**Information Communication Technology (ICT) Solutions Framework (ComIT)**

# **Order Form for Goods and/or Services**



**Call-Off Contract under the HealthTrust Europe LLP Framework Agreement for the supply of**

**Break Fixed contract for EUC and selected Server (reference number*: PO TBC* dated *28th September 2018***

***Lot 1 and 2 –01527.1-Hardware and 01527.2-Software***

***SCC Ref Opp-2568817***

|  |  |
| --- | --- |
| **The Authority** | **Highways England Company Limited**, c/o Company Secretary, Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ |
| **The Supplier** | **Specialist Computer Centres PLC** with company number 01428210 whose registered office is at James House, Warwick Road, Birmingham, B11 2LE |

The Supplier and the Authority hereby agree as follows:

 The Authority wishes to enter into a Contract in respect of the Goods and/or Services pursuant to the Framework Agreement.

 The Contract incorporates, and the Supplier agrees to abide by the following documents (where applicable):

1. the Mini-Competition Specification of the Authority’s requirements as appended at **Appendix 1** overleaf;
2. the Mini-Competition Response Document submitted by the Supplier, including the Contract Price, as appended at **Appendix 2** overleaf;
3. the Call-Off Terms and Conditions set out at Appendix A to the Framework Agreement (as attached to this Order Form at **Appendix 11** for ease) (including the front page and all Schedules thereto).

 The Supplier agrees to provide the Ordered Goods and Services as per **Appendix 3** (Ordered Goods and Services) overleaf at the charges (Contract Price) as per **Appendix 4** (Call Off Contract Charges) overleaf.

 The Authority acknowledges and agrees to, in particular, the HealthTrust Europe Key Provisions set out at Clause 7 of Schedule 1 of the Call-Off Terms and Conditions (set out at **Appendix 11** overleaf for ease), as stated below for the avoidance of doubt:

1. In the event that the Authority terminates its agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) for convenience or otherwise, and such termination takes effect before the end of the Initial Term (as defined in the UHCW Framework) or in the event that the Authority’s agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) expires without being renewed on or after such Initial Term, HealthTrust Europe shall notify the Supplier of such termination or expiry in accordance with the provisions of Clause 15 of Schedule 1 of the Framework

Agreement (“**Beneficiary Withdrawal Notice**”). Upon receipt of such Beneficiary Withdrawal Notice by the Supplier, the Supplier shall cease to apply for the benefit of the Authority, the Contract Price or any special discounts in relation to such supply which applied solely by reason of the operation of the UHCW Framework and its associated services and/or framework agreements or any contract made between the Authority made pursuant thereto and further the Authority shall no longer be permitted to place Orders or benefit from the Contract Price, save with the prior written consent of HealthTrust Europe.

1. The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.
2. The Authority and the Supplier agree that (in addition to the Authority’s right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract.

 The Commencement Date of the Contract shall be ***4th October 2018***

 The Term of this Contract shall be ***2 (two)*** years from the Commencement Date and may be extended in accordance with **Clause 15.2** of **Schedule 2** provided that the duration of this Contract shall be no longer than ***4 (four)*** years in total taken in 1 year extensions.

 The Parties acknowledge that the Authority is the Data Controller (as defined by the Data Protection Legislation) and the Supplier is the Data Processor (as defined by the Data Protection Legislation) in respect of any Personal Data Processed under this Contract.

 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4.1(i) of Schedule 2.

 For the purposes of Clause 4.2 of Schedule 2, the Authority shall visually inspect the Goods within 60 hours of the date of delivery of the relevant Goods.

 The payment profile for this Contract shall be:

See Appendix 4

 The Authority may terminate this Contract forthwith by notice in writing to the Supplier at any time on three (3) months’written notice. Such notice shall not be served within ***one (1)*** year of the Commencement Date. Termination under this Clause after the initial one year of the Contract will be subject to an early termination charge which shall be 80% of the Pro Rata contract value.

 The provision of Services

1. The Services Commencement Date shall be 5th October 2018
2. NOT USED
3. The Services shall be provided by the Supplier at the Premises and Locations:
4. As per the Purchase Order
5. The Supplier shall implement the Services in accordance with the Implementation Plan appended at **Appendix 5** overleaf.
6. The provision of access by the Authority to the Supplier to the Premises and Locations shall be subject to the lease and/or licence appended at **Appendix 7**.
7. Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in **Appendix 6** overleaf.
8. The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to this Clause and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. This Clause shall continue notwithstanding the expiry or earlier termination of this Contract.
9. The Contract shall be performed in accordance with **Appendix 9** overleaf (Contract Performance).
10. The Contract shall be performed in accordance with **Appendix 10** overleaf (Quality Standards).

12A The Parties believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending those provisions (the “Transfer Regulations”) do not apply to the transactions which are the subject matter of this Contract.

If it is subsequently determined by a court or tribunal of competent jurisdiction that the Transfer Regulations do apply to a transaction which is the subject matter of the Contract, the Authority shall indemnify and hold harmless the Supplier and any sub-contractor of the Supplier from and against all liability and loss suffered and any costs and expenses reasonably and properly incurred by the Supplier and any sub-contractor of the Supplier, as a result of the Transfer Regulations applying, including all liability and loss suffered and any costs and expenses reasonably and properly incurred arising out of or in connection with the employment of former employees of the Authority and/or any employees of any the Authority’s contractors, including breach of statutory duty, any claims for damages for breach of contract and/or compensation for unfair or wrongful dismissal or redundancy arising from any such employees having ceased for any reason to be employed.

 The Contract Managers at the commencement of this Contract are:

* 1. for the Authority:
  2. ***Redacted*, Assistant IT Commercial & Contracts Manager, *Redacted*, *Redacted*** for the Supplier:

***Redacted, Frameworks Account Manager, Redacted, Redacted***

 Notices served under this Contract are to be delivered to:

(a) for the Authority:

***Redacted, Head of IT Commercial & Governance, Highways England, The Cube | 199 Wharfside Street | Birmingham | B1 1RN***

for the Supplier:

***F.A.O. Redacted, Public Sector Director - Contracts, Compliance & Governance***

***SCC, Redacted, Warwick Road, Birmingham, B11 2LE***

 In this Contract, unless the context otherwise requires, all capitalised words and expressions shall have the meanings ascribed to them by the Call-Off Terms and Conditions set out overleaf at **Appendix 11** (Call-Off Terms and Conditions).

 The following Appendices are incorporated within this Contract (where applicable):

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| --- | --- |
| **Appendix 1** | Mini-Competition Specification |
| **Appendix 2** | Mini-Competition Response Document |
| **Appendix 3** | Ordered Goods and Services |
| **Appendix 4** | Call Off Contract Charges |
| **Appendix 5** | Implementation Plan |
| **Appendix 6** | Change Control Note |
| **Appendix 7** | Lease and/or Licence to access Premises and Locations |
| **Appendix 8** | Hardware Support and Maintenance Terms and Conditions |
| **Appendix 9** | Contract Performance |
| **Appendix 10** | Quality Standards |
| **Appendix 11** | Call-Off Terms and Conditions |

# **Signed by the authorised representative of THE AUTHORITY**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | *Redacted* | Signature: | *Redacted* |
| Position: | PROCUREMENT DELIVERY  PARTNER | Date: | 27/09/18 |

**AND**

# **Signed by the authorised representative of THE SUPPLIER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | *Redacted* | Signature: | *Redacted* |
| Position: | COMMERCIAL DIRECTOR | Date: | 26/09/2018 |

# **Appendix 1**

## **Mini-Competition Specification *NOT USED***

**Appendix 2**

## **Mini-Competition Response Document *NOT USED***

**Appendix 3**

## **Ordered Goods and Services**

**Authority Requirements:**

* As detailed within the following attachment provided to the Supplier at the time of quotation and included **for information purposes only**;



Desk Side Support

Requirements - FINAL

The Supplier will provide to the Authority a Break Fix Contract for End User Compute and selected servers. This service will include;

* Hardware Maintenance for Laptops, desktops and tablets as described in the Service Description below
* IMACs; including the Install of Laptops, which will will be pre-staged and stored centrally by SCC before deployment. The onsite IMAC engineer will deliver and hand over laptops to the user

Subsequent IMACS on the same site can be grouped together and if required will attract additional hourly charges. So for example if 3 IMACS are grouped together on the same site, and the onsite IMAC handover takes 30 mins then this equates to: 3 x 30 mins = 1 ½ hours = 2 x £87

Any of the IMACs included in the monthly baseline (5 per calendar month) can be rolled over to subsequent months

* Configuration and Recycling Services

* Hardware maintenance for the Servers listed below;

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| **Server Name** | **Site** | | **Rack** | | **Model** | | **Version** | | |
| HAWBHCS001 | Guildford | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWBRUCS001 | Aztec West, Bristol | |  | | HP Proliant DL380 | | Gen 9 | | |
| HAWEMCS002 | East Midlands RCC | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWEXCS002 | Exeter | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWFALCS001 | Preston | |  | | HP Proliant DL380 | | Gen 9 | | |
| HAWGNHCS001 | Darlington | |  | | HP Proliant DL380 | | Gen 9 | | |
| HAWLBCS002 | Leeds | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWNECS002 | North East RCC | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWNEWCS001 | Penrith | |  | | HP Proliant DL380 | | Gen 9 | | |
| HAWNWCS002 | NorthWest RCC | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWPGCS002 | Manchester | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWPYCS001 | Pytchley | |  | | HP Proliant DL360 | | Gen 8 | | |
| HAWQBCS002 | NTOC | |  | | HP Proliant DL380 | | Gen 8 | | |
| HAWRQCS002 | | | West Midlands RCC | |  | | HP Proliant DL380 | | Gen 8 |
| HAWSECS002 | | | South East RCC | |  | | HP Proliant DL380 | | Gen 8 |
| HAWSHCS001 | | | Mansfield | |  | | HP Proliant DL380 | | Gen 9 |
| HAWSMCS002 | | | South Mimms RCC | |  | | HP Proliant DL380 | | Gen 8 |
| HAWSPPCS001 | | | St Phillips Place, Birmingham | |  | | HP Proliant DL380 | | Gen 9 |
| HAWSWCS002 | | | South West RCC | |  | | HP Proliant DL380 | | Gen 8 |
| HAWTCCS003 | | | Birmingham | |  | | HP Proliant DL380 | | Gen 5 |
| HAWTCCS006 | | | Birmingham | |  | | HP Proliant DL380 | | Gen 8 |
| HAWTCCS007 | | | Birmingham | |  | | HP Proliant DL380 | | Gen 8 |
| HAWTQCS002 | | | Bristol | |  | | HP Proliant DL380 | | Gen 8 |
| HAWWBCS002 | | | Bedford | |  | | HP Proliant DL380 | | Gen 8 |

## **Service Descriptions**

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| **Service Group:** | **Hardware Support & Maintenance** |
| **Service**  **Component:** | **Incident Management** |
| **i) Service to be provided**    This Service Component will include:   * SCC shall provide Customer with access to a designated telephone number and/or a designated e-mail address for all communication from the Customer’s helpdesk. SCC will also utilise the Customers ServiceNow system to receive and close Incidents. * SCC shall manage incidents submitted to SCC via the agreed methods, during the Working Hours. SLA targets are listed in the spreadsheet “HE quote 220818” in Appendix 4 of this document. * SCC will log the call on SCC’s incident management system and advise Customer of the incident number either to the Customer’s Service Desk or via the ServiceNow system. This number will be used as the following:   + Confirmation that the Service Levels are now active, except where the Service is to be provided on an appointment basis where, the agreed Service Levels for the performance of the Service shall commence at the time SCC attends the Site in accordance with the appointment.   + As a point of reference for both parties when communicating further about the incident.   + The customer will provide the supplier with sufficient number of accounts to facilitate the timely management of the following; o Incident Management   + Change Management (for the purpose of providing resource to change tasks raised by the customer and agreed with SCC in advance)   + Problem Management (for the purposes of investigating Problems raised by the customer utilising the Intelligent hands service) o Service Request Management   The supplier will, as a continued Service Improvement, work in partnership with the customer to implement and integrate its own Service Management tools. All works for this will be discussed and agreed between the parties prior to implementation.     * SCC shall update the Customer via agreed methods with regular incident updates, and will provide proactive management of the incident through to closure regardless of the resolver group. | |
| **ii) Customer Obligations**   * In order for SCC to carry out this Service Component, the Customer shall: * Ensure all incidents are submitted in the agreed forms. * Ensure that all incidents assigned to SCC have been reviewed by the Customer service desk and have followed a level of diagnostics prior to assignment. * Ensure all agreed information is passed to SCC at time of incident logging, and allow the rejection of the incident by SCC if insufficient information has been provided to enable SCC to progress to resolution of the Incident. * Ensure that all agreed Incident Logging Processes are followed. * Provide SCC with all ServiceNow licences required | |

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| **Service Group:** | **Hardware Support and Maintenance** |
| **Service**  **Component:** | **Hardware Maintenance** |
| **i) Service to be provided**    Following acceptance by SCC of a Hardware Maintenance request from the Customer (in accordance with the procedures and requirements specified in the Incident Management Service Component), SCC shall using its reasonable endeavours;   * Perform such actions as SCC deems necessary so as to return the Hardware to Good Working Order within the applicable Service Level. * If SCC determines that repair of the Hardware on Site within the Service Levels is not possible, then SCC at its sole discretion shall either swap out the Hardware with a permanent replacement or provide temporary loan equipment in accordance with Clause 3.5 of Appendix B the “SCC Hardware Support and Maintenance Terms and Conditions”; * Arrange and expedite repairs of Hardware via SCC or third parties making full use of Manufacturer’s warranties where possible and where the same have been provided to the Customer by the manufacturer concerned. * The Services are limited to the Sites in the United Kingdom as specified within this Appendix A.     **ii) Notes or Exceptions to Service Component**    In addition and without prejudice to the exclusions set out in Clause 4.1 of Appendix B , the following shall not be provided as part of Service and provision of such services and/or materials shall only be provided in accordance with Clause 3.4 of Appendix B:    • The cost of materials resulting from any malfunction of parts or other supplies that are deemed to be consumable by the original manufacturer which shall include but are not limited to:   * CD’s, Diskettes, Ozone filters, Toner cartridges, Dot matrix print heads, Ribbons, Ink cartridges, Gear Train Assemblies, Any non standard components not declared on supported inventory (communication cards etc), Batteries (after warranty period), Internal pointing devices, Internal keyboards, External pointing devices, External keyboards, Keycaps, Anti- glare screens, Touch screens, Fuser Units, Developers, Paper Trays, Pick-up transfer rollers, Platen Knobs, User Damage Items; -, Display Enclosures, Access Covers, Base Covers, Front   Covers, Top Covers, Rear Covers, Hinges & Bezels, Membrane panels o Other components declared as consumable by the operators manual (e.g. maintenance  kits)   * Where whole units are exchanged SCC will notify the customer any details of any chargeables identified in our repair centre within 30 days.     **iii) Customer Obligations**    In addition to the obligations of the Customer set out elsewhere in this Support Agreement, in order for SCC to carry out this Service Component, the Customer shall comply with the following: | |

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| • | Provide sufficient devices in agreed locations to enable SCC to swap out faulty devices where required |
| • | Ensure that appropriate procedures are in place for individual data backup and recovery following Hardware repair. |
| • | Ensure that appropriate procedures are in place and enforced within the user base and that users have all required documentation to operate the software and hardware correctly. |
| • | Only use the supported version of software. |
| • | Where an onsite repair at a Homeworker location is not possible arrange for the transportation of Hardware from a home worker’s location to a relevant Site and back, in the event that a fault or software problem cannot be resolved remotely. The customer will agree and follow at all times the customer obligations in SCC’s Home Worker Visit policies and procedures (outlined below), which are subject to ongoing risk assessment. |

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| **Service Group:** | **Hardware Support and Maintenance** |
| **Service**  **Component:** | **Homeworker Visits** |
| 1. **Service to be provided**     • Provision of Hardware Support and Maintenance Services at Homeworker locations as agreed between the parties     1. SCC Engineer Obligations   The following guidelines and limitations will apply for all engineer attendances:   * + - Engineer to carry visible photographic ID at all times     - Engineers will be appropriately attired, courteous and professional at all times     - The engineer will carry out a dynamic risk assessment while on site, if at any point they feel uncomfortable they may leave site and provide a full account of the reasons why. These will be shared with the customer.     - Where an engineer completes an activity but feels there are risks associated, SCC can refuse to attend any more calls at that location, again risk assessment will be made giving reasons and passed back to the customer     - Work is limited to troubleshooting, equipment repair/replacement and desktop software support only     - No mounting of equipment where moving of furniture or drilling is required Engineers will only work on registered customers equipment at that location      1. **Customer Obligations**     The following conditions will apply for home working employees:   * + - The customer will provide an agreed list of all Home Worker locations in advance as part of the customer site list provided     - It is the employees responsibility to provide the engineer with a safe working environment     - It is the employees responsibility to provide access to the property and not give the engineer responsibilities of any keys etc.     - Employees must be appropriately attired, courteous and professional at all times     - Pets to be located in another room away from the engineers work location     - Areas must be covered to provide the engineer an area to work without the risk of damage   (e.g. a cover for a dining room table if this we where they are instructed to work)   * + - Clear access must be given to the equipment     - Liability insurance to be provided by the Customer for any claims of accidental breakages     - Engineer will attend a call a home location only when the employee is present, if the employee has to go out then the engineer is to leave site also | |

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| **Service Annex 1** | Support and Maintenance | |
| **Service Specification:** |  | **Intelligent Hands Service** |
| **Overview**  The Remote Hands Service is designed to provide within the Core Hours of Support (08:00 – 18:00 Monday to Friday, excluding UK Bank Holidays) a basic level of SCC presence within the Location, should physical intervention to the Equipment become necessary and the Customer is unable to attend the Location.  Remote Hands provides the reassurance of a rapid response to a situation requiring an element of physical or visual assistance. Remote hands service activities are defined below and take no more than 1 hour total time for a single engineer per Remote hands request.    **SCC Responsibilities**  SCC shall perform any of the following activities as and when instructed by the Customer up to a maximum of 1 hour resource time via the SCC Service Desk;   * Power cycling (turning off/on) Equipment (cold reboots via power cable unplug) • Pushing a button * Securing cabling to connections as detailed by customer. * Observing, describing, reporting of indicator lights or display information on machines or consoles (hard disk status indicators, system status indicators, etc.) * Modifying basic cable layout, labelling and/or re-labelling of Equipment * Checking alarms for faults * Inserting USB/Media sticks * Disconnection and reconnection of existing patch cabling as detailed by customer. * Replacement of device power cables as detailed by customer. * Replacing desktop or laptop devices with replacement spare devices provided by the customer at the location of the incident.     **Customer Responsibilities**   * Raise all Service Requests via the SCC Service Desk. * Provide all information, process, policies, procedures, Equipment and tools that SCC may reasonably require to perform the Remote Hands activities. * Documentation of tape rotation procedures and labelling/naming conventions     **Exclusions**   * Software or Equipment provision, decommissioning, installation, commissioning, rebuild or repair outside of replacing desktop and laptop devices with spares provided by the customer. * Technical troubleshooting * Configuration of software, firmware or Equipment * Physical intervention that requires the outer casing of Equipment to be removed. * Any Service Level failures that are a result of issues or circumstances outside the control of SCC which have inhibited or stopped SCC from completing the Remote Hands Service Request shall be reported as an exception and excluded from Service Level measurement. | | |

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| **Service Annex 1** | Support and Maintenance | |
| **Service Specification:** |  | **Intelligent Hands Service (Enhanced 24x7)** |
| **Overview**  The Remote Hands Service is designed to provide outside the Core Hours of Support (i.e. outside of 08:00 – 18:00 Monday to Friday, excluding UK Bank Holidays) a basic level of SCC presence within the Location, should physical intervention to the Equipment become necessary and the Customer is unable to attend the Location.  Remote Hands provides the reassurance of a rapid response to a situation requiring an element of physical or visual assistance. Remote hands service activities are defined below and take no more than 1 hour total time for a single engineer per Remote hands request.    **SCC Responsibilities**  SCC shall perform any of the following activities as and when instructed by the Customer up to a maximum of 1 hour resource time via the SCC Service Desk;   * Power cycling (turning off/on) Equipment (cold reboots via power cable unplug) • Pushing a button * Securing cabling to connections as detailed by customer. * Observing, describing, reporting of indicator lights or display information on machines or consoles (hard disk status indicators, system status indicators, etc.) * Modifying basic cable layout, labelling and/or re-labelling of Equipment * Checking alarms for faults * Inserting USB/Media sticks * Disconnection and reconnection of existing patch cabling as detailed by customer. * Replacement of device power cables as detailed by customer. * Replacing desktop or laptop devices with replacement spare devices provided by the customer at the location of the incident.       **Customer Responsibilities**   * Raise all Service Requests via the SCC Service Desk. * Provide all information, process, policies, procedures, Equipment and tools that SCC may reasonably require to perform the Remote Hands activities. * Documentation of tape rotation procedures and labelling/naming conventions     **Exclusions**   * Software or Equipment provision, decommissioning, installation, commissioning, rebuild or repair outside of replacing desktop and laptop devices with spares provided by the customer * Technical troubleshooting * Configuration of software, firmware or Equipment * Physical intervention that requires the outer casing of Equipment to be removed. * Any Service Level failures that are a result of issues or circumstances outside the control of SCC which have inhibited or stopped SCC from completing the Remote Hands Service Request shall be reported as an exception and excluded from Service Level measurement. | | |

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| **Service Annex 2** | Service Operations (Distributed) | |
| **Service Specification:** |  | **IMAC’s** |

