 5.1.1 the date from which Transitional Assistance Services are required;
 - 5.1.2 the nature and extent of the Transitional Assistance Services required; and
 - 5.1.3 the period during which it is anticipated that Transitional Assistance Services will be required ("Transitional Assistance Period") which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.
- 5.2 The Authority shall have an option to extend the Transitional Assistance Period beyond the period specified in the Transitional Assistance Notice by written notice to the Supplier provided that such extension shall not extend beyond six (6) Months after the expiry of the period referred to in Paragraph 5.1.3 (Transitional Assistance Services) of this Schedule 12 (Exit Plan and Service Transfer Arrangements).
- 5.3 The Authority shall have the right to terminate its requirement for Transitional Assistance Services by serving not less than twenty (20) days' notice upon the Supplier to such effect.
- 5.4 The Transitional Assistance Services shall be provided in good faith and in accordance with Good Industry Practice.
- 5.5 During the Transitional Assistance Period, the Supplier shall, in addition to providing the Services and the Transitional Assistance Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption and to facilitate the orderly transfer of the Services. The Supplier shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the Supplier in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Plan shall be provided on a time-and-materials basis in accordance with the applicable rates set out in Schedule 8 (Pricing) of these Call-off Terms and Conditions and subject to agreement under the Change Control Process as applicable.
- 5.6 The Authority and the Supplier acknowledge that the transition of the Services to the Replacement Supplier may be phased over a period of time so that certain identified Services are transferred to the Replacement Supplier before others.
- 5.7 The Authority shall, at the Supplier's reasonable request, require the Replacement Supplier and any agent or personnel of the Replacement Supplier, to enter into an appropriate confidentiality undertaking with the Supplier.

- 5.8 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 5.9 From the date six (6) Months before expiry or from the service by either Party of any Termination Notice (whichever is the earlier) and during any Termination Period, the Supplier shall not terminate or vary in any material respect any Transferable Contract without the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.10 The Supplier shall comply with all of its obligations regarding the Supplier Personnel in accordance with Schedule 5 (Staff Transfer) of these Call-off Terms and Conditions.
- 5.11 Upon the termination or expiry of the Contract (as the case may be) or upon expiration of the Termination Period or, provided that it does not have an adverse impact on the ability of the Supplier to provide the Services or the Transitional Assistance Services, at any time during the Termination Period (as the Authority shall require):
- 5.11.1 the Supplier shall cease to use the Authority Data and, at the direction of the Authority either:
- (i) provide the Authority or Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority); or
 - (ii) destroy (including removal from any hard disk) or return (at the Authority's option) all copies of the Authority Data not required to be retained by the Supplier for statutory compliance purposes and confirm in writing that such destruction has taken place;
- 5.11.2 the Supplier shall erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Period any software containing the Intellectual Property Rights owned by the Authority;
- 5.11.3 the Supplier shall return to the Authority such of the following as are in the Supplier's possession or control:
- (i) all materials created by the Supplier under this Contract, the Intellectual Property Rights in which are owned by the Authority;
 - (ii) any other equipment which belongs to the Authority; and
 - (iii) any items that have been on-charged to the Authority, such as consumables;
- 5.11.4 the Supplier shall vacate any Authority's Premises; and

5.11.5 each Party shall return to the other Party all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information.

5.12 The Transitional Assistance Services to be provided by the Supplier shall include (without limitation) such of the following services as the Authority may specify:

5.12.1 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority or Replacement Supplier after the end of the Termination Period;

5.12.2 providing details of work volumes and staffing requirements over the preceding twelve (12) Months;

5.12.3 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth;

5.12.4 transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

5.12.5 providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and

5.12.6 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services.

6. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

6.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

6.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

9. **SCHEDULE 13 PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

Annex 1: processing personal data

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

The contact details of the Controller's Data Protection Officer are: odpo@dhsc.gov.uk

The contact details of the Processor's Data Protection Officer are: Matt Spall, DPO Centre Ltd

The Processor shall comply with any further written instructions with respect to Processing by the Controller.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 12.2 to 12.15 (Protection of Personal Data) and for the purposes of the Data Protection Laws, the Authority is the Controller and the Supplier is the Processor of the following Personal Data</p>
Subject matter of the processing	<p>The processing is needed in order to ensure that the Service Provider can effectively deliver the contract to provide the services to members of the public.</p>
Duration of the processing	<p>For the duration of the contract and in what it is strictly necessary to perform the obligations under the terms of the contract.</p>
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose is to deliver the services in accordance with the specifications.</p>

Type of Personal Data being Processed	Name, address, postcode, date of birth, age, sex, gender, mobile/home telephone numbers, email addresses, geographical location (e.g where treatment is received); Ethnicity, sexual orientation and sexual activity; individual's physical or mental health conditions;
Categories of Data Subject	Members of the Public
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	<p>The retention periods set out in the Records Management: NHS Code of Practice and latest BASHH Guidance which states that the minimum retention period for health records is as follows</p> <p>Adults: 8 years after the last attendance.</p> <p>The supplier will not adopt a shorter retention period to any user record than the minimum set out above. If the service ceases to trade arrangements will be put in place to provide access to the data for the organisations with a statutory duty to deliver services to those users.</p> <p>The retention schedule will be reviewed annually.</p>
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract	England – United Kingdom

Annex 2: Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data for which the Parties are Joint Controllers, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Clauses 13.2 to 13.5 (Where one Party is Controller and the other Party is Processor) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions and Clauses 13.17 to 13.28 (Independent Controllers of Personal Data) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions. Accordingly, the Parties each undertake to comply with the applicable Data Protection Laws in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Authority]:

1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;

1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

1.2.5 shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Laws as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Authority each undertake that they shall:

2.1.1 report to the other Party every [x] Months on:

- (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Laws;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; that it has received in relation to the subject matter of the Contract during that period;

2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1(a) to 2.1.1(e); and

2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1.1 2.1.1(c) to 2.1.1(e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Laws.

2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Contract or is required by Law. For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.

2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.

- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
- 2.1.8 are aware of and comply with their duties under this Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information
- 2.1.9 are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
- 2.1.10 have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Laws;
- 2.1.11 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- 2.1.12 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Laws, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.13 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.
- 2.2 For the purposes of this Joint Controller Agreement “Personnel” means all directors, officers, employees, agents, consultants and suppliers of the Parties and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
- 2.3 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Laws and shall not perform its

obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Laws to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Laws;

3.1.2 all reasonable assistance, including:

- (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

3.2.1 the nature of the Personal Data Breach;

3.2.2 the nature of Personal Data affected;

3.2.3 the categories and number of Data Subjects concerned;

3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;

3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and

3.2.6 describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

4.1.1 the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Laws.

4.1.2 the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures);

5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 of the UK GDPR.

6. ICO Guidance

- 6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
- 7.2 If in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- 7.3 If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident.
- 7.4 If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such dispute shall be referred to the dispute resolution procedure Clause 21 (Dispute Resolution) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions.
- 7.5 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the

Court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

- 7.6 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim Losses**”):

7.6.1 if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;

7.6.2 if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and

7.6.3 if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

- 7.7 Nothing in Paragraphs 7.2-7.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

8. Termination

- 8.1 If the Supplier is in material default or breach under any of its obligations under this Annex 2 (Joint Controller Agreement), the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 18 (Termination) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions

9. Sub-Processing

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Laws.

10. Data Retention

- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Laws and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Laws and its privacy policy.

10. SCHEDULE 14 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

1. Business Continuity and disaster recovery plan

1.1 The Supplier shall ensure that the Business Continuity Plan shall include:

1.1.1 details of how the Supplier will implement the Business Continuity Plan;

1.1.2 details of how the Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Authority (as notified by the Authority from time to time);

1.1.3 details as to how the invocation of any element of the Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the services; and

1.1.4 identification of all reasonably possible failures of or disruptions to the Services.