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| **OVERVIEW**  An “IMAC” shall be defined as any one of the following activities, performed by SCC in a single visit to Site, on a single item of Equipment or Software;   * Installation of Equipment or Software. * De-installation of Equipment or Software. * Relocation of the Equipment within a Site * Relocation of Equipment from one Site to another Site. * Hardware and software upgrades to the Equipment     For avoidance of doubt should the Customer request more than one activity to be performed on two or more items of Equipment or Software, subsequent IMACS on the same site, at the same time can be grouped together and will attract additional hourly charges. So for example if 3 IMACS are grouped together on the same site, and the onsite IMAC handover takes 30 mins then this equates to:  3 x 30 mins = 1 ½ hours = 2 x £87  Any of the IMACs included in the monthly baseline (5 per calendar month) can be rolled over to subsequent months    In the event that the Customer wishes to undertake multiple activities at the same time (ie: Office move, rollout of a desktop hardware or software upgrade) then the SCC Customer Relationship Manager and the Customer Service Owner will discuss the options available to achieve the most efficient IMAC usage.  A BAU change is defined as an IMAC request for 10 or less End User desktops, which shall consist of a PC/ Workstation / Laptop or Netbook, monitor, keyboard, mouse and local peripherals. Requests consisting of more than 10 End User desktops shall be treated as a project, which may be chargeable.    **SCC RESPONSIBILITIES**   * Ensuring that all IMACs have the correct established business approvals prior to execution of an IMAC activity * Defining with the Customer the agreed Equipment standards * Ensuring that any new hardware to be installed meets with the agreed Equipment standards * Ensuring that all IMAC activities are carried out in accordance with the contracted Service Levels as defined in Part B of this Service Annex * Using all reasonable endeavours to minimise disruption to the Customer whilst delivering the IMAC Service * Working with the Customer to identify and validate IMAC requests and agree any additional charges in advance via the Operational Change process * Validating that the Customer site is ready before the IMAC activity commences. This may include the provision of additional LAN connections and communications in accordance with the details of the Service Request * Provide the customer with agreed information to allow the population of the CMDB     **CUSTOMER RESPONSIBILITIES:**   * Authorising all IMAC requests * Ensure all End User submitted request are provided in the agreed format and contain all the information necessary for SCC to complete the IMAC request. * Defining with SCC the agreed Equipment standards * Ensuring that SCC is able to access the Customer site at the agreed date and time to execute the IMAC * Completion of any requests that should be actioned by Customer, and management as appropriate of 3rd parties not managed by SCC     **EXCLUSIONS** | |
| • | IMAC requests consisting of 10 or more End User desktops may be determined to be a project. This shall be jointly agreed between the Customer and SCC |
| • | IMAC requests for assets not owned by the Customer or SCC |

## **Hardware Maintenance**

1. Definitions
   1. In this Service Description, the following terms shall have the following meanings:

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| --- | --- |
| End of Sale Date | means the last date on which a Supported Equipment can be ordered from the  OEM |
| Field Replacement Unit (FRU) | means any Hardware device, or a part or component of a device or system that can be replaced by a skilled technician on-site, thus avoiding the necessity to send the entire device or system to be repaired. |
| Non-Genuine  Supported  Equipment | means any and all Supported Equipment: (i) to which a OEM trademark or service mark has been affixed without the OEM’s consent; (ii) that have not been manufactured by the OEM or by a licensed manufacturer of the OEM in accordance with the applicable license; iii) are produced with the intent to counterfeit or imitate a genuine OEM equipment; or (iv) whose form of copyright notice, trademark, logo, confidentiality notice, serial number or other Supported Equipment identifier has been removed, altered, or destroyed. |
| OEM | Means the Original Equipment Manufacturer |
| Severity 1 (Critical) | Means the Service failure creates a serious business and financial exposure, causing a high number of Users to be unable to work or perform an essential portion of their job, and there is no acceptable workaround to the problem (ie: the job cannot be performed in any other way). |
| Severity 2 (High) | Means the Service failure creates a significant business and financial exposure, causing a high (fixed) number of Users to be unable to work or perform some significant portion of their job, but there is an acceptable workaround to the problem in the short term (ie: the job can be performed in some other way). |
| Severity 3 (Medium) | Means the Service failure creates a low business and financial exposure to an isolated number of Users causing them to be unable to perform a portion of their job, but they are still able to complete most other tasks, or; General Service related questions and requests for information. |
| Severity 4 (Low) | The Service failure creates a minimal business and financial exposure causing one or two User to be unable to perform a minor portion of their job, but they are still able to complete most other tasks. |

Supported equipment maintenance

1. Supplier Obligations
   1. The Services are intended to return the relevant Supported Equipment to Good Working Order, but the Supplier does not warrant that the Services shall cause the Supported Equipment to operate without interruption or error.
   2. To the extent that it is permitted to do so, the Supplier shall assign or pass on the benefit of any guarantee or warranty covering any defects in any replacement parts, spares or goods, received by the Supplier under an agreement with the manufacturer or supplier of the relevant Supported Equipment. The warranty of the manufacturer or supplier is in lieu of all other terms or conditions whether express or implied concerning the quality or fitness for purpose of the replacement parts, spares or goods. For the avoidance of doubt, the Supplier does not give any warranty or guarantee in respect of the replacement parts, spares or goods.
   3. The Supplier’s engineer may choose to return the Supported Equipment to the Supplier’s workshop for repair should on-site repair be impracticable. In such cases, if the Supplier’s engineer believes that repair of the Supported Equipment is not possible within the Service Levels, then at the Supplier’s sole discretion the Supplier will either provide the Authority with:
      1. Loan equipment; or
      2. A permanent replacement (“Swap Out”).
   4. Where the Supplier provides loan equipment or a Swap Out:

(a) The Supplier shall be under no obligation to provide identical equipment, but shall use all reasonable endeavours to ensure that the loan or Swap Out equipment provided will be of not less than an identical or better level of functionality; (b) Unless otherwise agreed:

* + - 1. The loan equipment or Swap Out shall not include software; and
      2. In respect of a Swap Out only, upon receipt of the Swap Out by the Authority title to the Swap Out shall pass to the Authority, and title to the Supported Equipment that the Supplier removes from the Site shall transfer to the Supplier.
  1. Loan equipment or a Swap Out shall not be supplied where the provisions of Clause 3 (Excluded Services) of this section applies.
  2. As soon as reasonably practicable after the Authority has received the application, the Supplier and the Authority shall meet to agree the effects (if any) of the change to the Service Levels.
  3. The Services which will be available to the Authority post End of Sale Date are detailed in Paragraphs 2.8 to 2.9, however they are intended as general guidelines only and are not a firm commitment or guarantee that a resolution activity can/ will be performed or available as described in this Annex for any Supported Equipment that has reached its End of Sale Date. Any Services provided post End of Sale Date are subject to and shall not extend beyond the duration of the relevant Services Period.
  4. Subject to Paragraph 2.7, access to the Services will be available during Working Hours for a period of 5 years from the End of Sale Date for Hardware and operating system software issues and for a period of 3 years from the End of Sale Date for application software issues.
  5. Subject to Paragraph 2.7, spares or replacement parts for Hardware will be available for a period of 5 years from the End of Sale Date. Where possible the Supplier will continue to make available spares or replacement parts for Hardware beyond this period but provision of such will always be on a reasonable endeavours basis. The Authority acknowledges that any spare or replacement parts provided by the Supplier 5 years after End of Sale Date will not necessarily be new or unused and accordingly will supplied with a limited 90 day warranty.

1. Excluded Services
   1. The Supplier shall not provide disaster recovery or business continuity planning services.
   2. Where The Supplier has not contracted to provide disaster recovery and/or business continuity planning it is the Authority’s responsibility to create and maintain the same and the Supplier shall have no liability whatsoever for the maintenance and/or amendments to, without limitation, the Authority’s disaster recovery and/or business continuity plans, procedures or processes.

3.2.1 The Supplier will provide the Authority with a copy of their standard BCDR processes and will provide relevant input and advise on the Authority’s own BCDR plan as requested.

* 1. The Services exclude the following in addition to any other items expressly excluded in the relevant Order or Service Annex:

Any works required as a result of:

Improper use, negligence, abuse, misuse or accidental or deliberate damage or loss of the Supported Equipment or any non-compliance with a Service Specification, including failure to observe any applicable maximum usage limit for Supported Equipment;

Improper preparation, provision or maintenance of environmental conditions at the Customer Site or any environmental conditions that do not conform to The Supplier’s or the Third Party Vendor's specifications;

Installation, maintenance, repair, support or calibration of the Supported Equipment other than by or on behalf of the Supplier or its subcontractors;

Any failure or fluctuation of electricity supply, climate control or other environmental conditions at the Authority Site;

Any virus, infection, worm or similar malicious code affecting the Supported Equipment that has not been introduced by the Supplier or its subcontractor;

Any work required to erase or remove any customer or third party data on Supported Equipment (or parts of it) returned repaired or otherwise handled by the Supplier;

Repair of any external or cosmetic damage to the Supported Equipment that does not affect the performance or functionality of the Supported Equipment;

Electrical work external to the Supported Equipment; Relocation of any Supported Equipment; provision of any items defined by Third Party Vendor as being a consumable items, including accessories, disposable parts, power cords, rack mounting kits and cables; Repair to Supported Equipment which:

Are not in Good Working Order at the commencement of the relevant Contract;

Have come to the end of their natural service life or for which spare parts are no longer readily available;

Are, in the reasonable opinion of the Supplier (or relevant Third Party Vendor), Beyond Economic Repair; or

Are required as a result of a Third Party Vendor's product recall whether in relation to a complete Product or a component part;

Any work on equipment which is not listed as Supported Equipment in the Contract; and Any work at the site which is not expressly set out in the Contract.

*3.4* If the Authority requests any Excluded Services and the Supplier agrees to perform any Excluded Services, the Authority shall pay the Supplier’s charges for such services on a time and materials basis at the Supplier’s then current charges (or as otherwise agreed by the parties using the Change Control Procedure) and the provision of such Excluded Services shall be subject to the Parties entering into a variation to an existing Order via the Change Control Procedure.

*3.5* Repair of any Hardware installed either outside the Authority Site or inside but requires special equipment to perform the Services;

*3.6* services on any equipment that: (i) Authority purchases or acquires from any party other than the OEM, an authorized OEM vendor or the Supplier; or (ii) Supported Equipment for which OEM support has never been offered or has lapsed prior to the applicable Service Commencement Date; or (iii) for which a valid software license does not exist, unless in each case such equipment passes a Supplier equipment inspection and the Supplier receives payment for the applicable equipment inspection and/or any necessary software license fees;

*3.7* Repairs to Supported Equipment which are not OEM-branded or are Non-Genuine Supported Equipment;

*3.8* Hardware replacement on individual items of Supported Equipment in quantities greater than three FRU’s, including those replacements due to pervasive issues documented in an engineering change notice or field alert.

1. Authority obligations
   1. The Customer acknowledges and accepts that in order for SCC to provide the Services, SCC requires the Customer to carry out or assume the responsibilities and activities set out in this Clause **Error! Reference source not found.**, the relevant Order and Service Annex (together t he "Customer Obligations" and individually a "Customer Obligation") and the Customer agrees to do so
   2. The Customer shall:

Provide SCC with:

all assistance, materials and information reasonably required by SCC for the purposes of enabling SCC to provide the Services, including providing access to staff and technical data, as SCC may reasonably need concerning the Customer’s operations; and

Timely responses to queries, decisions and approvals which may be reasonably necessary for SCC to undertake any of the Services, and

The Customer shall ensure that information and answers provided in accordance with this Clause 4.1(a) are accurate and complete. SCC shall, to the extent reasonably practicable, give the Customer reasonable prior notice of any information or answers it requires in accordance with this Clause 4.1(a) or if it has reason to suspect that any information is inaccurate or incomplete;

provide full and safe access to the Customer Site, facilities, equipment, materials and telecommunications facilities as SCC shall reasonably require in order to provide the Services;

Allow SCC (or Third Party Vendor), at SCC’s request and at no additional charge, to modify Supported Equipment to improve operation, supportability, and reliability, or to meet legislative requirements;

Comply with any technical specifications relevant to the Supported Equipment or Products and licence terms relevant to the Supported Equipment or Products;

Ensure that all personnel assigned by the Customer to provide assistance to SCC have the requisite skill, qualification and experience to perform the tasks assigned to them;

Obtain all necessary permissions, consents, permits or licences for SCC to perform the Services at the Customer Site, including any consents required for any alterations to the Customer Site; take up or remove any fittings or fixed floor coverings, ceiling tiles, suspended ceilings and partition covers as advised by SCC (or its representative) to permit installation of the Services and make good the same;

Keep confidential all passwords, logon codes and other access methods to the Services. SCC shall not be liable for any disclosure by the Customer of the same, whether intentional or otherwise;

with the exception of the Supported Equipment and/or equipment provided by or on behalf of SCC, provide all necessary computer hardware, software and/or telecommunications equipment and services to access and use the Services;

Where necessary for the access and use of the Services, obtain a licence from the relevant Third Party Vendor to use the software (including the Third Party Software); and

Conduct its business without detriment to the good name, goodwill and reputation of SCC and its Third Party Vendors.

*4.3* In terms of Services and/or Supported Equipment to be provided and/or located at the Authority Site, the Authority shall:

At all times provide:

Suitable secure accommodation, assistance, facilities and environmental conditions, including protection from weather and appropriate heating and ventilation, for the installation and housing of the Supported Equipment; and

All necessary electrical power supplies (including back-up) and other installations and fittings for the commissioning and provision of the Services, and the Authority shall at its own cost ensure that:

16.A.1.1.1 such preparation and provision is effected at the Authority’s sole cost before the Services and Supported Equipment are installed and are in accordance with any reasonable specifications provided by the Supplier; and

16.A.1.1.2 Any restoration and re-decorating at the Authority Site is performed; Allow and/or procure that:

The Supplier has an unencumbered and free right of access to the Authority Site during Working Hours for the purpose of delivering the Services; and

The Supplier’s employees, subcontractors and/or agents have safe and sufficient access to the Supported Equipment to allow the Supplier to provide the Services.

*4.4* Unless otherwise specified in the Order, the Authority shall:

Ensure that any programs or data stored on the Supported Equipment are virus free and full back up copies of all such programs and data are made and retained by the Authority;

connect Supported Equipment with cables or connectors (including fibre optics if applicable) that are compatible with the Supported Equipment and interface with the Supplier’s equipment and are in accordance with the Third Party Vendor's and/or the Supplier’s instructions;

Ensure that all equipment connected to a Service is connected to and used with the Service in accordance with the Third Party Vendor's and/or the Supplier’s instructions and any safety and security procedures notified to the Authority;

Maintain details relating to Supported Equipment, including the location, serial numbers and any Third Party Vendor-designated system identifiers and labels for such Supported Equipment;

Maintain all Supported Equipment at the latest specified configuration and revision levels;

Ensure only competently trained and authorised employees are permitted to use the Supported Equipment;

Promptly notify the Supplier of any faults in the operation of the Supported Equipment and give the Supplier a minimum of ten (10) Business Days' prior written notice of any Modification to the Supported Equipment prior to such Modification being carried out. The Supplier shall:

Acknowledge the Modification in writing; and

Notify the Authority if any proposed alteration to the Charges due to such Modification or if such Modification is accepted (such acceptance not being unreasonably withheld or delayed), and

Any Modification should be made in accordance with industry standards and the Authority shall only use products and parts approved by the relevant the Supplier or the relevant Third Party Vendor;

Ensure the external surfaces of the Supported Equipment are kept clean and in good condition; Only use consumables recommended by The Supplier or the relevant Third Party Vendor; not request, permit or authorise anyone other than the Supplier or the relevant Third Party Vendor to carry out any modifications, adjustments, repairs or maintenance to the Supported Equipment (or any part of it) without the prior consent of the Supplier or the relevant Third Party Vendor; and

Save for mobile hardware, not move the Supported Equipment or any part of it to another site without providing the Supplier with a minimum of thirty (30) calendar days' prior written notification. The Authority accepts movement of Supported Equipment to a new location may necessitate changes to the Service Levels and/or Charges for that Service and, in terms of a new location outside of the United Kingdom, shall also be subject to availability in the destination country.

4.5 Unless such Services are expressly stated as being the responsibility of the Supplier in the relevant Contract, the Authority shall be solely responsible for the performance and management of its data back-up and data recovery and the Supplier shall have no liability whatsoever for the back-up or recovery of the Authority’s data. If the Authority requests the Supplier to provide any assistance in respect of data back-up and data recovery following execution of a Contract which does not include the same, such services and the charges therefor shall be provided as agreed by the parties in accordance with the Change Control Procedure.

4.6 The Supplier maintains title and the Authority shall bear the risk of loss or damage to any:

Equipment provided by the Supplier during the performance of the Services, unless otherwise agreed in writing between the Parties; or

Loan units, if provided at the Supplier’s discretion as part of the Services or warranty services and such loan units will be returned to the Supplier without lien or encumbrance at the end of the loan period.

4.7 The Authority shall not charge, mortgage or otherwise deal with any of the equipment referred to in Clause 4.6 and use all reasonable efforts to prevent third parties from asserting rights in relation to such equipment.

Passwords

4.8 In order to obtain Access to certain Services, the Authority will be issued with the Supplier’s telephone number(s) and unique user-IDs and passwords.

4.9 The Authority shall:

be responsible for the security and proper use of all user-IDs and passwords relating to the Services and must take all necessary steps to ensure that all passwords and user IDs are kept confidential, kept secure, used properly and not disclosed to unauthorised people; and

immediately give the Supplier written notice if it becomes aware or should reasonably have become aware that a user-ID or password has become known to someone not authorised to use it or if any user-ID or password is being or is likely to be used in an unauthorised way.

If Clause 4.9(b) applies or the Authority forgets a user-ID or password, the Authority shall immediately contact the Supplier and satisfy such security checks as are required by the Supplier so that a new user-IDs or passwords can be issued to enable Access to be resumed

1. provide the Supplier with no less than thirty (30) days prior written notice of any proposed changes to the Supported Equipment; and
2. Where required by the Supplier, return failed/defective Supported Equipment within ten (10) days after receipt of the replacement Hardware. The Supplier reserves the right to invoice the Authority in full for the replacement Hardware if the timescales referred to in this paragraph 4.1(b) are not met. All returned Supported Equipment must be properly packaged, with details of the failure, and any changes or alterations made to the Hardware clearly documented, and the tag must include the Supplier provided RMA transaction number.
3. Term and Duration

5.1 Except as provided in this paragraph 5.1, the Customer shall not be entitled to cancel the Services prior to the expiry of the Initial Services Term or during any Renewal Period without the Supplier’s prior written consent. If the Supplier does consent specifically to early termination for convenience of Services, such consent shall, unless otherwise notified by the Supplier in writing, be subject to the Authority paying an early termination charge to the Supplier calculated as a sum equal to the average of the Charges paid by the Authority in the previous three (3) months (or the Charges paid in the previous month if less than three (3) months of the Initial Services Term

or the Renewal Period have expired) multiplied by the number of months remaining in the Initial Services Term or Renewal Period.

The Authority may procure Config and recycling services from the Supplier as described below

# Pre-Deployment Services

## Supplier Configuration

It’s proposed that we explore The Supplier’s pre-deployment options coupled with some value adding ideas that will ultimately meet your budgetary needs. These options are detailed as the following services:

Pre-Deployment:

* Cloning
* USB Image Deployment
* Extending Authority’s SCCM to The Supplier
* Asset Tagging
* Bonded Storage

## Our Service Capability

We execute all builds in our configuration centre in Birmingham, where new and refurbished product supply is complemented with a range of value adding services, from basic asset tagging through to complex configurations, specific to an end user’s profile. Our ever expanding portfolio covers laptops, desktops, tablets, Android and IOS devices, servers and any associated peripheral devices.

Within The Supplier’s facility we have the capacity to annually roll out up to 780,000 PCs and hold the ability to build or destroy one-thousand (1000) devices per day within an agreed contractual service, either as run rate supply or for a large project rollout. All work is carried out to standards defined and agreed with each of our customers.

Our facilities are accredited to multitude of standards, some detailed below:

* ISO9001 Quality
* ISO14001 Environmental
* ISO18001 OHAS
* ISO20000 Service • ISO27001 Security.
* List N Facility
* Secure Config Lab to cater for Secret data classifications
* DIPCOG approved and CAS(sanitisation) certified

A more detailed overview of our security compliance capabilities are available upon request.

The Supplier applies three core services aimed at delivering any build requirement required before a device arrives to customer site.

## Cloning

* Receive device with target image applied
* Clone device’s image onto MDT server ready to deploy across LAN
* Un-box target device and cosmetic check of systems for physical damage or surface scratches.
* Initial power up and test of device to confirm functionality.
* Bios Updates applied (where required)
* Restart unit and PXE boot device and start selected Build sequence from The Supplier Configuration Server. If requested physically apply the Asset tag to the unit (Authority to specify desired location of tag).
* Complete electronic audit sheet recording Serial and Asset tag number. Additional data can be captured at this point if required – this can be agreed with Authority prior to service inception.
* Quality checks to confirm build has installed correctly. (A Login account maybe required to perform these checks)
* Apply Encryption using customer software (where required)
* Once a unit has been quality assured it can be re-boxed ready for despatch to agreed location or distribution centre.
* Bespoke box labels can be applied at this stage – again this can be agreed with Authority prior to service inception.

## USB Image Deployment

* Receive USB memory stick from customer with WIM target image inside
* Un-box target device and cosmetic check of systems for physical damage or surface scratches.
* Initial power up and test of device to confirm functionality.
* Bios Updates applied (where required)
* Restart unit and boot device to supplied Scripted USB and deploy build locally via USB.
* If requested physically apply the Asset tag to the unit (Authority to specify desired location of tag).
* Complete electronic audit sheet recording Serial and Asset tag number. Additional data can be captured at this point if required – this can be agreed with Authority prior to service inception.
* Quality checks to confirm build has installed correctly. (A Login account maybe required to perform these checks)
* Apply Encryption using customer software (where required)
* Once a unit has been quality assured it can be re-boxed ready for despatch to agreed location or distribution centre.
* Bespoke box labels can be applied at this stage – again this can be agreed with Authority prior to service inception.

## Extending Authority’s SCCM to The Supplier

* Establish VPN link from customer’s master SCCM server (Secure, one way link)
* Un-box target device and cosmetic check of systems for physical damage or surface scratches.
* Initial power up and test of device to confirm functionality.
* Bios Updates applied (where required)
* Restart unit and PXE boot device and start selected Build sequence from Server
* Apply Encryption using customer software (where required)
* If requested physically apply the Asset tag to the unit (Authority to specify desired location of tag).
* Deployment of scripted unattended build
* Complete electronic audit sheet recording Serial and Asset tag number. Additional data can be captured at this point if required – this can be agreed with Authority prior to service inception.
* Quality checks to confirm build has installed correctly with correct user profiling i.e. individual user apps deployed. (A Login account maybe required to perform these checks)
* Once a unit has been quality assured it can be re-boxed ready for despatch to agreed location or distribution centre.
* Bespoke box labels can be applied at this stage – again this can be agreed with Authority prior to service inception.

## SLA

For newly ordered units, a 5 days SLA applies to deliver the core service after an initial 3-5 day testing and setup phase. This is based on all kit being in stock at The Supplier, and also in line with any preagreed daily throughput volumes. Our current throughput volume is 1,000 units in one day.

Example: Authority requires deployment of 5000x devices within a 2 week deadline. The Supplier will call off stock, take first (1st) batch of one-thousand (1000) devices and start the process of un-boxing and applying image and asset tag etc. re: chosen pre-deployment service. Each following day the process will repeat until all five-thousand (5000) units have been deployed within 9-10 working days.

## Asset Tagging

To assist deployment and establish an audit trail, we are able to capture asset details for a customer’s asset inventory and fix identification tags as part of the configuration and configuring process after the DOA test.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Asset Tagging / Record Vendor Pre-Tagging** | • | Installation of a customer asset tag to predefined location on the unit. These can be self-adhesive or resin-applied tags. |
|  | • | Record of asset number on audit sheet for tags that have been applied or vendor pre-tagged units. |
| **Asset Reporting** |  |  |
| Standard | • | Daily, monthly or weekly reports with hardware unit details, serial number and corresponding asset numbers sent to a specified email address / email addresses. |
|  | • | Can be requested directly from IT support for information held in core systems. |
| Bespoke Reports | • | Authority-specific information is available in addition to standard reporting when this information is entered as part of the engineering process. Bespoke reports are set up by IT support and requested by the configuration management team. |
| Box Labelling | • | Box labels can be applied to configured units, featuring any information as specified by the customer. Typical requests for box labels usually consist of user names, host names, asset numbers and MAC address. |

Where possible the asset reports can be fed back into the customer's CMDB or asset registry from a .xls or .csv file format supplied by The Supplier. All core data is also updated into the customer The Supplier Lifecycle Portal.

The supplier will provide the customer access to its Asset Management Tool, Radius Asset Management System via Lifecycle. This access is a means of a Hosted Gateway, providing real-time data regarding all CI’s managed by the supplier on behalf of the customer.

As a Service Improvement, the supplier will work with and will commit to facilitating the customer the ability to integrate to the suppliers Asset Management Tool subject to agreed requirements. This will form as part of a separate project, funded by the customer.

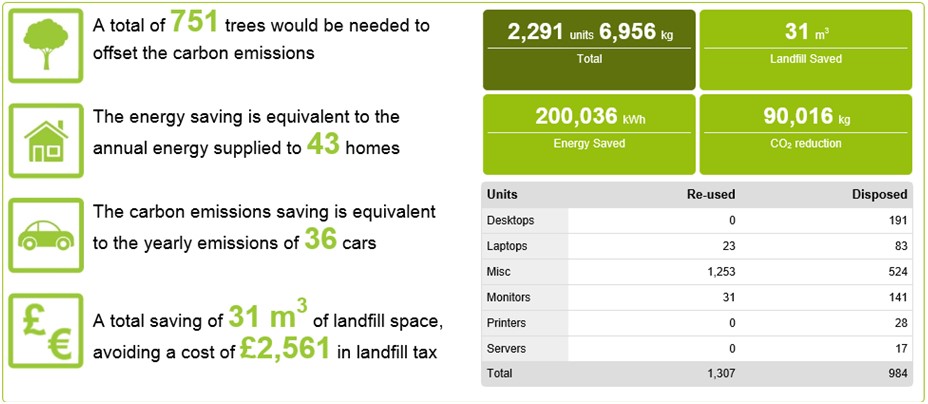
## Bonded Storage

Our Bonded Distribution Centre’s sole purpose will be to store, commission and rollout Authority bonded stock, where inventory is invoiced and held against a delivery schedule.

# Post-Deployment Services

## Packaging Consolidation

|  |  |  |
| --- | --- | --- |
| **Waste Management** | •    − | We can dispose of all hardware equipment packaging when the units arrive at customer site.  Unit is called off from stock and delivered next day to customer site |
|  | − | Technical Courier will deliver to desk and remove unit packaging |
|  | − | Packaging will be removed from customer site |
|  | − | Old asset can be taken away for recycling |



The Supplier are able to provide CSR reports for Authority’s who use our recycling services.

## The Supplier Recycling Services

Built upon our wealth of knowledge and experience within the IT industry, The Supplier’s Recycling Services offer customers a full portfolio of recycling services from our UK Operations Centre based at the Supplier Global Headquarters in Birmingham.

The Supplier will provide a fully auditable, compliant and managed recycling solution which may cover all aspects of Refurbishment, Remarketing and Environmental WEEE Disposal as required by the Authority. Additionally, we can deliver secure data destruction services at customer locations.

The Supplier has offered Recycling Services within the UK and across EMEA covering in excess of 2 million assets since 2003. At the UK Operations Centre, all processing activity is undertaken entirely in-house by fully trained and SC Cleared personnel, without the need for any additional subcontracting.

The Supplier’s Recycling Services are designed to optimise the lifespan and overall value of assets in your IT estate, encompassing your individual requirements, compliancy obligations, data security and CSR objectives, including adhering to a zero landfill policy following the secure destruction of end of life assets.

## Service Scope

### Equipment

Where agreed between the parties, The Supplier may provide its Services to the Authority in respect of the following classes of Authority Equipment: Desktop and Laptop PCs, Monitors, Telephony devices, Printers, Servers, Network Equipment, Mobile Devices, HDDs and any associated parts and peripherals. Specific equipment processing thresholds will be further defined within the Authority Brief(s) in relation to this Statement of Work.

### Supplier Locations

All Supplier processing activity will be provided by the Supplier within the Territory of the United Kingdom unless otherwise stated and will take place in the following location(s):

SCC UK Operations Centre

Seeleys Road

Tyseley,

Birmingham

B11 2LE

### Logistics

The Supplier uses a combination of internal transport solutions and approved specialist IT logistic partners. All approved partners are subject to regular Supplier downstream audit, ensuring all waste and security provisions required by the customer can be met and adhered to. Where standard collections are agreed, the following IT logistic partner hubs may be used:

**Bonds Worldwide Express Ltd** – The Supplier Primary IT specialist courier / hub

Unit 6, The Gateway Estate

West Midlands Freeport

B26 3QD

**SAS Logistics** – The Supplier Secondary IT specialist courier / hub

Unit 18

Slough Business Park

94 Farnham Road

Berkshire

SL1 3FQ

### Hours of Cover

Standard hours of cover for carrying out work requests through the Recycling Service Desk (i.e. collections, placing service requests, processing of equipment, or requesting management reporting) will be Monday – Friday, 09:00 - 17:00 excluding Bank Holidays.

The Supplier will require at least 3 working days’ notice for work carried out from 17:00 to 08.00 on any day, or 08.00 and 18.00 on Saturdays, or for work carried out at any time on Sundays or Bank Holidays.

Requests outside contracted hours shall be provided on a per event basis.

## Authority Brief

The Authority brief is a process control document created by the Supplier which controls the provision of services according to Authority-defined business requirements. The Authority will require at least one approved Authority brief prior to the commencement of processing activity.

### The Supplier Responsibilities

1. The Supplier shall set up a consultation meeting with Authority to create initial Authority brief(s)

1. The Supplier will assign account number(s) as required for the Authority. Authority briefs will be assigned a ‘business unit’ name which will be assigned to applicable account

1. The Supplier will ensure all Authority-defined business requirements captured in Authority brief documents align with the services defined within this Statement of Work

1. All Authority brief documents will be version controlled and subject to a managed change control process for all subsequent changes required

1. Authority brief document transposed into the Supplier asset management system, Radius

### Authority Responsibilities

1. Establish initial quantity of briefs required and ‘business unit’ name for each brief

1. Establish processing outcome for all assets requiring auditable asset management

1. Establish processing requirements for items not requiring auditable asset management

1. Establish any bespoke instructions

1. Submit change requests

1. Signature required from authorised Authority Representative to authorise live Authority Brief documents

## Radius Asset Management System

Radius is the proprietary asset management system developed and managed by The Supplier to provide auditable asset tracking through the entire end-to-end process. Radius has the ability to pin point the exact location and work activity that has been performed upon any asset at any given time. Where agreed, the customer will be allocated a portal account which can be used to arrange collections, monitor activity relating to work in progress assets and historically processed assets.

## Authority Arranged Delivery

Authority assets delivered into the Supplier UK Operations Centre via a transportation method arranged by the Authority. This does not include out of hours deliveries to be agreed on a delivery by delivery basis

### Supplier Responsibilities

1. Provision of a ‘Collection Request (CR) Number’
2. Provision of waste paperwork where applicable (nominal charge apply)
3. Inventory count will be reconciled and signed for by the Supplier Goods Inwards delegate upon receipt into the Supplier UK Operations Centre
4. Notification of discrepancies to Authority (if applicable)

### Authority Responsibilities

1. Nominated Authority contacts will send email or complete an online collection request in Lifecycle ™ portal to schedule a delivery, to include:
   * Confirmation of collection address
   * Required delivery date
   * Quantity of items being delivered
   * Additional information
2. Changes to expected inventory or service must be communicated to the Supplier prior to delivery
3. Authority required to sign all collection paperwork generated by the Supplier

## Standard Collection Service

Collection of assets from Authority using either internal SC cleared authorised personnel and secure vehicles, or secure and stringently audited, specifically trained logistics partners for secure transport of IT equipment. Overnight storage hubs may be used between collection from Authority and receipt at the Supplier UK Operations Centre.

### Supplier Responsibilities

1. The Supplier shall ensure all logistics partners have been subject to a Supplier downstream audit and personnel used are BPSS cleared. (SC Cleared personnel available on request)
2. Collections shall be carried out in secure container vehicles with rigid based axles, slam lock systems, immobilisers and GPS tracking
3. Audited hub locations may be used for overnight storage and shall be declared in collection paperwork.
4. Occasional multi-point collections from different Authorities are permitted when required
5. Only expected inventory will be collected on the agreed date (and time where requested)
6. The Supplier Courier performs inventory count against pre-agreed quantity at Authority site
7. Inventory count will be reconciled and signed for into Hubs (where applicable)
8. Inventory count will be reconciled and signed for when leaving Hubs (where applicable)
9. Inventory count will be reconciled and signed for by The Supplier Goods Inwards delegate upon receipt into The Supplier UK Operations Centre)
10. Asset Number reconciliation will take place in steps 7 to 10 where requested as a Collection Service Enhancement (see Authority Responsibilities – Point 1)
11. Notification of discrepancies to Authority (where applicable)
12. Capture of courier signatures at each stage of the collection process
13. Provision of waste paperwork where applicable (nominal charge applies)
14. Provision of a ‘Collection Request (CR) Number’
15. Confirmation of collection date (Timed collections available subject to charges)
16. The Supplier Service Desk to provide collection service support

### Authority Responsibilities

1. Nominated Authority contacts will send email or complete an online Collection Request in Lifecycle ™ to schedule a collection, to include:
   * Confirmation of collection address
   * Required collection date (and time where Timed Collection Service Enhancement is requested)
   * Quantity of items to collect (including Inventory serial or unique identifier when Asset

Managed Collection Service Enhancement is requested)

* + Details of site specific restrictions and any other additional information
  + Identification of Collection Service Enhancement requirements when submitting a Collection Request (including but not limited to secure point to point, asset managed collections and timed collections, when submitting a Collection Request

1. Changes to expected inventory / service must be communicated to the Supplier prior to collection
2. Authority required to sign all collection paperwork generated by the Supplier

## Collection Service Enhancements

Collection Service Enhancements can be requested to enhance the Standard Collection Service. They can be requested when submitting a Collection Request if required

### Secure Point to Point Collection

* Minimum of two SC Cleared personnel will be present; equipment will always be escorted by a minimum of 1 courier personnel during loading, transportation and unloading
* Direct point to point transport between Authority site and the Supplier UK Operations Centre only (hub usage and multi point collections are strictly not permitted) **Asset Managed Collection**
* The Supplier Courier will reconcile inventory against pre-provided detail (serial or customer unique identifier) at point of collection
* The Supplier Goods Inwards will reconcile inventory detail (serial or customer unique identifier) at point of receipt
* Where hub usage is permitted, inventory will be reconciled into and out of the hub **Timed Collection**
* The Supplier Courier will arrive and collect inventory during a specific time frame detailed by the Authority when submitting a Collection Request. **Additional Resource**
* The Authority may request additional resource when submitting a Collection Request (Please note additional resource is mandatory for Items above 25kgs or large collections) **SC Cleared Personnel**
* The Authority may request SC Cleared Personnel when submitting a Collection Request

## Refurbishment Service (Asset Managed)

The Supplier will provide an asset managed auditable refurbishment services at our UK Operations Centre. Each asset shall be in a cosmetic condition suitable for re-use by the Authority and where applicable, cleansed of all data. Processed assets are cleaned, packaged and securely stored awaiting redeployment to the Authority. Equipment identified by the Authority as not having an asset management requirement will be classed as Mixed EEE. Equipment which is not suitable for refurbishment will be securely recycled /disposed.

### Supplier Responsibilities

1. Allocation of a unique bar coded reference to each asset (Please note that hot swappable server drives will individually classed as assets)
2. Asset information captured (including make / model / serial / Authority identifiers / specification) 3. Factory defaults will be applied (where applicable)
3. BIOS factory defaults will be applied and Authority information and passwords removed (where applicable)
4. Magnetic hard disks erased using CPA (CESG) approved Blancco software using the CESG CPA – Higher Level 3 erasure algorithm applied

1. Solid State Drives erased using Blancco SSD software. A tailored SSD algorithm applied which will overwrite memory twice with random patterns, initiate internal erasure commands of the drive and perform 100% logical verification of erasure

1. Mobile phones will be erased using Blancco Mobile Device Eraser
2. Faulty disk drives will be removed for auditable for physical destruction (This includes hybrid drives as there is currently no erasure option in the industry for this technology)
3. Any optical media located in device will be removed for physical destruction
4. Hardware diagnostic testing (where applicable)
5. Electrical integrity check (where applicable)
6. Cosmetic assessment against refurbishment tolerance criteria
7. Asset graded from ‘A’ to ‘D’ depending on physical/functional condition
8. Allocation of unique product code for model type
9. Asset cleaned internally (where applicable) and externally
10. Asset boxed and packaged using bespoke packaging
11. Asset bundled with UK Mains Plug to IEC C13 (if applicable) as standard. Model specific power supplies/power chords bundled where provided by Authority
12. Asset labelled with bar coded information; including Authority identifiers, Serial , SKU code
13. Asset stored in secure storage awaiting Authority call off
14. Data destruction certificate(s) produced
15. Financial billing information produced
16. Assets deemed unfit for refurbishment which fall outside the customer specification or requirements will be processed in accordance to the Remarketing Service or Recycling / Disposal Service as defined in the Authority Brief

### Authority Responsibilities

1. Establish processing instructions and thresholds within specific Authority Brief for each business unit (including the identification of any equipment categories which do not require asset management)
2. Provision of model specific power supplies/power chords for assets which do not power on from a UK Mains Plug to IEC C13 if required for bundling
3. Where Authority security processes allow, provide BIOS passwords to allow for BIOS factory default and sanitisation (To be captured in business unit specific Authority Brief)
4. Define processing instructions for all assets which do not meet refurbishment requirements after assessment in business unit specific Authority Brief
5. Deactivate iOS devices from user iTunes accounts for returned iOS devices (where possible)

## Remarketing (Asset Managed)

The Supplier will provide an asset managed auditable remarketing service at our UK Operations Centre. Each asset shall be in a cosmetic condition suitable for resale and where applicable, cleansed of all data. Where assets hold a market value, processed assets are prepared and routed for sale in a manner as to gain the best financial value for the Authority. Equipment identified by the Authority as not having an asset management requirement will be classed as Mixed EEE. Equipment which is not suitable for resale will be securely recycled /disposed.

### Supplier Responsibilities

1. Allocation of a unique bar coded reference to each asset (Please note that hot swappable server drives will individually classed as assets)
2. Asset information captured (including. make / model / serial / Authority identifiers / specification) 3. Factory defaults will be applied (where applicable)
3. BIOS factory defaults will be applied and Authority information and passwords removed (where applicable)
4. Magnetic hard disks erased using CPA (CESG) approved Blancco Drive Eraser software using the CESG CPA – Higher Level 3 pass erasure algorithm’

1. Solid State Drives erased using Blancco Drive Eraser software. A tailored SSD algorithm applied which will overwrite memory twice with random patterns, initiate internal erasure commands of the drive and perform 100% logical verification of erasure

1. Mobile phones will be erased using Blancco Mobile Device Eraser
2. Faulty disk drives will be removed for auditable for physical destruction in accordance to Annex A of HMG IA Standard No. 5 Secure Sanitisation (This includes hybrid drives as there is currently no erasure option in the industry for this technology)
3. Authority identifiers physically removed
4. Any optical media located in device will be removed for physical destruction
5. Hardware diagnostic testing and electrical integrity check (where applicable)
6. Cosmetic assessment against remarketing tolerance criteria
7. Asset graded from ‘A’ to ‘D’ depending on physical/functional condition
8. Asset prepared for sale
9. Data destruction certificate(s) produced
10. Financial billing information produced
11. Revenue accrued information produced
12. Mixed EEE equipment which the customer has identified as not requiring asset management will be allocated a unique bar code reference per pallet and charged incrementally per every 50KG received. Mixed EEE equipment will be assessed by the Supplier for potential re-use as a waste prevention measure where possible. This includes removal of all data and customer information if present.
13. Assets deemed unfit for resale by the Supplier or Mixed EEE items which have no potential reuse will be processed in accordance the Recycling / Disposal Service.

### Authority Responsibilities

1. Establish processing instructions and thresholds within specific Authority Brief for each business unit (including the identification of any equipment categories which do not require asset management)
2. Provide BIOS passwords to allow for BIOS factory default and sanitisation (To be captured in account specific Authority Brief)
3. Deactivate iOS devices from user iTunes accounts for returned iOS devices (where possible)

## Recycling / Disposal Service (Asset Managed)

The Supplier will provide an asset managed auditable recycling / disposal service at our UK Operations

Centre for equipment which (i) does not meet remarketing/refurbishment thresholds or (ii) where the Authority requests destruction only requirements. All assets will be treated in accordance with Annex II of the WEEE Directive and in line with best practice guidance provided via Best Available Treatment Recovery and Recycling Techniques (BATRRT). All data bearing components held in assets will be physically destroyed in accordance to the acceptable procedures detailed for OFFICIAL in Annex A of HMG IA Standard No. 5 Secure Sanitisation.

### Supplier Responsibilities

1. Allocation of a unique bar coded reference to each asset
2. Asset information captured (including make / model / serial / Authority identifiers / Specification)
3. Incoming waste weight captured for environmental reporting when received into the Supplier National Recycling Centre (does not include assets routed from remarketing/refurbishment services)
4. Authority identifiers physically removed
5. Outgoing waste weight captured for environmental reporting
6. Data bearing media removed from monitor for destruction (if applicable). The remaining monitor will be classed as hazardous material.
7. Hazardous materials/components are removed from the equipment to be separately treated by specialist reprocessors in accordance with the WEEE Directive
8. Data Bearing Media will be destroyed in accordance to OFFICIAL guidelines in Annex A of HMG IA Standard No. 5 Secure Sanitisation, including shredding to 6mm (any direction particle) where stipulated
9. Remaining asset passed through four shaft rotary shredder to reduce assembled structures down to 40mm fragment
10. Waste streams created through two phase separation process; ferrous metal fragments extracted by overband magnet and non-ferrous and plastics separated by eddy current separator
11. WEEE Fractions sent to approved recyclers for further treatment to enable efficient recovery of raw materials ready for transition back into the manufacturing industry in accordance to a zero landfill policy.
12. Destruction certificate produced
13. Environmental report produced (Excludes Mixed WEEE or items routed from Mixed EEE)
14. Financial billing information produced (Recycling / Disposal Service charges shall supersede Remarketing/Refurbishment Service charges should an asset be routed to Recycling from either service)

### Authority Responsibilities

1. Establish processing instructions and thresholds within specific Authority Brief for each business unit (including the identification of any equipment categories which do not require asset management)

## Pure WEEE Recyling Service (Non-Asset Managed)

This service provides the recycling of redundant Authority equipment which does not require asset management. Equipment will be treated in accordance with Annex II of the WEEE Directive and in line with best practice guidance provided via Best Available Treatment Recovery and Recycling Techniques (BATRRT)

### Supplier Responsibilities

1. Incoming waste weight captured for environmental reporting when received into the Supplier UK Operations Centre

1. Outgoing waste weight captured for environmental reporting

1. Hazardous materials/components are removed from the equipment to be separately treated by specialist reprocessors in accordance with the WEEE Directive

1. Remaining asset passed through four shaft rotary shredder to reduce assembled structures down to 40mm fragment

1. Waste streams created through two phase separation process:

* + Ferrous metal fragments extracted by overband magnet

* + Non-ferrous and plastics separated by eddy current separator

1. WEEE Fractions sent to approved recyclers for further treatment to enable efficient recovery of raw materials ready for transition back into the manufacturing industry

1. Destruction certificate produced per Collection Request

1. Environmental report produced (Excludes Mixed WEEE or items routed from Mixed EEE)

1. Financial billing information produced

**Authority Responsibilities**

1. Establish Business Unit where the is a requirement for Pure WEEE Recycling Services

## On-Site Destruction Service

The Supplier will provide the physical destruction of data bearing media at Authority site. Media includes but is not limited to hard drives, magnetic tapes, optical drives, memory modules. Authority’s will be provided with a detailed audit sheet upon the completion of a work request followed by a retrospective destruction certificate detailing al destroyed media, including asset/serial details and the destruction outcome. Shredded material will be returned to the Supplier UK Operations Centre for recycling.