1.2 The Supplier shall ensure that the Business Continuity Plan shall also include:

1.2.1 back-up methodology;

1.2.2 data verification procedures;

1.2.3 identification of all potential disaster recovery scenarios;

1.2.4 provision of appropriate levels of spares, maintenance equipment and test equipment;

1.2.5 responsibilities of the Sub-contractors in the event of a disaster;

1.2.6 hardware configuration details, network planning and invocation rules and procedures;

1.2.7 data centre site audits;

1.2.8 Authority obligations and dependencies.

1.3 The Business Continuity Plan shall be designed so as to ensure that:

1.3.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Business Continuity Plan;

1.3.2 the adverse impact of any disaster is minimised as far as reasonably possible;

1.3.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and

1.3.4 it details a process for the management of disaster recovery testing.

1.4 The Supplier shall also ensure that the Business Continuity Plan defines the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations. It shall also define the rules for storing data, the required availability for that data and the mechanisms for making that data available. It shall also include:

1.4.1 risk analysis (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis);

1.4.2 possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure;

1.4.3 business continuity maintenance;

1.4.4 documentation of business processes, procedures and responsibilities;

1.4.5 a communications strategy; and

1.4.6 procedures for reverting to normal service.

10.1.1

11. SCHEDULE 15 STEP-IN RIGHTS

1. STEP-IN RIGHTS

1.1 In this Schedule, the following definitions shall apply:

“Deductions” means any service credits, compensation for unacceptable KPI failure, delay payments or any other deduction which is paid or payable to the Authority under this Contract;

“Sites” means any premises (including the Premises, the Supplier’s premises or third party premises) from, to or at which:

- (a) the Services are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Services.

“Step-In Notice” has the meaning given in Clause 1.2 of this Schedule 15 (Step-In Rights);

“Step-In Trigger means:

Event”

- (a) a condition occurs that triggers the Authority’s right to terminate the Contract under Clause 18 (Termination) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions;
- (b) a default or breach by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 1.2 of this Schedule 15 (Step-In Rights) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty.

“Step-Out Date” has the meaning given in Clause 1.6.2 of this Schedule 15 (Step-In Rights);

“Step-Out Notice” has the meaning given in Clause 1.6 of this Schedule 15 (Step-In Rights);

“Step-Out Plan” has the meaning given in Clause 1.7 of this Schedule 15 (Step-In Rights);

“Required Action” has the meaning given in Clause 1.2.1 of this Schedule 15 (Step-In Rights);

1.2 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “Step-In Notice”) that it will be taking action under this Schedule 15 (Step-In Rights), either itself or with the assistance of a third party (provided any third parties appointed by the Authority shall be subject to the same confidentiality obligations as the Authority under Clause 30 (Confidential Information) of Schedule 2 (General Terms and Conditions) of these Call-off Terms and Conditions). The Step-In Notice shall set out the following:

1.2.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the “Required Action”);

1.2.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier’s default or breach;

1.2.3 the date on which it wishes to commence the Required Action;

1.2.4 the time period which it believes will be necessary for the Required Action;

1.2.5 whether the Authority will require access to the Supplier’s premises and/or the Sites; and

1.2.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier’s obligations to provide the Services during the period that the Required Action is being taken.

1.3 Following service of a Step-In Notice, the Authority shall:

1.2.7 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

1.2.8 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

1.2.9 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

1.2.10 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority’s rights under this Schedule 15 (Step-In Rights).

- 1.3 For so long as and to the extent that the Required Action is continuing, then:
- 1.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 1.3.2 no Deductions shall be applicable in relation to the Contract Price in respect of Services that are the subject of the Required Action and the provisions of Clause 1.5 of this Schedule 15 (Step-In Rights) shall apply to Deductions from Contract Price in respect of other Services; and
 - 1.3.3 the Authority shall pay to the Supplier the Contract Price after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 1.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Contract Price.
- 1.5 Before ceasing to exercise its Step-In rights under this Schedule 15 (Step-In Rights) the Authority shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
- 11.1.1 1.5.1 the Required Action it has actually taken; and
 - 11.1.2 1.5.2 the date on which the Authority plans to end the Required Action (the "Step-Out Date") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 1.7 of this Schedule 15 (Step-In Rights).
- 1.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 1.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 1.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Schedule 15 (Step-In Rights), provided that the Authority shall reimburse the Supplier's

reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

1.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

1.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the res Supplier's default or breach).