### Supplier Responsibilities

1. The Supplier Recycling On-Site Service Desk will work with the Authority to establish specific site requirements (Pre-project On-Site survey can be performed if required for complex sites)
2. Provision of a ‘Collection Request (CR) Number’ (Used for On-Site as well as Collections)
3. Set up method statement detailing project requirements. This will include but will not be limited to details of assets requiring destruction, media volume, vehicle access, shred size requirements, security and health and safety requirements and project timeline
4. The Supplier engineers arrive at Authority site with assigned shredder and vehicle (details will be provided to the Authority prior to the project)
5. The Supplier engineers will perform a dynamic risk assessment to identify and make provisions for any security or health and safety risks which are not mitigated by standard provisions or which have not been identified during initial client engagement
6. The Supplier engineers will establish work areas with site contact
7. All media allocated unique tracker ID which will be audited alongside media type, serial number

(where possible), asset number (where possible) and host asset details (if applicable)

1. Media degaussed (where requested and in accordance to ‘On-Site Degaussing Service’)
2. Media will be shredded to agreed levels in project specific method statement
3. Shredded material will be transported back to The Supplier UK Operations Centre for additional recycling
4. Audit sheet and destruction certificate will be provided to the Authority retrospectively

### Authority Responsibilities

1. Provide detailed project requirements for specific projects to the Supplier Recycling On-Site Service Desk. This will include but will not be limited to details of assets requiring destruction, media volume, vehicle access, shred size requirements, security provisions, health and safety provisions, post erasure requirements and required project commencement date
2. Provision of secure processing area
3. Provision of a site contact for all engagement required between the Supplier and the Authority during the request
4. Sign and approve method statement and dynamic risk assessment

## On-Site Data Erasure Service

The Supplier will provide secure erasure of either loose magnetic / solid state drives or drives contained in laptop, desktop or server equipment at Authority site. Data cleansing will be attempted on all disk drives and Blancco erasure certificates will be provided to the Authority at the end of each request. Any drives which fail the erasure process will be subject to processing outcomes established during the client engagement stage. There is currently no erasure option in the industry for hybrid drive technology.

### Supplier Responsibilities

1. The Supplier Recycling On-Site Service Desk will work with the Authority to establish specific site requirements (Pre-project On-Site survey can be performed if required for complex sites)
2. Provision of a ‘Collection Request (CR) Number’ (Used for On-Site as well as Collections)
3. Set up method statement detailing project requirements. This will include but will not be limited to details of assets requiring data erasure, outcome required for failed hard drives, security/health and safety provisions and details of personnel, vehicle and project timeline
4. The Supplier engineers arrive at Authority site in assigned vehicle (details will be provided to the Authority prior to the project) with Blancco erasure tool kit (Standalone erasure rigs required for loose hard drives and server drives where architecture is unsupported)
5. The Supplier engineers will perform a dynamic risk assessment to identify and make provisions for any security or health and safety risks which are not mitigated by standard provisions or which have not been identified during initial Authority engagement
6. The Supplier engineers will establish work areas with site contact
7. Magnetic hard disks erased using CPA (CESG) approved Blancco software using the CESG CPA – Higher Level 3 erasure algorithm applied

1. Solid State Drives erased using Blancco SSD software. A tailored SSD algorithm applied which will overwrite memory twice with random patterns, initiate internal erasure commands of the drive and perform 100% logical verification of erasure
2. As agreed in each project specific method statement, faulty drives will be either be:
   * retained by Authority (where requested, media will be degaussed accordance to ‘On-Site Degaussing Service’)
   * physically destroyed at Authority site (defined in ‘On-Site Destruction’ herein and returned to the Supplier UK Operations Centre for recycling
   * transported to the Supplier UK Operations Centre for auditable physical destruction and recycling (where requested, media will be degaussed in accordance to ‘On-Site Degaussing’ defined herein)
3. Any Optical media located during procession will be removed and returned to site contact
4. Blancco certificate saved by engineer and provided to site contact retrospectively
5. Data safe items segregated into agreed area established with the customer (where applicable
6. Erased equipment may be collected and transported back to The Supplier UK Operations Centre for additional processing where requested)

### Authority Responsibilities

1. Provide detailed project requirements for specific projects to The Supplier Recycling On-Site Service Desk. This will include but will not be limited to details of assets requiring data cleansing, outcome required for failed hard drives, security provisions, health and safety provisions, post erasure requirements and required project commencement date
2. Authority Brief must be established for the processing of failed hard drives / return of devices at the Supplier UK Operations Centre if required as a service
3. Provision of secure work area, including a minimum of 2 UK power sockets
4. Provision of a site contact to identify to be processed assets, work areas and for all engagement required between The Supplier and the Authority during the request
5. Sign and approve method statement and dynamic risk assessment

## On-Site Degaussing Service

The Supplier will provide degaussing services (lower or higher level) at Authority location alongside part of an On-Site Erasure or Destruction Services or as standalone service to mitigate transportation risks. This service provides the physical degaussing of either magnetic hard drives or magnetic tapes at Authority site. Authority’s will be provided an audit sheet detailing media asset/serial details and the outcome of all degaussed media. Degaussed media can either be shredded at Authority site or be returned to the Supplier UK Operations Centre for further recycling.

### Supplier Responsibilities

1. The Supplier Recycling On-Site Service Desk will work with the Authority to establish specific site requirements (Pre-project site survey can be performed if required for complex sites)
2. ‘Collection Request (CR) Number’ (Job Number) will be allocated to each request
3. Set up Method Statement detailing project requirements. This will include but will not be limited to details of assets requiring degaussing, media volume, vehicle access, shred size requirements, security and health and safety requirements and project timeline
4. The Supplier engineers arrive at Authority site with assigned degausser and vehicle (details will be provided to the Authority prior to the project)
5. The Supplier engineers will sign at Authority reception and designated Site Contact
6. The Supplier engineers will perform a dynamic risk assessment to identify and make provisions for any security or health and safety risks which are not mitigated by standard process or which have not been identified during initial client engagement
7. The Supplier engineers will establish work areas with site contact
8. All media allocated unique tracker ID which will be audited alongside media type, serial number

(where possible), asset number (where possible) and host asset details (if applicable)

1. Media will be degaussed to agreed levels in project specific method statement
2. Degaussed material will be transported back to The Supplier UK Operations Centre for additional recycling against Authority Brief
3. Audit sheet and will be provided to the Authority retrospectively

### Authority Responsibilities

1. Provide detailed project requirements for specific projects to The Supplier Recycling On-Site Service Desk. This will include but will not be limited to details of assets requiring destruction, media volume, vehicle access, shred size requirements, security provisions, health and safety provisions, post erasure requirements and required project commencement date
2. Provision of a site contact to identify to be processed assets, work areas and for all engagement required between The Supplier and the Authority during the request
3. Provision of secure processing area
4. Sign and approve method statement and dynamic risk assessment

## On-Site Survey

The Supplier will provide an on-site survey at customer location where requested to be undertaken prior to the commencement of work. A site survey is typically undertaken for complex jobs at large sites service designed to establish access and egress at Authority sites, detailing specific measurements and routes throughout the site. The objective of a site survey is to estimate length of time required for the job and ensure any special provisions which are required are in place, such as the need for an electronic stair walker or initial breakdown of equipment. Any special security or health and safety provisions will also be captured during a site survey.

### Supplier Responsibilities

1. The Supplier representative will attend Authority site at agreed time/date
2. The Supplier engineers will sign at Authority reception and designated Site Contact
3. Site Survey conducted to capture details regarding:
   * parking and vehicle restrictions
   * Access/egress to the facility and equipment (entrances, stairs, lifts and corridors etc.) **-** Equipment location (cable management, floor restrictions, power etc.
   * identification of Authority specific requirements and site protocols
   * assessment of resource requirements
4. Completed site survey returned to The Supplier On-site team leader for assessment
5. The Supplier team leader will engage with Authority contact to agree On-Site requirements for the project and identify any prerequisite’s required

### Authority Responsibilities

1. Request a site survey with the Supplier Recycling On-Site Service Desk
2. Agree time/date for Site Survey to take place and any provisions for attending (Security Clearance, identify, parking restrictions etc.)
3. Provide access to all equipment and logistical areas during site survey

**Appendix 4**

### Call Off Contract Charges (Contract Price)

**Contract Price:**

The Contract Price for the Contract shall be as follows:

£**326,069.80** per year for the first two years (including a 20% amount to allow for contract growth to be called-off against line item charges specified in this contract as required). Pricing for any extensions shall be provided at the time as pricing may increase. Transition costs are to be charged in accordance with the agreed ratecard on a T&M basis, this will be deducted from the additional 20% allocation as stated above.

Breakdown as per the attached spreadsheet. Any additions or deletions will be changed in the inventory included in the attachment below on a monthly basis.



HE quote

220818.xlsx

The Supplier will provide itemised pricing for future planned additions to the support contract. The Authority will need to provide sufficient notice to the Supplier with any proposed additions so the Supplier can provide fixed pricing for those additions.

**Config and Recycling Charges**

## Pre-Deployment Services

|  |  |  |
| --- | --- | --- |
| **Configuration, Delivery and Bonded Storage** | **Per Asset** | **Charge** |
| Service 1 - Cloning | 1 | *Redacted* |
| Service 2 - USB Image Deployment | 1 | *Redacted* |
| Service 3 - \*Extending Authority’s SCCM to The Supplier | 1 | *Redacted* |
| Standard Delivery | 1 | *Redacted* |
| Delivery (\*Per pallet, packaging consolidation) | 1 | *Redacted* |
| Bonded Storage (\*3 Months – no charge) | 1 | *Redacted* |
|  |  | **Total** |
| Asset Tags (Batch: 1000x 3M Bright Silver) | 1 | *Redacted* |

\*Per pallet refers to the cost of a single pallet carrying up to 30 bundles of equipment. Example A: (1x bundle = 1x laptop + 1x travel hub) 1x pallet = 30x laptops and 30x travel hubs. Example B: (1x bundle = 1x monitor + 1x mouse/keyboard) 1x pallet = 30x monitors and 30x mice/keyboards.

\*3 Months refers to a storage model offering the customer a ‘3 months no charge service’ with a view to charge 9p per device/per day thereafter. Stock rotation always works on a first in, first out system.

\*Extending Authority’s SCCM to The Supplier setup charges = £650.00 with monthly connectivity and server hosting charges applicable = £126 per month (for duration of project). The Supplier can provide consultancy to help build and test your SCCM solution / image.

## Post-Deployment Services

|  |  |
| --- | --- |
| **Collection Service** | **Charge** |
| Standard Collection\* Under 150 miles (from The  Supplier UK Operations Centre) | *Redacted* |
| Standard Collection\* Over 150 miles (from The  Supplier UK Operations Centre) | *Redacted* |
| Scotland, Ireland, Jersey and the Highlands | *Redacted* |
| Asset Managed Collection | *Redacted* |
| Timed Collection | *Redacted* |
| Secure Point to point collection | *Redacted* |
| Waste Transfer Documentation - Non Hazardous\*1 | *Redacted* |
| Waste Transfer Documentation - Hazardous\*1 | *Redacted* |
| SC Cleared Personnel | *Redacted* |
| Extra Resource (Heavy Items above 25kgs or large collections | *Redacted* |
|  |  |

\* Standard Collection costs based on non-timed 09:00 – 17:00 collection, based on all items being less than 25KG in weight.

\*1 Documentation required when items are classed as waste prior to collection (e.g. CRT monitors will always be classed as hazardous waste for remarketing customers.

## Refurbishment Services (Asset Managed)

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Refurb of a Laptop / Tablet | *Redacted* |
| Refurb of a Desktop | *Redacted* |
| Refurb of a Server | *Redacted* |
| Refurb of a CRT Monitor / TV | *Redacted* |
| Refurb of a Flat Panel Monitor / TV | *Redacted* |
| Refurb of a Printer | *Redacted* |
| Refurb of a Mobile Device | *Redacted* |
| Refurb of a Disk Drive | *Redacted* |
| Refurb of a Network Device | *Redacted* |
| Refurb of all other Misc | *Redacted* |
| Portable Appliance Test | *Redacted* |

## Remarketing Services (Asset Managed)

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Resale of a Laptop / Tablet | *Redacted* |
| Resale of a Desktop | *Redacted* |
| Resale of a Server | *Redacted* |
| Resale of a CRT Monitor / TV\* | *Redacted* |
| Refurb of a Flat Panel Monitor / TV | *Redacted* |
| Refurb of a Printer | *Redacted* |
| Refurb of a Mobile Device | *Redacted* |
| Refurb of a Disk Drive | *Redacted* |
| Refurb of a Network Device | *Redacted* |
| Refurb of all other Misc | *Redacted* |

\*Refurbishment and Recycling Service only for CRT monitors

## Recycling / Disposal Services (Asset Managed)

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Recycling / Disposal of a Laptop / Tablet | *Redacted* |
| Recycling / Disposal of a Desktop | *Redacted* |
| Recycling / Disposal of a Server | *Redacted* |
| Recycling / Disposal of a CRT Monitor / TV\* | *Redacted* |
| Recycling / Disposal of a Flat Panel Monitor / TV | *Redacted* |
| Recycling / Disposal of a Printer | *Redacted* |
| Recycling / Disposal of a Mobile Device | *Redacted* |
| Recycling / Disposal of a Disk Drive | *Redacted* |
| Recycling / Disposal of a Network Device | *Redacted* |
| Recycling / Disposal of all other Misc | *Redacted* |
| Optional Data Erasure for asset managed services prior to destruction | *Redacted* |

\*CRT monitors will always be Recycled / Disposed and classed as waste due to no market value

## Non-Asset Managed Services

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Pure WEEE Non-Hazardous Waste (Non-asset managed service per tonne) | *Redacted* |
| Pure WEEE-Hazardous Waste (Non-asset managed service per tonne) | *Redacted* |
| Mixed EEE / WEEE 0 – 50 Kg | *Redacted`* |
| Mixed EEE / WEEE 51 Kg – 100 Kg | *Redacted* |
| Mixed EEE / WEEE 101 Kg – 150 Kg | *Redacted* |
| Mixed EEE / WEEE 151 Kg – 200 Kg | *Redacted* |
| Mixed EEE / WEEE 201 Kg - 250 Kg | *Redacted* |
| Mixed EEE / WEEE 251 Kg - 300 Kg | *Redacted* |
| Mixed EEE / WEEE 301 Kg – 350 Kg | *Redacted* |
| Mixed EEE / WEEE 351 Kg – 400 Kg | *Redacted* |
| Mixed EEE / WEEE 401 Kg – 450 Kg | *Redacted* |
| Mixed EEE / WEEE 451 Kg – 500 Kg | *Redacted* |
| Mixed EEE / WEEE 501 Kg - £550 Kg | *Redacted* |

## Additional Logistics

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Return of Item to Authority | *Redacted* |
| Asset Management and Handling of Repair/Return Item | *Redacted* |
| Authority Defined On Hold Items (per item/per day) \*30 days F.O.C. | *Redacted* |
| Secure Storage of Refurbished Items (per item/per day) 90 days F.O.C. | *Redacted* |
| Secure Storage of Refurbished Items (per item/per day) 0 days F.O.C. | *Redacted* |

## On-Site Services

|  |  |
| --- | --- |
| **Service** | **Charge per Asset** |
| Data erasure Resource (per day/per engineer) | *Redacted* |
| Data Erasure – Charge Per Drive | *Redacted* |
| Higher Level Degauss Equipment/Engineer Per Day\* | *Redacted* |
| Higher Level Degauss Per Drive | *Redacted* |
| Shredding Equipment Including Resource Per Day | *Redacted* |
| Site Survey | *Redacted* |
| Project Expenses (Including Engineer  Accommodation) POA | *Redacted* |

\* This charge will be wavered when used alongside ‘Shredding Equipment Including Resource Per Day’. ‘Higher Level Degauss Per Drive’ Charge will still apply.

Invoice Frequency

The Supplier will invoice for all Services monthly in arrears.

## Resale Proceeds

### Returned Resale Proceeds

The Returned Resale Proceeds shall be 70% (seventy percent) of the Resale Proceeds.

The Supplier will provide the Authority 70% of the Resale Proceeds net of VAT generated by the Supplier through the sale of Equipment in respect of which the Supplier has provided Remarketing Services.

### Retained Resale Proceeds

The Retained Resale Proceeds shall be 30% (thirty percent) of the Resale Proceeds.

The Supplier will retain 30% of the proceeds net of VAT generated by the Supplier through the sale of Equipment in respect of which the Supplier has provided Remarketing Services.

# Caveats and Assumptions

**The following assumptions have been made when preparing the costs within this document:**

* The image will be managed by the Authority; this includes application of software patches as required.
* Asset tags for application to machines to be supplied by Authority. The Supplier to notify Authority when new stock required.
* Authority is responsible for ensuring that full testing of builds and patches have been carried out before sending to the Supplier
* Authority supplies build to the Supplier in agreed format i.e. Ghost/WIM or SCCM/MDT on USB
* Authority supplies and manages all relevant server hardware to support build process.
* VPN is a shared connection
* Costs provided here apply only to this service – where the Supplier offer associated services to the Authority, these will need to be arranged and quoted for separately – for example disposal of packaging or change of deployment method to SCCM
* Authority will provide the Configuration Centre with support between hours of 06:00 and 22:00 Monday to Friday (exc Public Holidays)
* Build completes within times specified in assumed build process section (4 hours).
* Authority will provide a list of detailed steps for post build QA in order for the Supplier to verify builds have completed 100% pre-shipment.
* Pre-built units requiring latest image update are subject to a repeat core service charge
* Packaging disposal costs requires 10 units per delivery (1x unit will cost £100, up to
* Collection of old asset is not mandatory however costs remain the same
* Remarketing of old asset and resale proceeds will assume a Grade C level:
  + Working unit
  + Severe scuffs and scratches
  + Any slight damage to screens (Monitors and Laptops only)
  + May be missing small plastics or buttons
  + May have missing or faulty/damaged hardware parts– (Up to 3 Hardware items)
  + Unit may be holding a repairable fault
  + Micro-dot etching (Micro-dot etching will be removed surface damage to the casing will be caused)
* Remarketed items can be sold via [www.scctrade.co.uk](http://www.scctrade.co.uk/) to staff members at a pre-agreed resale price and/or accrued revenue can be given back to the Authority as an invoicable amount.
* Refurbished items can be re-distrubted to staff members at zero cost, delivery charges apply;

application of image optional.

Additional purchases may be made. A quote will be provided to the Authority from the Supplier based on the Authority’s request.

Invoice Address:

THE CUBE, 199 WHARFDALE STREET, BIRMINGHAM, 0845 955 6575, B1 1RN

**Appendix 5**

**Implementation Plan**

## ***NOT USED***

**Appendix 6**

### Change Control Note (Template)

**.............................................................................................................................**

#### CHANGE CONTROL NOTE (CCN) FOR CALL-OFF CONTRACT UNDER THE HEALTHTRUST EUROPE NHS FRAMEWORK AGREEMENT DATED

*This CCN relates solely to the Contract entered into between the Authority and the Supplier dated [ enter call-off contract date ] pursuant to the Health Trust Europe NHS Framework Agreement.*

*Issued in accordance with Clause 14.1 of the Call-Off Terms and Conditions.*

CCN Number : ………………………………………………………………

Contract Reference : ……………………………………………………………. CCN Title : ………………………………………………………………………… Date change first proposed: ……………………………………………..

**The Supplier:** Specialist Computer Centres PLC

**The Authority:** [to be completed]

**Contract change full details:**

*[insert details here]*

**Contract change cost implications:**

*[insert details here]*

**Effective date of CCN:** *[insert date]*

**IT IS AGREED** as follows:

1. With effect from the Effective Date the Contract shall be amended as set out above.

1. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

**Signed for and on behalf of the Authority**

**By ....................................................................................................**

**Name ..............................................................................................**

**Title .................................................................................................**

**Date ................................................................................................**

**Signed for and on behalf of the Supplier**

**By ....................................................................................................**

**Name ..............................................................................................**

**Title .................................................................................................**

**Date ................................................................................................**

**Appendix 7**

**Lease and/or Licence to access Premises and Locations**

## ***NOT USED***

**Appendix 8**

### Hardware Support and Maintenance Terms and Conditions



**HealthTrust Europe LLP**

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SCC- COMIT/ HTE Customer Call-Off order Form 2018 V3

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Support and Maintenance Agreement the following words have the meanings set out below unless the context otherwise requires:

* 1. "**Beyond Economic Repair**" means any Hardware, which has come to the end of its natural service life or which is beyond economic repair and any Hardware shall be deemed to be Beyond Economic Repair, where (i) the cost of the required parts to make the Hardware properly functional (for the avoidance of doubt, excluding any labour costs) will exceed the current list or new replacement equipment price (as determined by SCC) and/or (ii) any required spare parts or components are no longer available from the manufacturer and/or (iii) any item of Hardware experiences or suffers persistent or reoccurring faults or component failure provided always that Beyond Economic Repair will be evidenced by SCC’s engineer in a written report which will state the reason(s) why the item has become Beyond Economic Repair and agreed by the Customer acting reasonably and in good faith;
  2. "**Business Day**" means Monday to Friday excluding public and bank holidays in England, Wales, Scotland or Northern Ireland as appropriate, or such other times as are agreed in writing by SCC;
  3. "**Charges**" means the charges to be paid by the Customer to SCC for the provision of Services in accordance with Clause 8 and as set out in Appendix A;
  4. "**Commencement Date**" means the date set out on the signature page of this Support and Maintenance Agreement on which the Parties agree SCC will commence the provision of the Services to the Customer;
  5. "**Confidential Information**" means the terms of this Support and Maintenance Agreement and all sums payable under it, all information in respect of the business of a Party including, but not limited to, Know-How, other technical, business, financial and product development plans, forecasts, customer lists, strategies or other matters connected with the Services, and any other information which a reasonable person would consider to be of a confidential nature (whether or not marked as confidential) but shall exclude the Excluded Information with effect from the date that it becomes Excluded Information;
  6. "**Customer Obligations**" means the obligations of the Customer as set out in **Clause 5** and **Appendix A** of this Support and Maintenance Agreement;
  7. “**Data Protection Legislation**” means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679)

(“**GDPR**”) and any other directly applicable European Union regulation relating to privacy;

* 1. **"Excluded Information"** means information which:

1. was or becomes publicly known through no default or breach of this Support and Maintenance Agreement by the receiving Party;
2. was or becomes lawfully known to the receiving Party without restriction from a source other than the disclosing Party who itself obtained it without any confidentiality obligation or which has been demonstrated by the receiving Party to the disclosing Party to have been independently developed by the receiving Party;
3. is approved for disclosure by the Party which has provided it without restriction in a document signed by a duly authorised officer of such Party;
4. or to the extent that the receiving Party is compelled to disclose it by a court or competent regulatory body (in which case the receiving Party shall give the Party which has disclosed the information prompt notice, to the extent permitted by law, of the relevant order).
   1. "**Force Majeure**" means any cause preventing a Party from performing any or all of its obligations under this Support and Maintenance Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and/or control of the Party including, without limitation, strikes, lockouts or other industrial disputes, protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fault or loss of electricity supply, fire, explosion, flood, storm, epidemic or any of the above events affecting suppliers or sub-contractors;
   2. "**Good Working Order**"means a materially similar degree of functionality as existed prior to the fault being logged provided always that such degree of functionality is considered taking into account the age of the Hardware;
   3. "**Hardware**" means the equipment listed in **Appendix A** for which the Services are being provided;

"**Initial Term**" means the initial term of this Support and Maintenance Agreement as set out on the signature page of this Support and Maintenance Agreement;

"**Intellectual Property Rights**"means copyright, moral rights, patents, trademarks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or confidential information (such as Know-How, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world;

"**Know-How**"means all information not in the public domain held in any form including without limitation that comprised in or derived from drawings, data, formulae, specifications, notes, computer software, component lists, instructions, manuals, brochures, catalogues and processed descriptions;

"**Manufacturer**"means the original manufacturer of the Hardware or spares or software as appropriate;

"**Modifications**" means any attention, modification, change, adjustment or addition to the Hardware by the Customer;

"**Party**"means SCC or the Customer (as appropriate) and “Parties” shall be construed accordingly;

"**Service Levels**"means the service levels, if any, set out in **Appendix A** of this Support and Maintenance Agreement;

"**Services**" means the services as set out in **Appendix A** (Service Description) of this Support and Maintenance Agreement to be provided by SCC to the Customer in accordance with this Support and Maintenance Agreement;

"**Site**"means the Customer's sites where Hardware is situated as set out in **Appendix A**;

"**Software**"means the computer software supplied as part of the Hardware factory-build by the manufacturer, whether embodied in ROM, RAM, firmware or on disk, tape or other media;

“**UK Data Protection Legislation**” means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation;

"**Working Hours**"shall mean the hours between 9 am and 5.30 pm on a Business Day unless otherwise set out in Appendix A;

1.2 Any reference to a “Clause” or “Appendix” shall mean a clause or appendix of this Support and Maintenance Agreement unless otherwise stated.

1.3 The use of headings in these terms and conditions shall be for convenience only and shall not affect the interpretation of these terms and conditions.

1.4 Reference to any statute or statutory provision or any other regulation includes any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

1.5 Reference to the word “including” shall mean “including without prejudice to the generality of the foregoing phrase or term” and references to “written”, “in writing” or any similar expression shall include all data in written form whether represented in hand-writing, facsimile, printed or other format.

1.6 Reference to the Parties shall include their permitted successors and assigns.

1.7 Reference to an obligation on a Party not to do any act or thing shall be deemed to include an obligation not to permit or suffer the doing of that act or thing.

1.8 Reference to the singular include the plural, references to any gender include all other genders, and references to “persons” shall include individuals, bodies corporate, unincorporated associations, professions, businesses and partnerships.

1.9 In the event of any conflict or inconsistency between these terms and conditions and the terms contained elsewhere in this Support and Maintenance Agreement these terms and conditions shall prevail.

1.10 The Appendices shall have full force and effect as is expressly set out in the body of these terms and conditions.

1. **FORMATION OF CONTRACT**

2.1 This Support and Maintenance Agreement shall be formed between the Customer and SCC upon the signature by both parties of the signature page of this Support and Maintenance Agreement.

#### 3. SCC’S OBLIGATIONS

3.1 SCC shall provide the Services to the Customer during the Working Hours within the Service Levels and in accordance with the terms of the service description(s) set out in **Appendix A**. The Customer acknowledges that time is not of the essence in the provision of the Services.

3.2 For avoidance of doubt, it may take up to thirty (30) days from the date of acceptance of the Purchase Order, before SCC starts providing the Services. Prior to this start date, on acceptance of the Purchase Order, SCC will use reasonable endeavours to support the Services

3.3 SCC warrants to the Customer that:

1. the Services will be carried out with reasonable skill and care by suitably skilled and experienced personnel;
2. to the extent that it is permitted to do so, it shall assign or pass on the benefit of any guarantee or warranty covering any defects in any replacement parts, spares or goods, received by SCC under an agreement with the manufacturer or supplier of the relevant products. The warranty of the manufacturer or supplier is in lieu of all other terms or conditions whether express or implied concerning the quality or fitness for purpose of the replacement parts, spares or goods. For the avoidance of doubt, SCC does not give any warranty or guarantee in respect of the replacement parts, spares or goods; and
3. it has all necessary rights and licenses to enter into this Support and Maintenance Agreement and to carry out the Services.
   1. The Services are intended to return the relevant item of Hardware to Good Working Order but SCC does not warrant that the Services shall cause the Hardware to thereafter operate without interruption or error.
   2. SCC shall not be obliged to either carry out any repairs or work which are excluded under **Clause 4** or **Appendix A** or carry out the Services on Hardware which is not listed in **Appendix A**. The Customer may request that SCC carry out such excluded services on providing SCC with full written particulars of its requirements and with such further information as SCC may reasonably request in order to enable SCC to produce a written quotation. SCC shall supply such services in its sole discretion and if it agrees to supply the services it shall provide the Customer with a quotation. If such quotation is accepted by the Customer then (where applicable and unless otherwise agreed) the terms and conditions of this Support and Maintenance Agreement shall apply to the provision of such additional services.
   3. For Hardware which is identified in Appendix A as receiving Hardware Maintenance Services, SCC's engineer may choose to return the Hardware to SCC's workshop for repair should on-site repair be impracticable. In such cases, if SCC's engineer believes that repair of the Hardware is not possible within the Service Levels, then at SCC’s sole discretion SCC will either provide the Customer with loan equipment or a permanent replacement (“**Swap Out**”). Where SCC provides loan equipment or a Swap Out SCC shall be under no obligation to provide identical equipment but shall use all reasonable endeavours to ensure that the loan or Swap Out equipment provided will be of not less than an identical or better level of functionality. Unless otherwise agreed loan or Swap Out equipment shall not include software. Loan or Swap Out equipment shall not be supplied where the exclusions set out in **Clause 4** below apply.
   4. Where SCC provides the Customer with Swap Out equipment, then unless otherwise agreed, upon receipt of the Swap Out equipment by the Customer title to the Swap Out equipment shall pass to the Customer, and title to the Hardware SCC removes from Site shall transfer to SCC.
   5. SCC agrees to use all reasonable endeavours to ensure that its employees and sub-contractors shall comply with the Customer's written security and safety procedures which are brought to the attention of SCC.
   6. The Services are broken down into its constituent parts called Service Components (“**Service Components**”) which are detailed in the tables set out in **Appendix A**,
   7. Any new Service Components which are not specified in **Appendix A**, can be added, following approval from both parties post Commencement Date of this Support and Maintenance Agreement in accordance with **Clause 6**.
   8. At the written request of the Customer, from time to time, SCC shall implement changes to the Services detailed in Appendix A, providing that such changes do not necessitate SCC using additional resources over and above the resources used at that time to provide the Services and does not impact upon SCC’s ability to meet the Service Levels or the Charges, or the timescales detailed in this Support and Maintenance Agreement (“**Minor Changes**”). Any change requested by the Customer, which is over and above the Minor Changes shall be dealt by agreement between the parties in accordance with **Clause 6**.
   9. Where the Customer’s responsibilities are listed in the Service Component Tables, these should be read in conjunction with and are without prejudice to the Customer’s other obligations set out in this Support and Maintenance Agreement.
   10. SCC and the Customer will carry out a general review of the Service Levels and reports provided on a regular basis, time intervals to be agreed, but not to be less than once per year or more than once per month.
   11. All amendments to Service Levels shall be agreed by the Parties in accordance with **Clause 6.**
   12. During the term of this Support and Maintenance Agreement, changes, for example, projects, upgrades and additions to the Hardware may occur that may have an impact on the Service Levels. However, SCC will use its reasonable endeavors to ensure that the current operational Service Levels is not affected by the change. Where SCC reasonably considers it impossible to do so, then SCC may apply in writing, for the suspension of the Service Levels for a limited period only, explaining the reasons for the change and detailing the effects of the change.
   13. As soon as reasonably practicable, after the Customer has received the application, SCC and the Customer shall meet to agree the effects (if any) of the change to the Service Levels.
4. **EXCLUSIONS**

**Services**

4.1 For the avoidance of doubt, the Customer hereby agrees and acknowledges that the Services do not include:

1. repairs or replacement as required as a result of any accident, relocation to another site, installation, neglect, or misuse of the Hardware by any party other than SCC including operation in a manner contrary to the Manufacturer's operating instructions; or
2. works requested by the Customer for rearrangement including additional wiring, relocating any part of the Hardware or repairing a previously prepared site to make it operational; or
3. repairs or replacement as required as a result of any Modification to the Hardware other than in accordance with **Clause**

**5.4(b)**; or

1. repairs, support, or maintenance of the Hardware by any party other than SCC without SCC's prior consent; or
2. repairs or replacement of Hardware which has suffered physical loss or damage whatsoever caused by any factor outside the control of SCC including but not limited to fire, theft, vandalism or accidental/deliberate damage or destruction; or
3. repairs required as a result of any failure or fluctuation of electricity supply, climate control or other environmental conditions; or
4. repair of any external or cosmetic damage to the Hardware or any other goods affected by a defect in the Hardware, electrical work external to the Hardware, refurbishment or repair of any casing; or
5. replacement of consumable items with a limited life expectancy including but not limited to the consumable items specifically designated by the Manufacturers as consumables, and/or as described in **Appendix A**; or
6. repairs to items of Hardware which have come to the end of their natural service life, or which are, in the reasonable opinion of SCC, Beyond Economic Repair, or for which spare parts are no longer readily available; or
7. any supply of parts or work which is required because of the failure of the Customer promptly to inform SCC of any faults in the operation of the relevant items of Hardware or the adding or removal of any accessories, attachments or other devices; or
8. repairs to items of Hardware which are not in Good Working Order at the commencement of this Support and Maintenance Agreement; or
9. repairs to items of Hardware which are required as a result of a Manufacturers’ product recall whether in relation to a complete piece of Hardware or a component part thereof. Product recalls shall constitute an additional service which shall be charged at SCC’s then current time and materials rates; or
10. Firmware updates, patches and fixes for HP servers and storage product ranges (“HP Equipment”) are excluded from the Services under this Agreement unless;
11. the HP Equipment is still within its OEM manufacturer warranty period; and/ or
12. the Agreement specifically states that such firmware updates, patches and fixes are included as part of the Service;

For avoidance of doubt the above restriction does not apply to any firmware updates, patches and fixes which HP considers to be required for ILO, I/O, safety or security purposes;

(n) any service not specifically stated in **Appendix A** to form part of the Services.

**Service Levels**

4.2 Without prejudice to any exceptions to the Service Levels set out elsewhere in this Support and Maintenance Agreement, SCC shall not be in breach of this Support and Maintenance Agreement including without limitation the Service Levels in the following situations:

1. where the Customer fails to comply with its obligations as set out in this Support and Maintenance Agreement and in the Service Components to the extent that such failure directly or indirectly causes SCC to fail the Service Levels;
2. where the Service requested falls within one of the exceptions set out in **Clause 4** and/or in the Service Components in **Appendix A**;
3. faults referred to vendors and Manufacturers will not be included in the measurement of performance against Service Levels, unless the vendors or manufacturers are authorised sub-contractors of SCC;
4. where system restoration time frames (applications and data) are extensive, that is it is not possible to restore the system within the Service Levels;
5. where the Customer invokes a change to an incident therefore resolution needs to be rescheduled at the request of the Customer;
6. HE Service Desk is not available when their input is required to resolve the call. A minimum of three attempts should be made to contact the HE Service Desk before suspending the call.
7. **CUSTOMER OBLIGATIONS** 
   1. The Customer shall be responsible for the Customer Obligations as set out in **Appendix A**.
   2. The Customer shall be responsible for and shall ensure that any programs or data stored on the Hardware are virus free and full back up copies of all such programs and data are made and retained by the Customer. SCC shall not be liable for any loss of data howsoever caused.
   3. The risk of any accidental/deliberate damage, loss, destruction or theft of any loan equipment provided by SCC shall pass to the Customer on delivery of the loan equipment to the relevant site and the Customer must insure, for its full replacement value, such loan equipment from that date and provide on request by SCC evidence of such insurance. Title to loan equipment shall at all times remain vested in SCC. The Customer shall ensure that any loan equipment provided by SCC is returned to SCC in the same condition in which it is supplied to the Customer (taking in to account reasonable wear and tear). If this is not the case, the Customer shall indemnify SCC for any losses suffered by SCC including but not limited to replacement of the loan equipment.
   4. The Customer shall:
8. ensure that proper environmental conditions are maintained for the Hardware and shall maintain in good condition the accommodation of the Hardware;
9. give SCC 10 working days prior written notice of any Modification to the Hardware prior to such Modification being carried out. SCC shall notify the Customer if such Modification is accepted by SCC (such acceptance not being unreasonably withheld or delayed) SCC shall acknowledge the Modification in writing and shall notify the Customer of any proposed alteration to the Charges due to such Modification. Any Modification should be made in accordance with industry standards and the Customer shall only use products and parts approved by the Manufacturer or SCC;
10. not request, permit or authorise anyone other than SCC to carry out any adjustments repairs or maintenance to the Hardware (or any part) without the prior consent of SCC;
11. keep and operate the Hardware in a proper and prudent manner in accordance with the operating instructions of SCC and the

Manufacturer and ensure only competent trained and authorised employees are permitted to use the Hardware;

1. ensure the external surfaces of the Hardware are kept clean and in good condition;
2. use only such operating supplies as SCC or the Manufacturer shall recommend;
3. not move Hardware or any part of it to another Site without the prior notification in writing of SCC for the avoidance of doubt, this clause does not apply to mobile Hardware;
4. provide SCC with full and safe access to the Site and to the Hardware for the purposes of carrying out its obligations under this Support and Maintenance Agreement and shall make available to SCC such staff, facilities, assistance and services as reasonably required by SCC to perform the Services including without limitation safe and clean facilities and working space, storage space suitable to carry out the Services, telephone facilities and access to electricity supply; and
5. ensure that when a service call is made that it relates to the Hardware. For the avoidance of doubt, if a service call is made relating to a fault other than in relation to the Hardware or for a service which falls outside of the Services, SCC will be entitled to charge for any labour and parts used at its then current time and materials rates.

5.5 The Customer warrants to SCC that it:

1. will provide SCC with such information as it may reasonably need concerning the Customer’s operations and answers to queries, decisions and approvals which may be reasonably necessary for the SCC to undertake the Services. The Customer is responsible for ensuring that such information and answers are accurate and complete. SCC will, to the extent reasonably practicable, give the Customer reasonable prior notice of any information or answers it requires in accordance with this **Clause 5** and will notify the Customer promptly in writing if it considers the Customer to have failed to provide information or answers in accordance with this **Clause 5** or if it has reason to suspect that any information is inaccurate or incomplete. If any information is deemed to be inaccurate or incomplete, SCC shall not be deemed to be in breach of any Service Levels or other obligations under this Support and Maintenance Agreement;
2. shall ensure that all personnel assigned by it to provide assistance to SCC shall have the requisite skill qualification and experience to perform the tasks assigned to them;
3. shall keep and operate the Hardware in a proper and prudent manner in accordance with the operating instructions of SCC and the Manufacturer and ensure only competent trained and authorised employees are permitted to use the Hardware; and
4. is the owner of the Hardware and any Software which may form part of the Hardware and that it has the power and authority to enter into this Support and Maintenance Agreement and permit SCC to perform the Services or, where the Customer does not own the Hardware or any Software that may form part of the Hardware, that it has all powers, right, authority and licences necessary to enter into this Support and Maintenance Agreement and to permit SCC to perform the Services.

5.6 The Customer will defend, indemnify and hold SCC harmless against all losses, liabilities, damages, claims, costs (including legal and other professional costs) and expenses which SCC may suffer or incur arising out of or in connection with any breach of the warranty set out in **Clause 5.5(d)** above.

1. **CHANGE CONTROL** 
   1. SCC reserves the right to modify this Support and Maintenance Agreement without notice to the extent necessary to ensure compliance with any regulatory or legislative requirement. Subject to **Clause 6.2**, all other variations to this Support and Maintenance Agreement shall be subject to the prior written agreement of both Parties, such consent not to be unreasonably withheld.
   2. For the avoidance of doubt, if the Customer requests any changes to the Sites and/or the Hardware the Customer should request such change in writing providing at least 30 days notice. SCC shall respond to such request, within a reasonable period, detailing their acceptance (which shall not be unreasonably withheld) of the request or details of any change to the Charges necessary due to such change. SCC shall not be deemed to be acting unreasonably if it refuses any such change request during the final 3 months of either the Initial Term or any extended period or at any time after written notice to terminate this Support and Maintenance Agreement has been served by either Party upon the other. SCC may terminate this Support and Maintenance Agreement, on written notice, if the Parties fail to reach agreement on the change request or the Charges.
2. **DURATION OF CONTRACT AND TERMINATION** 
   1. This Support and Maintenance Agreement shall commence on the Commencement Date and shall continue for the Initial Term and shall remain in force thereafter unless and until terminated by either Party giving to the other not less than 3 months’ written notice expiry on the last day of the Initial Term or on the last day of each subsequent anniversary of the Initial Term (as applicable) but shall be subject to earlier termination as provided under this **Clause 7**.
   2. For the term of this Support and Maintenance Agreement the Customer shall not engage either directly or indirectly any third party to provide in whole or part any of the Services or any services similar to the Services in relation to the Hardware without the prior written consent of SCC.
   3. Except as provided in this **Clause 7.3**, the Customer shall not be entitled to cancel this Support and Maintenance Agreement prior to the expiry of the Initial Term without SCC’s prior written consent. If SCC does consent to early termination of this Support and Maintenance Agreement, such consent shall be subject to the Customer paying an early termination charge to SCC calculated as a sum equal to the average of the Charges paid by the Customer in the previous three (3) months (or the Charges paid in the previous month if less than three (3) months of the Initial Term have expired) multiplied by the number of months remaining in the Initial Term.
   4. 7.4 Either Party may by notice in writing served on the other Party terminate this Support and Maintenance Agreement immediately if the other Party:
   5. (a) is in material breach of any of the terms of this Support and Maintenance Agreement and, where the breach is capable of remedy, the other Party fails to remedy such breach within 30 days service of a written notice from the Party not in default, specifying the breach and requiring it to be remedied; or
   6. (b) shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of a bona fide amalgamation or reconstruction); or the equivalent of any of the above occurs under the jurisdiction to which the Parties is subject.
   7. 7.5 SCC may terminate this Support and Maintenance Agreement in writing without notice if the Customer has a change in its management and/or control as defined by section 1124 of the Corporation Tax Act 2010.
   8. 7.6 The termination of this Support and Maintenance Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or SCC accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
   9. 7.7 On termination of this Support and Maintenance Agreement all provisions in this Support and Maintenance Agreement which expressly or impliedly have effect after termination shall remain in effect.
3. **CHARGES AND PAYMENT** 
   1. SCC will invoice the Customer for the Services in accordance with **Appendix A**.
   2. The Customer shall pay the Charges within thirty (30) days from the date of SCC’s invoice.
   3. All Charges shall be stated in pounds sterling and shall be exclusive of Value Added Tax and all other sales taxes whether in addition to or in substitution unless otherwise stated in this Support and Maintenance Agreement.
   4. 8.4 All payments to be made by the Customer under this Support and Maintenance Agreement will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding.
   5. 8.5 If any sum payable under this Support and Maintenance Agreement which is not the subject of a bona fide dispute is not paid by the due date then (without prejudice to SCC’s other rights and remedies), SCC reserves the right to charge

interest on such sum on a day to day basis (after as well as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of four percent (4%) per annum over Barclays Bank plc base rate (or such other London Clearing Bank as SCC may nominate) from time to time in force. Such interest shall be paid on demand by the Customer.

8.6 SCC reserves the right to vary its charges on not less than 30 days written notice where such variations are to take into account any factors outside of its reasonable control. Such factors shall include but shall not be limited to, changes in the Manufacturers terms and conditions in relation to rebates for warranty repairs and costs incurred in relation the this Support and Maintenance Agreement due to the implementation into English Law of the Waste Electrical and Electronic (Producer Responsibility) Regulations.

1. **LIABILITY**

1.10 9.1 The following provisions of this **Clause 9** set out the total liability of SCC under or in connection with this Support and Maintenance Agreement whether in contract, tort (including negligence) for breach of statutory duty or otherwise.

9.2 Nothing in this Support and Maintenance Agreement shall limit or exclude either Party’s liability:

* 1. (a) for fraud; or
  2. (b) for death or personal injury resulting from negligence; or
  3. (c) to the extent not permitted by law.
  4. 9.3 SCC’s total liability in respect of loss of or damage to tangible property shall not in any circumstances exceed one million pounds (£1,000,000).
  5. 9.4 SCC’s total liability in respect of any other loss or damage arising under this Support and Maintenance Agreement shall not in any circumstances exceed fifty thousand pounds (£50,000) or a sum equal to the Charges payable under this Support and Maintenance Agreement in the 12 month prior to the breach whichever is the lesser.

9.5 SCC shall not have any liability in respect of the provision of any Services which is alleged to be defective unless notice of any claim in respect of such Services is given to SCC by the Customer within 14 days of the date upon which the relevant Services were performed. Where such notice is validly given, SCC’s only obligation shall be to re-perform the relevant Services and SCC shall have no further liability in relation to such alleged defective Services.

1.16 9.6 Neither Party will have any liability under or in connection with this Support and Maintenance Agreement in respect of:

1. loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether direct, indirect or consequential); or
2. loss of use or value of any data or equipment including software, wasted management, operation or other time (whether direct, indirect or consequential); or
3. any indirect or consequential loss, howsoever arising.
   1. SCC shall not be liable for any losses or damages suffered by the Customer arising from the Customer's failure to make adequate provision for recovery of lost or corrupted data, files, or programs.
   2. Where SCC is unable to access the Site and/or the Hardware for any reason (other than due to the default of SCC) and as a result is unable or is delayed from providing the Services, SCC shall not be deemed to have breached any of the terms of this Support and Maintenance Agreement.
   3. The Charges have been set by SCC on the basis of the exclusions and restrictions of liability in this **Clause 9** and would be higher without those provisions. In the circumstances, the Customer agrees that those provisions are reasonable and will accept the risk and/or insure accordingly.

1.17 9.10 Except as otherwise specifically provided in this Support and Maintenance Agreement, SCC hereby excludes to the fullest extent permissible in law, all conditions, warranties, terms and stipulations, express (other than those set out in this Support and Maintenance Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

1. **INTELLECTUAL PROPERTY**

1.18 10.1 All Intellectual Property Rights in or in relation to the Services (including any manuals and operating documentation relating thereto) or in any materials (including software) provided by SCC during the course of supplying the Services shall vest in SCC or its suppliers as the case may be. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in this Support and Maintenance Agreement.

1. **CONFIDENTIALITY** 
   1. 11.2 The Parties will keep confidential any and all Confidential Information that they may acquire pursuant to this Support and Maintenance Agreement.
   2. 11.2 Neither Party will use the Confidential Information for any purpose other than to perform its obligations under this Support and Maintenance Agreement. Each Party will ensure that its officers and employees comply with the provisions of this **Clause 11**.

11.3 The Customer acknowledges that SCC does not have any knowledge of the quantity or value of the data or software used by the Customer in utilising the Services. The Customer shall take all reasonable steps to mitigate the risks of data and software loss inherent in its use of the Services. The Customer agrees that SCC shall not be liable for loss of Customer data or software to the extent that the Customer data or software has changed since the time that SCC was last required to perform a backup pursuant to this Agreement.

**11A. DATA PROTECTION**

* 1. 11A.1 In this Clause, the terms “**Controller**”, “**Personal Data**”, “**Processed**”, “**Processor**”, “**Processing**” and “**Data Subject**” have the meanings given to them in the Data Protection Legislation.
  2. 11A.2 The Parties acknowledge that the Customer is a Controller and SCC is a Processor in relation to the Personal Data processed by SCC pursuant to this Agreement.
  3. 11A.3 The Personal Data which could be Processed by SCC in performing the Services (including where the Processing is related to the storage and transfer of data used by the Customer in the course of carrying on its business within its equipment, systems or applications which SCC services, hosts or provides compute infrastructure for) will be specified in this Agreement or, where not so specified, could relate to any individual anywhere in the world with whom the Customer and its users are communicating, doing business, providing a service to, employing (either potentially or historically) and anyone related to such individuals or other individuals. Unless specified in this Agreement, the Personal Data could be any type of personal data or special category of sensitive Personal Data that is Processed in connection with such systems, equipment or applications or on emails, information or other documents sent to or from the Customer or its users or created by them, all as determined by the Customer or the Customer's users. The Personal Data will be Processed for the duration of this Agreement. Where the Customer requests, the Parties may agree to set out in a schedule to this Agreement the specific subject matter and duration, nature and purpose of particular Processing activities under this Agreement, the type of Personal Data being Processed and the specific categories of the Data Subjects concerned.
  4. 11A.4 SCC shall:
  5. (a) Process the Personal Data only on the documented instructions of the Customer as set out in this Agreement, in order to perform its obligations under this Agreement and shall ensure it takes steps to ensure that its personnel only Process the Personal Data on documented instructions from the Customer as set out in this Agreement, unless required to do otherwise by applicable law;
  6. (b) ensure that its personnel who are authorised to Process Personal Data are under obligations of confidentiality that are enforceable by SCC;
  7. (c) take all measures required pursuant to Article 32 of GDPR;
  8. (d) assist the Customer, by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller’s obligation to respond to requests for exercising the Data Subject’s rights under Chapter III of GDPR;
  9. (e) assist the Customer in ensuring compliance with the obligations pursuant to Articles 32-36 of GDPR taking into account the nature of the Processing and the information available to SCC;
  10. (f) at the written election of the Customer, either delete or return the Personal Data (including all copies of it) at any time upon request by the Customer or promptly upon termination or expiry of this Agreement; and
  11. (g) make available to the Customer all information necessary to demonstrate compliance with the obligations in Article 28 of GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
  12. 11A.5 The Customer shall:
  13. (a) ensure it has all necessary authority to Process Personal Data and to disclose or make available such Personal Data to SCC and to allow SCC to conduct the relevant Processing activities required in order to provide the Services for the Customer, in each case in accordance with all applicable Data Protection Legislation; and
  14. (b) be responsible for ensuring that appropriate technical and organisational measures are in place for all Personal Data Processed within the Customer's IT environment by the Customer and SCC. The Parties agree that it is not appropriate for SCC to be responsible for determining appropriate technical and organisational measures related to the Customer's IT environment wherever it may be located unless the implementation of such measures are within the scope of the Services to be provided by SCC.
  15. 11A.6 The Customer acknowledges and agrees that, taking into account the nature, scope, context and purposes of the processing of Personal Data that may be carried out by SCC in the course of the provision of the Services provided under this Agreement, it is not appropriate for SCC to implement and SCC shall not implement, unless expressly agreed by SCC in this Agreement or via the Change Control Procedure, specific back-up, pseudonymisation or encryption measures in respect of Personal Data Processed by SCC when performing the Services.
  16. 11A.7 The Customer consents to the Processing of Personal Data by SCC’s affiliate company Specialist Computer Centres Vietnam Company Limited, for the purpose of providing out of hours support or for assistance with other services subcontracted by SCC to Specialist Computer Centres Vietnam Company Limited on the terms located at the following hyperlink https://www.scc.com/wp-content/uploads/2018/06/Data-Exporter-Agreement-SCC-Vietnam.pdf (the “**Model Clauses**”). The Parties shall execute those Model Clauses at the same time as this Agreement (or upon request by

either Party following execution of this Agreement) and with SCC agreeing those Model Clauses in its capacity as agent, acting on behalf of Specialist Computer Centres Vietnam Company Limited. SCC shall not otherwise Process or transfer Personal Data outside of the European Economic Area without the prior written further consent of the Customer, (and where further consent is given such further consent will be set out in this Agreement) and without putting in place adequate protection for the Personal Data to enable compliance by the Customer and SCC with their obligations under applicable Data Protection Legislation. Prior to any such further transfer or Processing of Personal Data outside of the European Economic Area or to a country without a finding of adequacy, the Customer and SCC shall enter into a further data transfer agreement on the terms of the standard contractual clauses approved by the European Commission from time to time (or as required under applicable law where the United Kingdom is no longer part of the European Economic Area).

* 1. 11A.8 The Customer consents to the appointment by SCC of sub-processors as necessary for SCC to provide the Services.

1. **PERSONNEL** 
   1. 12.1 The Parties consider and intend that the commencement of the provision of the Services by SCC will not constitute the transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending these provisions (the “**Transfer Regulations**”) and, accordingly, the contracts of employment of any employees of the Customer or any contractor who are assigned to work in connection with the Services (the “**Customer Employees**”) and any rights and liabilities attaching thereto will not have effect from that date as if originally made between the Customer Employees and SCC or any of its subcontractors.
   2. 12.2 If any Customer Employee asserts or establishes that his or her employment or any claim right or liability in connection with his or her employment or the termination of that employment has transferred to SCC or any of its subcontractors upon commencement of the Services pursuant to this Support and Maintenance Agreement under the Transfer Regulations:
   3. **(a) the Customer shall indemnify SCC and any of its subcontractors and keep them fully indemnified at all times against all liabilities to or in respect of or on behalf of such Customer Employee incurred by SCC and any of its subcontractors (including pay, redundancy payments, protective awards, compensation for wrongful or unfair dismissal or discrimination, or any other order for damages or compensation for any failure to perform any duty imposed under the provisions of the Transfer Regulations or otherwise) arising out of the employment of or the termination of employment of such Customer Employee and against all and any costs, expenses or damages incurred by SCC and any of its subcontractors in contesting any claim in respect thereto; and**
   4. **(b) SCC or any of its subcontractors shall be entitled to terminate the Customer Employee’s employment and SCC and any of its subcontractors shall be indemnified by the Customer in respect of all awards, losses, damages, costs, liabilities, expenses and legal fees which they may sustain arising under or in connection with Customer Employee’s contract of employment and/or the termination of his or her employment.**
   5. 12.3 The Parties acknowledge that each has incurred significant costs in the recruitment and training of its employees engaged in connection with the Services. Accordingly the Parties agree with each other that it will not, and it will ensure that its associated companies will not, solicit or approach in any way, any of the other’s employees **who are engaged in connection with the Services with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the period of this Support** and Maintenance **Agreement and for a period of six (6) months after the termination or expiration of this Support** and Maintenance **Agreement.**
   6. 12.4 If any employee leaves the employment of SCC or Customer (as appropriate) (the “**Non-Breaching Party**”) as a result of a breach by the other Party or its associated companies (the “**Breaching Party**”) of **Clause 12.3** and commences employment with, or provides services to the Breaching Party, the Breaching Party shall pay to the NonBreaching Party 50% of the higher of:
2. the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of the Non-Breaching Party; or
3. the annual salary of the employee at the time they commence employment with the Breaching Party and the Parties acknowledge that any such payment is by way of liquidated damages and is reasonable and genuine pre-estimate of the Non-Breaching Party’s losses.
4. **DISPUTE RESOLUTION PROCEDURE** 
   1. **All disputes, differences or questions arising in relation to this Support** and Maintenance **Agreement shall be referred in the first instance to the Account Director of SCC and the nominated equivalent representative of the Customer (as notified to SCC) who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.**
   2. **13.2 If the persons appointed in Clause 13.1 are unable to resolve the dispute, it shall be referred to the Managed Service Director of SCC and the nominated equivalent representative of the Customer (as notified to SCC) who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.**
   3. **13.3 If the persons appointed in Clause 13.2 are also unable to resolve the dispute within 10 Business Days, the Parties shall have no further obligation to follow this dispute resolution procedure.**
   4. **13.4 Neither party may initiate any legal action until the procedure set out in Clauses 13.1, 13.2 and 13.3 has been completed except that in no event shall the provisions of this Clause 13 operate to prevent a Party seeking interim relief in respect of any dispute or differences.**
5. **FORCE MAJEURE**
   1. SCC will not be deemed to be in breach of this Support and Maintenance Agreement or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under this Support and Maintenance Agreement due to Force Majeure.
   2. If the SCC’s performance of its obligations under this Support and Maintenance Agreement is affected by Force Majeure:
6. it will give written notice to the Customer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity, (without being obliged to incur any expenditure); and
7. subject to the provisions of **Clause 14.3**, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event.

14.3 If the Force Majeure in question continues for more than three months, either party may give written notice to the other to terminate this Support and Maintenance Agreement. The notice to terminate must specify the termination date, which must not be less than 15 Business Days after the date on which the notice is given, and once such notice has been validly given, this Support and Maintenance Agreement will terminate on that termination date.

**15. NOTICES**

1.47 15.1 All notices that are required to be given under this Support and Maintenance Agreement shall be in writing and shall be sent to the addresses set out in this Support and Maintenance Agreement by first class pre-paid letter or by hand and shall be deemed to have been received: (a) by first class post, 48 hours after the date of mailing;

(b) by hand, the following Business Day.

1. **GENERAL** 
   1. 16.1 Each right or remedy of a Party under this Support and Maintenance Agreement is without prejudice to any other right or remedy of the Party under this Support and Maintenance Agreement.
   2. 16.2 If any condition or part of this Support and Maintenance Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Support and Maintenance Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of this Support and Maintenance Agreement and this will not affect any other provisions of this Support and Maintenance Agreement which will remain in full force and effect.
   3. 16.3 No failure or delay by a Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
   4. 16.4 SCC may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under this Support and Maintenance Agreement.
   5. 16.5 This Support and Maintenance Agreement is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under this Support and Maintenance Agreement without SCC’s prior written consent (which shall not be unreasonably withheld or delayed).
   6. 16.6 A person who is not a party to this Support and Maintenance Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Support and Maintenance Agreement. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
   7. 16.7 This Support and Maintenance Agreement contains all the terms which SCC and the Customer have agreed in relation to the Services. For the avoidance of doubt, no terms or conditions endorsed upon, delivered with or contained in any Customer documentation will form part of the Agreement unless specifically agreed in advance, in writing by SCC. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of SCC which is not set out in this Support and Maintenance Agreement.
   8. 16.8 The Parties shall use all reasonable endeavours to mitigate losses, damages and expenses that it may suffer or incur as a result of any breach by the other Party of its obligations under this Support Agreement or otherwise and in respect of which it desires to make recovery in whole or in part from the other Party.
   9. 16.9 Neither Party shall be entitled to recover from the other Party under this Support and Maintenance Agreement more than once to the extent and in respect of the same liability of the other Party or its own loss.
   10. 16.10 Unless otherwise expressly agreed, all communications between the Parties shall be in the English language.
2. **LAW AND JURISDICTION** 
   1. The formation, existence, construction, performance, validity and all aspects whatsoever of this Support and Maintenance Agreement will be governed by English law.
   2. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Support and Maintenance

#### Appendix 9

**Contract Performance**

Service Level Agreement (SLA) for Config and recycling Services

# Service Level Agreement

|  |  |
| --- | --- |
| **Collection Services** |  |
| **SLA Description** | **OLA** |
| Collection Requested to Collection Arranged | 5 days |
| Equipment Collected to Receipt at Supplier facility | 7 days\* |

|  |  |  |
| --- | --- | --- |
| **Asset Managed Services** | |  |
| **Service** | **SLA Description** | **OLA** |
| Refurbishment Services | Collection Received to Refurbished\*1 | 30 Days |
| Refurbishment Services | On Hold Picking Process\*2 | 7 days |
| Remarketing Services | Collection Received to Sold\*1 | 90 days |
| Asset Managed Recycling Services | Collection Received to Recycled\*1 | 45 days |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | **Non-Asset Managed Services** | |  |
| **Service** |  |  | **SLA Description** | **OLA** |
| Pure WEEE Recycling |  |  | Collection Received to WEEE Plant | 5 days |
| Pure WEEE Recycling |  |  | WEEE Plant - Destruction | 30 days |
| Mixed EEE |  |  | Collection Received to Recycled | 30 days |
| Mixed WEEE |  |  | Collection Received to Recycled | 30 days |

|  |  |  |
| --- | --- | --- |
|  | **Service Managem** | **ent** |
| Change Control Process\*3 |  | 5 days |
| Certificate of Data Sanitisation |  | Available on Authority portal\*4 when item reaches final outcome |
| Certificate of Data Destruction |  |

\* Applicable to standard collections where the use of an approved hub is permitted

\*1 the Supplier reserves the right to use the entire SLA period to deploy data destruction methods to assets through sanitisation or physical destruction

\*2 This SLA is only applicable to Refurbishment Services where the customer has agreed instructions within the Authority Brief for the Supplier to hold a certain equipment type or model prior to a processing decision.

\*3 the Supplier will create a revised Authority brief draft within 5 days of a clarified change request awaiting Authority approval. Once an authorised Authority signature has been applied, the new live Authority brief will be activated within 24 hours.

\*4 Authorities are able to view progress of their equipment through the Supplier’s Recycling Services Portal at any time; information is continually updated from the bespoke asset management system Radius.

**Appendix 10**

**Quality Standards**

***NOT USED* Appendix 11**

*(Note: Extracted from Appendix A of the Framework Agreement)*

**Call-off Terms and Conditions for the Supply of Goods (and the Provision of Services)**

## **HealthTrust Europe Recitals**

### Background to Framework Agreement

1. HealthTrust Europe provides Procurement Services to the Beneficiaries on a call-off basis.
2. HealthTrust Europe procured the Framework Agreement for the benefit of the

Beneficiaries, and the Beneficiary wishes to enter into a call-off Contract pursuant to such Framework Agreement.

### Definitions

The following defined terms are used within this call-off Contract, such terms differing from those used within the Framework Agreement:

1. HealthTrust Europe shall be referred to as “**HealthTrust Europe**”; and
2. the Beneficiary shall be referred to as the “**Authority**”.

### Goods and Services

1. These are the NHS Call-off Terms and Conditions for the Supply of Goods as set out in Appendix A to the NHS Framework Agreement for the Supply of Goods (January 2014).
2. The scope of these Call-off Terms and Conditions shall include both the supply of Goods and the provision of Services by the Supplier. Consequently the Call-off Terms and Conditions shall be interpreted as follows:

## (i) “**Goods**” shall mean the “**Goods and/or Services**”; (ii) “**Product Information**” shall mean the “**Product Information and/or Services Information**”; and

(iii) Clause 14.1 shall be amended to read *“employer’s liability, public liability, professional indemnity and product liability”.*

(C) Furthermore, the relevant extracts from the Call-off Terms and Conditions for the Provision of Services as set out in Appendix A to the NHS Framework Agreement for the Provision of Services (January 2014) have been included within the Call-off Terms and Conditions at Schedule 7.

**NOW IT IS AGREED** as follows:

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.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Goods and 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 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 Order Form.

The Definitions in Schedule 4 of these Call-off Terms and Conditions apply to the use of all capitalised terms in the Contract.

### Schedules

|  |  |
| --- | --- |
| Schedule 1 of these Calloff Terms and Conditions | Key Provisions |
| Schedule 2 of these Calloff Terms and Conditions | General Terms and Conditions |
| Schedule 3 of these Calloff Terms and Conditions | Information and Data Provisions |
| Schedule 4 of these Calloff Terms and Conditions | Definitions and Interpretations |
| Schedule 5 of these Calloff Terms and Conditions | Equipment and Installation |
| Schedule 6 of these Calloff Terms and Conditions | Not Used |
| Schedule 7 of these Calloff Terms and Conditions | Services |

**Schedule 1 of these Call-off Terms and Conditions**

## **Key Provisions**

### 1 Application of the Key Provisions

1.1 The standard Key Provisions at Clauses **Error! Reference source not found.** to 10 o f this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.

1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

### 2 Term

2.1 This Contract commences on the Commencement Date.

2.2 The Term of this Contract shall be as set out in the Order Form.

2.3 The Term may be extended in accordance with Clause 15.2 of Schedule 2 of these Call-off Terms and Conditions provided that the duration of this Contract shall be no longer than any maximum duration applicable to the Contract if such maximum duration is set out in the Framework Agreement (including any options to extend).

### 3 Contract Managers

3.1 The Contract Managers at the commencement of this Contract shall be as set out in the Order Form or as otherwise agreed between the Parties in writing.

### 4 Names and addresses for notices

4.1 Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to such persons at such addresses as referred to in the Order Form.

### 5 Management levels for dispute resolution

5.1 Unless otherwise agreed by the Parties in writing, the management levels at which a dispute will be dealt with are as follows:

|  |  |  |
| --- | --- | --- |
| **Level** | **Authority representative** | **Supplier representative** |
| 1 | Contract Manager | Contract Manager |
| 2 | Assistant Director or equivalent | Assistant Director or equivalent |
| 3 | Director or equivalent | Director or equivalent |

### 6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 4 of these Call-off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

6.1.1 the Order Form (including the incorporated Mini-Competition Specification and Mini-Competition Response Document where applicable and appended to such Order Form);

6.1.2 the Finance or Lease Terms and Conditions described in Clause 9 of this Schedule 1.

6.1.3 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;

6.1.4 the provisions on the front page of these Call-off Terms and Conditions for the Supply of Goods;

6.1.5 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;

6.1.6 Schedule 6 of these Call-off Terms and Conditions: Logistics (if the Order is placed using the Squadron Medical Ordering Procedure and this Contract is therefore a Logistics Call-Off Contract, and this Schedule 6 shall take precedence over the documents set out in Clauses 6.1.6-6.1.9 below only in respect of aspects of the call-off Contract that relate to the Logistics Service);

6.1.7 the Specification and Tender Response Document (but only in respect of the requirements);

6.1.8 Schedule 2 of these Call-off Terms and Conditions : General Terms and Conditions;

6.1.9 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;

6.1.10 Schedule 5 of these Call-off Terms and Conditions: Equipment and

Installation;

6.1.11 Schedule 7 of these Call-off Terms and Conditions: Services;

#### 6.1.12 Not Used

6.1.13 Schedule 4 of these Call-off Terms and Conditions: Definitions and

Interpretations.

### 7 HealthTrust Europe Key Provisions

7.1 In the event that the Authority terminates its agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) for convenience or otherwise, and such termination takes effect before the end of the Initial Term (as defined in the UHCW Framework) or in the event that the Authority’s agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) expires without being renewed on or after such Initial Term, HealthTrust Europe shall notify the

Supplier of such termination or expiry in accordance with the provisions of Clause 15

of Schedule 1 of the Framework Agreement (“**Beneficiary Withdrawal Notice**”). Upon receipt of such Beneficiary Withdrawal Notice by the Supplier, the Supplier shall cease to apply for the benefit of the Authority, the Contract Price or any special discounts in relation to such supply which applied solely by reason of the operation of the UHCW Framework and its associated services and/or framework agreements or any contract made between the Authority made pursuant thereto and further the Authority shall no longer be permitted to place Orders or benefit from the Contract Price, save with the prior written consent of HealthTrust Europe

7.2 The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.

7.3 The Authority and the Supplier agree that (in addition to the Authority’s right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract.

### 8 Application of TUPE at the commencement of the provision of Services

8.1 Unless otherwise indicated on the Order Form, the Parties agree that at the commencement of the provision of Services by the Supplier TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

8.2 If any person who is an employee of the Authority or a Third Party claims or it is determined that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

8.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

8.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;

8.2.3 if such offer of employment is accepted, the Supplier or a subcontractor shall immediately release the person from their employment;

8.2.4 if after that period specified in Clause 8.2.2 of this Schedule 1 of these Calloff Terms and Conditions has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person.

### 9 Finance and Lease Terms and Conditions

9.1 Where the Authority has elected to purchase Goods and / or Services on a finance or lease basis as provided for in the Tender Response Document by the Supplier the applicable Terms and Conditions provided in the Tender Response Document by the Supplier shall, subject to Clause 6 of this Schedule 1, be incorporated into and apply to this Call-Off Contract in respect of the subject matter of such Terms and Conditions only.

### 10 Definitions

For the purposes of this Contract, in addition to the definitions set out in Schedule 4, the following terms shall have the following meanings:

|  |  |
| --- | --- |
| **“Actual Services Commencement Date”** | means the date the Supplier actually commences delivery of all of the Services; |
| **“Beneficiary”** | means UHCW and other Contracting Authorities that are entitled to use the Framework Agreement pursuant to the UHCW  Framework; |
| **“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; |
| **“Change Control**  **Process”** | means the change control process, if any, referred to in any Key Provisions and/or the Order Form; |
| **“Convictions”** | means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act); |
| **“Direct Delivery Calloff Contract”** | means the call-off Contract between the Authority and the Supplier whereby the Supplier delivers the Goods to the  Authority directly and that is not the Logistics Call-off Contract; |
| **“Employment Liabilities”** | means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever; |
| **“HealthTrust Europe”** | means HealthTrust Europe LLP; |
| **“Implementation Plan”** | means the implementation plan, if any, referred to in any Key Provisions and/or the Order Form; |
| **“Interested Party”** | means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Authority; |
| **“Long Stop Date”** | means the date, if any, specified in the Order Form; |
| **“Mini-Competition Response Document”** | means, in the case of Competed Goods [and/or Services] (as defined in the Framework Agreement), the document appended as Appendix 2 to the Order Form for Competed Goods [and/or Services] set out at Schedule 7A of the Framework Agreement; |
| **“Mini-Competition**  **Specification”** | means, in the case of Competed Goods [and/or Services] (as defined in the Framework Agreement), the document appended as Appendix 1 to the Order Form for Competed Goods [and/or Services] set out at Schedule 7A of the Framework Agreement; |
| **“Premises and**  **Locations”** | has the meaning given under Clause 2.1 of Schedule 7 of these Call-off Terms and Conditions; |
| **“Procurement**  **Services”** | means the provision of core purchasing, strategic sourcing and other services by HealthTrust Europe pursuant to the UHCW  Framework; |
| **“Services”** | means the services set out in this Contract; |
| **“Services**  **Commencement Date”** | means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order  Form, the services commencement date shall be the Commencement Date; |
| **“Services Information”** | means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's services catalogue from time to time; |
| **“Subsequent Transfer Date”** | means the point in time, if any, at which services the same as or of a similar nature to the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE; |
| **“Subsequent Transferring**  **Employees”** | means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services the same as or of a similar nature to the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate; |
| **“Successor”** | means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract; |
| **“Supplier Personnel”** | means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services; |
| **“Third Party”** | means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date; |
| **“Transfer Date”** | means the Actual Services Commencement Date; |
| **"TUPE"** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and  consolidated in 2001/23/EC) into English law; |
| **“UHCW”** | means University Hospitals Coventry and Warwickshire NHS Trust; and |
| **“UHCW Framework”** | means the framework agreement between UHCW and  HealthTrust Europe for the provision of Procurement Services. |

### Schedule 2 of these Call-off Terms and Conditions

*(****Note****: these General Terms and Conditions have been extracted from Schedule 2 of Appendix A of the NHS Framework Agreement for the Supply of Goods (January 2014) as published by the Department of Health - available for your convenience at* [*https://healthtrusteurope.app.box.com/nhsterms2014*](https://healthtrusteurope.app.box.com/nhsterms2014) *)*

## **General Terms and Conditions**

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### 1 Supply of Goods

1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:

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

1.1.2 in accordance with all other provisions of this Contract;

1.1.3 using reasonable skill and care in their delivery;

1.1.4 using reasonable skill and care in their installation, associated works and

training to the extent that such installation, works or training is a requirement of this Contract;

1.1.5 in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of 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 Tender Response Document and/or the Order Form (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).

1.3 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the requirements set out in the Specification and Tender Response Document and the Supplier’s response to such requirements) and any applicable manufacturers’ specifications.

1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.

1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority’s application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.

1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body

in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.

1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.5 of this Schedule 2 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.

### 2 Delivery

2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed with the Authority in writing.

2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.

2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority’s order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.

2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 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.

2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause

2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.

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

### 3 Passing of risk and ownership

3.1 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract.

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 3.2.2 of this Schedule 2 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.

### 4 Inspection, rejection, return and recall

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

4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 of these Calloff Terms and Conditions and subject to Clause 4.7 of this Schedule 2 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 as part of the requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract (“**Rejected Goods**”). The

whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.

4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 2 of these Calloff Terms and Conditions, upon the rejection of any Goods in accordance with

Clauses

4.2 and/or 4.6 of this Schedule 2 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) Business Days of issue of written notice from the Authority rejecting the Goods; and

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

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 of these Call-off Terms and Conditions; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier’s risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

4.5 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 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 for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2 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) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or

4.6.2 upon written notice of rejection from the Authority, treat such Defective

Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2 of these Call-off Terms and Conditions.

4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.5 (inclusive) and/or Clause 4.6 of this Schedule 2 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 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 as part of the requirements in the Specification and Tender Response Document, 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 Specification and Tender Response Document.

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

4.9.1 promptly (taking into consideration the potential impact 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 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 Staff

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

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

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

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

### 6 Business continuity

6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.1.1 the criticality of this Contract to the Authority; and

6.1.2 the size and scope of the Supplier’s business operations,

regarding continuity of the supply of Goods during and following a Business Continuity Event.

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier’s business operations. The Supplier shall promptly provide to the Authority, at the Authority’s written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 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) Business Days of any material update or revision to the Business Continuity Plan.

6.3 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

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

### 7 The Authority’s obligations

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

7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods.

7.3 The Authority shall comply with the Authority’s Obligations.

### 8 Contract management

8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority’s Contract Manager.

8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;

8.3.2 details of any complaints by the Authority in relation to the supply of Goods, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;

8.3.3 the information specified in the Specification and Tender Response Document;

8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and

8.3.5 such other information as reasonably required by the Authority.

8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier (“**Third Party Body”**). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods purchased, any payments made under this Contract and any other information relevant to the operation of this Contract.

8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:

8.6.1 storing and analysing the management information and producing statistics; and

8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.

8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 of these Call-off Terms and Conditions, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

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

### 9 Price and payment

9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:

9.2.1 shall remain fixed during the Term; and

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

1. packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax (excluding VAT) and duty, 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;

1. any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and

1. costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

9.3 Unless stated otherwise in the Framework Agreement and/or the Order Form:

* + 1. where the Framework Agreement and/or the Order Form confirms 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 supplied in compliance with this Contract in the preceding calendar month; or

* + 1. where Clause 9.3.1 of this Schedule 2 of these Call-off Terms and

Conditions does not apply, the Supplier shall invoice the Authority for Goods at any time following completion of the supply of the Goods 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.

* 1. 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.

* 1. Where the Contract Price is subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such requirements as required by Law or to the extent applicable to the Supplier as an industry member of a voluntary scheme.

* 1. The Authority shall pay each undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call-off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

* 1. The Authority reserves the right to deduct any monies due to the Supplier from the

Authority from any monies due to the Authority from the Supplier under this Contract.]

### 10 Warranties

10.1 The Supplier warrants and undertakes that:

10.1.1 it shall comply with the Framework Agreement;

10.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;

10.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are

manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;

10.1.4 without prejudice to the generality of the warranty at 10.1.3 of this

Schedule 2 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 distribution practice, as may be defined under any Law and/or Guidance relevant to the Goods;

10.1.5 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;

10.1.6 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;

10.1.7 it will ensure sufficient stock levels to comply with its obligations under this Contract;

10.1.8 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;

10.1.9 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;

10.1.10 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;

10.1.11 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;

10.1.12 it has and shall maintain a properly documented system of quality controls

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;

10.1.13 it shall not make any significant changes to its system of quality controls in relation to the Goods without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);

10.1.14 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;

10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer’s specification;

10.1.16 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;

10.1.17 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;

10.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;

10.1.19 it will comply with all Law and Guidance in so far as it is relevant to the Goods;

10.1.20 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

10.1.21 it will promptly respond to all requests for information regarding the

Contract and the Goods at the frequency and in the format that the Authority may reasonably require;

10.1.22 all information included within the Supplier’s responses in the Specification and Tender Response Document and all accompanying materials is accurate;

10.1.23 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;

10.1.24 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;

10.1.25 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;

10.1.26 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;

10.1.27 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;

10.1.28 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and

10.1.29 it has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and has gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.

10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:

10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 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 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 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 13.2 of this Schedule 2 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 Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.

10.6 The Supplier 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 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.

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

### 11 Intellectual property

11.1 Unless specified otherwise in the Specification and Tender Response Document, the

Supplier hereby grants to the Authority, for the life of the use of Goods by the

Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.

### 12 Indemnity

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

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

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

12.1.3 any breach of Clause 10.1.18 and/or Clause 11 of this Schedule 2 of these Call-off Terms and Conditions;

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

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

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

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

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

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

### 13 Limitation of liability

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

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

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

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2 of these Calloff 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.

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

13.3.1 extra costs incurred purchasing replacement or alternative goods;

13.3.2 costs incurred in relation to any product recall;

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

13.3.4 the costs of extra management time; and/or

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

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

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

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

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

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

13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five

million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 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 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 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 13.2 of this Schedule 2 of these Calloff

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

13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

### 14 Insurance

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

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

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

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

14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others

to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

### 15 Term and termination

15.1 This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority:

15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions, shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions; or

15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), 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.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach (“**Remedial Proposal**”) before exercising any right to terminate this Contract in accordance with Clause 15.4.1(ii) of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to

its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

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

shall be deemed, for the purposes of Clause 15.4.1(ii) of this Schedule 2 of these Call- off Terms and Conditions, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:

15.4.1 commits a material breach of any of the terms of this Contract which is:

1. not capable of remedy; or

1. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or

15.4.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

15.5 The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:

* + 1. 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 windingup, 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;

* + 1. 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;

* + 1. the Supplier purports to assign, subcontract, novate, create a trust in

or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions; or

* + 1. pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions.

15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material subcontractor 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 subcontract by the Supplier, the following process shall apply:

* + 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;

* + 1. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 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; and

* + 1. a failure to resolve such breach in accordance with such Dispute

Resolution Procedure by the end of the escalation stage of such process

(as set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4.1(i) of this Schedule 2 of these Call-off Terms and Conditions.

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

15.7 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2

of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

### 16 Consequences of expiry or earlier termination of this Contract

16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and accepted by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.

16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

16.3 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.

16.4 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

16.5 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.

### 17 Packaging, identification and end of use

17.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.

17.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.

17.3 Unless otherwise (a) specified in the Specification and Tender Response Document;

(b) agreed with the Authority in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package:

17.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or the Supplier;

17.3.2 the quantity in the package where available;

17.3.3 any special directions for storage;

17.3.4 the expiry date of the contents where applicable;

17.3.5 the batch number; and

17.3.6 the name and address of the manufacturer of the Goods and the Supplier.

17.4 All Goods that customarily bear 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 must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.

17.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers 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 or return.

### 18 Coding requirements

18.1 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:

18.1.1 prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Contract as at the Commencement Date; or

18.1.2 where further categories of Goods are to be supplied in accordance with Clause 21 of this Schedule 2 of these Call-off Terms and Conditions, prior to or on the date of implementation of any such variation.

18.2 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 18.1 of this Schedule 2 of these Call-off Terms and Conditions within the timescales stated and the Authority requires compliance with such coding requirements, the Supplier shall provide an implementation plan and timetable that sets out how the Supplier shall achieve such compliance by an alternative timescale. This implementation plan and timetable must be submitted by the Supplier for agreement by the Authority prior to the first delivery of the relevant Goods under the Contract (such agreement not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and plan shall be referred to and resolved in accordance with the Dispute Resolution Procedure. Once a timetable and plan have been agreed by the Authority, the Supplier shall comply with such timetable and plan as a condition of this Contract.

18.3 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

### 19 Sustainable development

19.1 The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Goods. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:

19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Goods and the Supplier’s supply chain;

19.1.2 maintain relevant policy statements documenting the Supplier’s significant social and environmental aspects as relevant to the Goods being supplied and as proportionate to the nature and scale of the Supplier’s business operations; and

19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier’s significant social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2 of these Call-off Terms and Conditions.

19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier’s compliance with the provisions of Clause 19 of this Schedule 2 of these Call-off Terms and Conditions.

### 20 Electronic product information

20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.

20.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2 of these Call-off Terms and Conditions.

20.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information.

20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Authority’s contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call- off Terms and Conditions, no right to illustrate or advertise the Product Information is granted to the Supplier by the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2 of these Call-off Terms and Conditions.

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

20.6 Before any publication of the Product Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 20.4 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.

20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

### 21 Change management

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

Authority from time to time.

21.2 Any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

### 22 Dispute resolution

22.1 During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).

22.2 In the case of a dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions before commencing court proceedings.

22.3 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. Level 1 of the management levels of the dispute as set out in Clause 5 of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.

22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above fails to resolve such dispute the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution (“**CEDR**”); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.

22.5 To initiate mediation a Party shall:

22.5.1 give notice in writing (“**Mediation Notice**”) to the other Party requesting mediation of the dispute; and

22.5.2 send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.

22.6 Neither Party may issue a Mediation Notice until the process set out in Clause 22.3

22.7 of this Schedule 2 of these Call-off Terms and Conditions has been exhausted.

22.8 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation 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. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

22.9 Nothing in this Contract shall prevent:

22.9.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods; or

22.9.2 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 CEDR or other mediation organisation procedure.

22.10 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

### 23 Force majeure

23.1 Subject to Clause 23.2 of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions and will not be considered to be in default or liable for breach of any obligations under this Contract if:

23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;

23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.

23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

23.4 Where the Force Majeure Event affects the Supplier’s ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.

23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.

23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.

23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.

23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions, neither Party shall have any liability to the other.

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

### 24 Records retention and right of audit

24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 of these

Call-off Terms and Conditions, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.

24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.

24.3 The Authority shall have the right to audit the Supplier’s compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier’s compliance with its obligations under this Contract.

24.4 Should the Supplier subcontract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier’s obligations under this Contract that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier’s compliance with this Contract for the purposes of:

24.5.1 the examination and certification of the Authority’s accounts; or

24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority

has used its resources.

24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 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.

24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

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

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

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 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.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the

Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

### 26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods, and any associated services engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority’s obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2 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 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 Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

27.2 A notice shall be treated as having been received:

27.2.1 if delivered by hand within normal business hours when so delivered or,

if delivered by hand outside normal business hours, at the next start of normal business hours; or

27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at

9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

### 28 Assignment, novation and subcontracting

28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 of these Calloff Terms and Conditions applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

28.2 Notwithstanding Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to:

28.2.1 the deduction of any sums in respect of which the Authority exercises

its right of recovery under Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions;

28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;

28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee’s contact information and bank account details to which the Authority shall make payment;

28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and

28.2.5 payment to the Assignee being full and complete satisfaction of the Authority’s obligation to pay the relevant sums in accordance with this Contract.

28.3 Any authority given by the Authority for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.

28.4 Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Authority in writing, which:

28.4.1 contain at least equivalent obligations as set out in this Contract in relation

to such manufacture, supply, delivery or installation of or training in relation to the Goods to the extent relevant to such subcontracting;

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 subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

28.4.4 contain a right for the Authority to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract; and

28.4.5 require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.

28.5 Where the Authority pays the Supplier’s undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its subcontractors.

28.6 The Authority shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.

28.7 The Authority may at any time transfer, assign, novate, subcontract 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, subcontracting 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, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

### 29 Prohibited Acts

29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):

1. 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

1. 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:

1. to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

1. 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 of these Calloff 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 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any dispute relating to:

1. the interpretation of Clause 29 of this Schedule 2 of these Calloff Terms and Conditions; or

1. the amount or value of any gift, consideration or commission,

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

### 30 General

30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.

30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.

30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.

30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.

30.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 30.7 of this Schedule 2 of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.

30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud.

30.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

30.11 Subject to Clause 22 of this Schedule 2 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.

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

### Schedule 3 of these Call-off Terms and Conditions

*(****Note:*** *these Information Governance Provisions have been extracted from Schedule 3 of Appendix A of the NHS Framework Agreement for the Supply of Goods (January 2014) as published by the*

*Department of Health – available for your convenience at* [*https://healthtrusteurope.app.box.com/nhsterms2014*](https://healthtrusteurope.app.box.com/nhsterms2014) *)*

#### Information and Data Provisions

##### 1 Confidentiality

1.1 In respect of any Confidential Information it may receive directly or indirectly from the other

Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3 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:

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

1.1.2 the provisions of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall not apply to any Confidential Information:

1. which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
3. which is authorised for disclosure by the prior written consent of the Discloser;
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
5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
   1. Nothing in Clause 1 of this Schedule 3 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**”).
   2. The Authority may disclose the Supplier’s Confidential Information:
      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);
      2. on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
      3. to any relevant party for the purpose of the examination and certification of the Authority’s accounts;
      4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
      5. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
      6. on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

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

* 1. The Supplier may only disclose the Authority’s Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the

Supplier’s obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 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.

* 1. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3 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.
  2. Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall remain in force:
     1. without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
     2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

##### 2 Data protection

2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.

2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:

2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;

2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;

2.4.3 nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;

2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;

2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient’s integrated electronic care record);

2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data

with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;

2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;

2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and

2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.

2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier’s unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

##### 3 Freedom of Information and Transparency

3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

3.2.1 that this Contract and any recorded information held by the Supplier on the Authority’s behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;

3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;

3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the

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

3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.

3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.

3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3 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.

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

3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

##### 4 Information Security

4.1 Without limitation to any other information governance requirements set out in this Schedule 3 of these Call-off Terms and Conditions, the Supplier shall:

4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority’s information governance Policies; and

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

4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.

4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

**DATA PROTECTION PROTOCOL**

**Table A – Processing, Personal Data and Data Subjects**

**(Note: to be completed by the Authority as Data Controller)**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the Processing | Data processing will relate to ICT maintenance and desk-side support services, and should be limited to information required to perform those services, including the location of a user (whether an office location or in the case of a home worker, a home address). |
| Duration of the Processing | The data processing will commence from the commencement date of this contract, 5th October 2018, for a period of two years. This may be extended by up two years. Data processing will cease on the expiry of the contract. |
| Nature and purposes of the Processing | The data will contain information required to identify individual Authority users, including their location (either an office location or in the case of a home worker, a home address). This is to enable the Supplier to provide desk-side support to the user, and enable them to use their IT services. |
| Type of Personal Data | Name  Authority IT User Name  Address  Telephone Number |
| Categories of Data Subject | The data subjects will be Authority staff (including contractors, agents and temporary workers) |
| Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data  data | Personal data should be kept by the Supplier for processing until the relevant task that requires the data has been closed and accepted by the Authority. On expiry of the contract (maximum of 4 years), data will be returned to the Authority, and Supplier copies destroyed. |

#### Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

|  |  |
| --- | --- |
| **“Data Loss Event”** | means any event that results, or may result, in 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 Officer**” and **“Data Subject**” | shall have the same meanings as set out in the 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 Legislation to access their Personal Data. |
| “**Personal Data Breach**” | shall have the same meaning as set out in the GDPR; |
| “**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 such measures adopted by it; |
| **“Protocol” or “Data Protection Protocol”** | means this Data Protection Protocol; |
| “**Sub-processor”** | means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract. |

##### 1 DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.

1.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

1.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:

1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;

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

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

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

1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:

1.4.1 process that Personal Data only in accordance with Table A of this Protocol, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;

1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

1. nature of the data to be protected;
2. harm that might result from a Data Loss Event;
3. state of technological development; and
4. cost of implementing any measures;

1.4.3 ensure that:

1. the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);
2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
   1. are aware of and comply with the Supplier’s duties under this Protocol;
   2. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
   3. 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 Authority or as otherwise permitted by this Contract; and
   4. have undergone adequate training in the use, care, protection and handling of Personal Data;

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
2. the Data Subject has enforceable rights and effective legal remedies;
3. the Supplier complies with its obligations under the Data Protection Legislation 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 Authority in meeting its obligations); and
4. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;

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

1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if it:

* + 1. receives a Data Subject Access Request (or purported Data Subject Access Request);
    2. receives a request to rectify, block or erase any Personal Data;
    3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
    4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
    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
    6. becomes aware of a Data Loss Event.
  1. The Supplier’s obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.
  2. Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
     1. the Authority with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Authority following any Data Loss Event;
     5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.

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

* + 1. the Authority determines that the Processing is not occasional;
    2. the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
    3. the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  1. The Supplier shall allow for audits of its Processing activity by the Authority or the Authority’s designated auditor.
  2. The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
  3. Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
     1. notify the Authority in writing of the intended Sub-processor and Processing;
     2. obtain the written consent of the Authority;
     3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
     4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
  4. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
  5. The Authority may, at any time on not less than 30 Business Days’ notice, revise this Protocol 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).
  6. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Business Days’ notice to the Supplier amend this

Protocol to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

* 1. The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into Table A above from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.
  2. Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

### Schedule 4 of these Call-off Terms and Conditions

*(****Note:*** *these Information Governance Provisions have been extracted from Schedule 4 of Appendix A of the NHS Framework Agreement for the Supply of Goods (January 2014) as published by the*

*Department of Health – available for your convenience at* [*https://healthtrusteurope.app.box.com/nhsterms2014*](https://healthtrusteurope.app.box.com/nhsterms2014) *)*

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| **“Authority”** | means the authority named on the Order Form; |
| **“Authority’s**  **Obligations”** | means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document and/or the Order Form; |
| **“Business Continuity**  **Event”** | means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods including an influenza pandemic and any Force Majeure Event; |
| **“Business**  **Continuity Plan”** | means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event; |
| **“Business Day”** | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| **“Call-off Terms and**  **Conditions”** | means these Call-off Terms and Conditions for the Supply of Goods (and the Provision of Services); |
| **“Codes of**  **Practice”** | shall have the meaning given to it in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions; |
| **“Commencement**  **Date”** | means the date of the Order Form; |
| **“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:   1. Personal Data or Sensitive Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; 2. 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   Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet; |
| **“Contract”** | means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement; |
| **“Contracting**  **Authority”** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5) (as amended), other than the Authority; |

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| **“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 or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Contract Price”** | means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form; |
| **“Controller”** | shall have the same meaning as set out in the GDPR |
| **“Data Protection**  **Legislation”** | means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy; |
| **“Date 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 these Call-off Terms and Conditions**;** |
| **“Data Subject”** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Defective**  **Goods”** | has the meaning given under Clause 4.6 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Dispute**  **Resolution**  **Procedure”** | means the process for resolving disputes as set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Electronic Trading**  **System(s)”** | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time; |
| **“Environmental**  **Regulations”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3 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; |
| **“FOIA”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions; |

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| **“Force Majeure**  **Event”** | means any event beyond the reasonable control of the Party in question to include, without limitation:   1. 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; 2. acts of terrorism; 3. flood, storm or other natural disasters; 4. fire; 5. 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; 6. 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; 7. compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; 8. industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any subcontractor of the Supplier; and   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 but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements; |
| **“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; |
| **“GDPR”** | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| **“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 similar to the Goods under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations; |

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| **“Goods”** | means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract; |
| **“Guidance”** | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the  Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care  Quality Commission and/or any other regulator or competent body; |
| **“Intellectual Property Rights”** | means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs; |
| **“Key Provisions”** | means the key provisions set out in Schedule 1 of these Call-off Terms and Conditions and/or as part of the Order Form; |
| **“KPI”** | means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any; |
| **“Law”** | means:   1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation; 2. any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or law; 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); 3. any enforceable community right within the meaning of section   2(1) European Communities Act 1972;   1. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; 2. requirements set by any regulatory body; and 3. any applicable code of practice, in each case as applicable in England and Wales; |
| **“Mediation**  **Notice”** | has the meaning given under Clause 22.5.1 of Schedule 2 of these Call-off Terms and Conditions; |
| **“NHS”** | means the National Health Service; |
| **“Order Form”** | means the order form for the Goods issued by the Authority in accordance with 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 GDPR; |
| **“Policies”** | means the policies, rules and procedures of the Authority as notified to the Supplier from time to time; |
| **“Process”** | shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly; |
| **“Processor”** | shall have the same meaning as set out in the 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 Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's product catalogue from time to time; |
| **“Rejected**  **Goods”** | has the meaning given under Clause 4.2 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Remedial**  **Proposal”** | has the meaning given under Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Requirement to**  **Recall”** | has the meaning given under 4.9 of Schedule 2 of these Call-off Terms and Conditions; |
| **“Sensitive**  **Personal Data”** | shall have the same meaning as set out in the GDPR; |
| **“Specification and Tender Response**  **Document”** | means the Specification and Tender Response Document set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with this Contract; |
| **“Staff”** | means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any subcontractors and person employed or engaged by such subcontractors; |
| **“Supplier”** | means the supplier named on the Order Form; |
| **“Term”** | means the term as referred to in the Key Provisions; |
| **“Third Party**  **Body”** | has the meaning given under Clause 8.5 of Schedule 2 of these Call-off Terms and Conditions; and |
| **“VAT”** | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

1.1 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.

1.2 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.

1.3 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a Clause” are to schedules, appendices, paragraphs and clauses of this Contract.

1.4 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.

1.5 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off Terms and Conditions, the Supplier shall bear the

cost of complying with its obligations under this Contract.

1.6 The headings are for convenience only and shall not affect the interpretation of this Contract.

1.7 Words denoting the singular shall include the plural and vice versa.

1.8 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.

1.9 Where there is a conflict between the Supplier’s responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.

1.10 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

**Schedule 5 of these Call-off Terms and Conditions**

## **Equipment and Installation**

### 1 Equipment and Materials

1.1 The Supplier shall be responsible for the provision and installation of all equipment and materials used in connection with the Contract except where these are licensed to the Supplier by the Authority in accordance with Clause 2 of this Schedule 5.

1.2 Where equipment and materials are supplied by the Authority these will be serviced and maintained by the Authority. However, the Authority gives no warranty that such equipment and materials used in connection with the Contract are fit for the purpose or in a good state of repair. It shall be the responsibility of the Supplier to ensure that any such equipment and materials are capable of being used for the purposes intended.

1.3 The Supplier’s Contract Manager shall forthwith inform the Authority’s Contract Manager of any defects appearing in or losses of, or damage, occurring to the Authority’s equipment. The Supplier shall be liable to pay to the Authority the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Supplier’s staff.

1.4 In accordance with the Specification and the Tender Response Document, the Supplier will, at his own expense, install all necessary equipment for the use of or in connection with the Goods.

1.5 Subject to Clause 1.2 above, the Supplier shall ensure that all equipment used in connection with the Contract is maintained in good working order in compliance with manufacturer’s instructions and current legislation.

1.6 Subject to Clause 1.2 above, all equipment and materials used by the Supplier shall comply with latest relevant British Standard or European equivalent specifications where such exist and any applicable policies of the Authority as notified to the Supplier from time to time and the Supplier shall upon request furnish the Authority’s Contract Manager with evidence to prove that such equipment and materials comply with this condition.

1.7 All equipment and materials of the Supplier brought on to the Authority’s premises shall be at the Supplier’s own risk. The Supplier shall provide for the haulage or carriage of equipment to the Authority’s premises and the removal of any equipment when no longer required under the Contract at its sole cost (including the costs of making good any damage caused to the Authority’s premises). The Supplier shall ensure that the Authority’s premises are appropriate to contain and/or operate the equipment.

1.8 The Supplier shall:

1.8.1 establish effective planned maintenance programmes; and

1.8.2 ensure compliance with all regulations covering the inspection and testing of all equipment used at the Authority’s premises in relation to the supply of the Goods; and

1.8.3 maintain records, open for inspection by the Authority, of maintenance testing and certification.

1.9 Any communication or electrical equipment used by the Supplier in connection with the Contract shall not cause any interference with or damage to any equipment used by the Authority.

1.10 Any communication or electrical equipment proposed to be used by the Supplier in connection with the Contract shall, at the discretion of the Supplier, be tested and approved by the Supplier before use on the Authority’s premises.

1.11 Notwithstanding Clause 1.10 the Supplier shall be liable for any damage or disruption to services caused by any communication or electrical equipment used in connection with the Contract.

1.12 The Authority reserves the right to inspect equipment used by the Supplier in or about the provision of the Goods at any time and the Supplier shall comply with any directions of the Authority’s Contract Manager as to the manner in which such equipment shall be used.

1.13 The Authority shall not be responsible, charged or chargeable for any equipment or materials brought on site and used by the Supplier in relation to the supply of Goods. **2 License of Authority Equipment**

2.1 The Authority will with effect from the Commencement Date grant to the Supplier a non-exclusive, non-transferrable (save as necessary in relation to any permitted subcontractors) licence to use of any licensed equipment (“**Licensed Equipment**”) (as defined in the Specification and the Tender Response Document) for the duration of the Contract.

2.2 The Supplier will indemnify and keep indemnified the Authority against all losses arising out of or in connection with the use of the Licensed Equipment by the Supplier unless such losses are caused by any negligent act or omission by the Authority.

2.3 In relation to the Licensed Equipment, the Supplier shall:

2.3.1 use the Licensed Equipment strictly in accordance with any reasonable instructions provided by the Authority;

2.3.2 store, operate and/or utilise all the Licensed Equipment in accordance with the reasonable recommendations of the Authority and of the manufacturers which are notified in writing to the Supplier by the Authority from time to time;

2.3.3 store, operate and/or utilise the Licensed Equipment in accordance with current statutory requirements and other applicable guidelines;

2.3.4 not charge or encumber the Licensed Equipment;

2.3.5 not sub-licence, assign or novate the benefit or burden of the licence set out in this Clause 2 in whole or in part;

2.3.6 notify the Authority as soon as practicable of it coming to the notice of the Supplier that any of the Licensed Equipment has developed a fault or is otherwise not operating correctly (provided that the Supplier shall notify the Authority immediately in the case of an emergency relating to the Licensed Equipment and shall take all reasonable steps to secure the relevant item to ensure it does not pose any risk or harm to any service user or employee or any other person);

2.3.7 not, nor shall it permit, any third party to modify, disassemble or alter the Licensed Equipment; and

2.3.8 ensure that the Licensed Equipment is returned to the Authority as soon as reasonably practicable in the same or similar condition as the Licensed Equipment have been provided to the Supplier (accepting fair wear and tear) at the expiry of the licence granted pursuant to this Clause 2.

2.4 Subject to the Supplier complying with its obligations pursuant to Clause 2.3 above, in relation to the Licensed Equipment the Authority shall at its discretion and own cost

replace any Licensed Equipment which in its opinion (acting reasonably) ceases to be capable of being safely and effectively used for the purposes for which they are intended.

2.5 The Authority shall insure the Licensed Equipment for their full replacement value.

2.6 For the avoidance of any doubt, nothing in this Clause transfers or purports to transfer ownership of the Licensed Equipment to the Supplier.

2.7 Upon expiry or termination of the licence granted pursuant to Clause this 2 or, if earlier, upon written notice given by the Authority to the Supplier following a material breach by the Supplier of its obligations under this Clause 2.3, all of the rights and licences granted by the Authority pursuant to this Clause 2 will terminate with immediate effect and the Supplier will return all the Licensed Equipment to the Authority or transfer them to a replacement Supplier as the Authority may direct within the timescales and in the manner agreed by the Parties from time to time each acting reasonably.

2.8 The Supplier shall satisfy himself that any Licensed Equipment is suitable for the purpose intended.

2.9 The Supplier shall be liable for any damage to any Licensed Equipment caused by misdirection or misuse due to negligence on the part of the Supplier, his staff, sub- Suppliers, servants or agents.

2.10 The Authority shall not be liable for any damage to the Licensed Equipment caused by a defect in or faulty operation of the Licensed Equipment.

2.11 The Authority shall have the right to withdraw Licensed Equipment at any time and shall be under no liability whatsoever for failing to licence equipment at any time.

### 3 Manner of Carrying out Installation Work

3.1 The Supplier shall not deliver any materials or plant nor commence any work on or at the site(s) (the “**Sites**”) of any installation works (“**Installation Works**”) (both as defined in the Specification and the Tender Response Document) without obtaining prior written approval from the Authority. Notwithstanding the foregoing, the Supplier shall, at the Authority’s written request, remove from the Sites any materials brought into the Sites by the Supplier, which in the reasonable opinion of the Authority are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Supplier’s expense as soon as reasonably practicable.

3.2 Any access to, or occupation of, the Sites, which the Authority may grant the Supplier from time to time shall be on a non-exclusive licence basis free of charge. The Supplier shall use the Sites solely for the purpose of performing its obligations under the Contract and shall limit access to the Sites to such staff or sub-contractors as is necessary for that purpose. The Supplier shall co-operate (and ensure that its staff and sub-contractors co-operate) with such other persons working concurrently on the Sites as the Authority may reasonably request.

3.3 When the Supplier reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Supplier:

3.3.1 accept the Installation Works, or

3.3.2 reject the Installation Works and provide reasons to the Supplier if, in the Authority’s reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

3.4 If the Authority rejects the Installation Works in accordance with Clause 3.3 of this Schedule 4, the Supplier shall immediately rectify or remedy any defects and if, in the Authority’s reasonable opinion, the Installation Works do not, within five (5) Business Days, meet the requirements set out in the Specification, the Authority may terminate the Contract with immediate effect by notice in writing to the Supplier.

3.5 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Authority in accordance with Clause 3.3. Notwithstanding acceptance of any Installation Works in accordance with that Clause, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.

3.6 Throughout the Term, the Supplier shall:

3.6.1 have at all times all licences, approvals and consents necessary to enable the Supplier and its staff or sub-contractors to carry out the Installation Works;

3.6.2 provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;

3.6.3 not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

3.7 On completion of any Installation Works the Supplier shall remove its plant, equipment and unused materials and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites, or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any of its staff or sub-contractors.

## **Schedule 6 of these Call-off Terms and Conditions**

**Not Used**

**Schedule 7 of these Call-off Terms and Conditions**

### Services

The provisions of this Schedule 7 are extracted from Appendix A to the NHS Framework Agreement for the Provision of Services (January 2014)).

#### 1 Provision of Services

1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form.

1.2 Immediately following the Commencement Date, the Supplier shall if specified in the Order Form implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.

1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.

1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

1.5 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

1.6 The Supplier shall notify the Authority forthwith in writing:

1.6.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and

1.6.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

1.7 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.

1.8 Upon receipt of notice pursuant to Clause 1.6 of this Schedule 7 of these Call-off Terms and Conditions of these Call-off Terms and Conditions or any report or communication pursuant to Clause 1.7 of this Schedule 7 of these Call-off 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.

1.9 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority’s incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority’s Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred or (b) the Supplier’s Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority’s Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

1.10 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier’s obligations.

#### 2 Premises, locations and access

21.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing (“**Premises and Locations**”).

21.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.

21.3 Subject to Clause 21.3 of this Schedule 7 of these Call-off Terms and Conditions of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 21.1 of this Schedule 7 of these Call-off Terms and Conditions of these Call-off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 21.2 of this Schedule 7 of these Call-off Terms and Conditions.

21.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 21.1 and Clause 21.2 of this Schedule 7 of these Call-off Terms and Conditions, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier as referred to in any Order Form.

21.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, the Authority may increase,

reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 21.3 of this Schedule 7 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of Schedule 2 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in the Key Provisions and Clause 22 of Schedule 2 of these Call-off Terms and Conditions.

#### 3 Cooperation with third parties

3.1 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

#### 4 Use of Authority equipment

4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:

4.1.1 shall be provided at the Authority’s sole discretion;

4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;

4.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

4.1.4 shall be used by the Supplier at the Supplier’s risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

#### 5 Staff

21.6 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.

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

5.2 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be

subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

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

5.4 The Supplier shall:

5.4.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;

5.4.2 ensure that every member of Staff is properly and sufficiently trained and instructed;

5.4.3 ensure all Staff have the qualifications to carry out their duties;

5.4.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier’s expense) in respect of the Staff; and

5.4.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.

5.5 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority’s staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.

5.6 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:

5.6.1 are questioned concerning their Convictions; and

5.6.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.

5.7 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier’s cost and expense.

5.8 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority’s prior written consent if:

5.8.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.6.1 of this Schedule 7 of these Calloff Terms and Conditions;

5.8.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.6.2 of this Schedule 7 of these Call-off Terms and Conditions; or

5.8.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.6.2 of this Schedule 7 of these Call-off Terms and Conditions.

5.9 In addition to the requirements of Clause 5.1 to Clause 5.8 of this Schedule 7 of these Call-off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:

5.9.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

5.9.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and

5.9.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.

5.10 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority’s written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

5.11 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.8 to Clause 5.10 of this Schedule 7 of these Call-off Terms and Conditions have been met.

5.12 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority’s concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.

#### 6 Price and payment

6.1 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price in respect of the Services:

6.1.1 shall be payable from the Actual Services Commencement Date;

6.1.2 shall remain fixed during the Term; and

6.1.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Staff.

#### 7 Warranties

7.1 The Supplier warrants and undertakes that:

7.1.1 it has, and shall ensure its Staff shall have, and shall maintain throughout

the Term all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;

7.1.2 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

7.1.3 it will provide the Services using reasonable skill and care and in accordance

with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;

7.1.4 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;

7.1.5 without limitation to the generality of Clause 10.1.9 of Schedule 2 of these Call-off Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier’s access to the Premises and Locations in accordance with this Contract;

7.1.6 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

7.1.7 any equipment it uses in the provision of the 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; and

7.1.8 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems.

7.2 Without prejudice to the generality of Clause 10.5 of Schedule 2 of these Call-off Terms and Conditions, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.

#### 8 Intellectual property

8.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

8.2 The Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority’s normal business operations. For the avoidance of doubt, unless specified otherwise in any Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

#### 9 Indemnity

9.1 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 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date.

#### 10 Term and termination

10.1 The Authority may terminate this Contract forthwith by notice in writing to the Supplier if the Supplier does not commence delivery of the Services by any Long Stop Date.

10.2 Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

#### 11 Consequences of expiry or earlier termination of this Contract

11.1 Immediately following expiry or earlier termination of this Contract:

11.1.1 the Supplier shall comply with its obligations under any agreed exit plan; and

11.1.2 all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date.

11.2 The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 11.1 of this Schedule 7 of these Call-off Terms and Conditions for the period set out in Clause 23.1 of Schedule 2 of these Call-off Terms and Conditions.

11.3 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.

#### 12 Staff information and the application of TUPE at the end of the Contract

12.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

12.2 No later than fourteen (14) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

12.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 12.1 and 12.2 of this Schedule 7 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 6 of this Schedule 7 of these Call-off Terms and Conditions.

12.4 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 that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 12.1 and 12.2 of this Schedule 7 of these Call-off Terms and Conditions.

12.5 Subject to Clauses 12.6 and 12.7 of this Schedule 7 of these Call-off Terms and Conditions, during the period of nine (9) months preceding the expiry of this Contract

or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:

12.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;

12.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;

12.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

12.5.4 deploy any person other than the Supplier Personnel to perform the Services;

12.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;

12.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

12.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

12.6 Clause 12.5 of this Schedule 7 of these Call-off Terms and Conditions shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

12.7 Where the obligations on the Supplier under Clause 12 of this Schedule 7 of these Call-off Terms and Conditions are subject to the Data Protection Legislation, the Supplier will, and shall procure that any subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

12.8 Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.

12.9 The Parties agree that where a Successor or the Authority provides the Services or services of the same or similar nature to the Services in immediate or subsequent succession to the Supplier or subcontractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE and the Cabinet Office Statement may apply in respect of the subsequent provision of the Services or services of the same or similar nature to the Services. If TUPE and/or the Cabinet Office Statement apply then Clause 12.11 to Clause 12.14 of this Schedule 7 of these Calloff Terms and Conditions shall apply.

12.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

12.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and shall procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services of the same or similar nature to the Services.

12.12 The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:

12.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

12.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;

12.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;

12.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and

12.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any subcontractor warrant that such records are accurate and up to date.

12.13 The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

12.13.1 the Supplier’s or subcontractor’s failure to perform and discharge its obligations under Clause 12.12 of this Schedule 7 of these Call-off Terms and Conditions;

12.13.2 any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;

12.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;

12.13.4 any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date; and

12.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor as a term of such Subsequent Transferring Employee’s contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and

12.13.6 any act or omission of the Supplier or any subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor’s or Authority’s failure to comply with regulation 13(4) of TUPE.

12.14 The Supplier will, or shall procure that any subcontractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 12.13 of this Schedule 7 of these Call-off Terms and Conditions to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.

12.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

12.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any subcontractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:

12.16.1 the Authority or Successor will within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

12.16.2 the Supplier may offer (or may procure that a subcontractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;

12.16.3 if such offer of employment is accepted, the Authority or the Successor shall immediately release the person from their employment; and

12.16.4 if after the period in Clause 12.16.2 of this Schedule 7 of these Call-off Terms and Conditions has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority or the Successor, whichever is the provider of the Services or services of the same or similar nature to the Services, shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

#### 13 Complaints

13.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

13.2 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

#### 14 Change management

14.1 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with any Change Control Process if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

14.2 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 except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

#### 15 Information Governance Provisions

15.1 Where, as a requirement of this Contract, the Supplier is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to patients and/or service users as part of the Services, the Supplier shall:

15.1.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;

15.1.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;

15.1.3 nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

15.1.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;

15.1.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;

15.1.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient’s integrated electronic care record);

15.1.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract; and

15.1.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.

15.2 Where required in accordance with the Specification and Tender Response Document and/or the Order Form, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Framework Agreement and/or the Order Form.