

CONTRACT FOR DRUG TESTING SERVICE PROVISION

DATED 29th January 2025

(1) MINISTRY OF JUSTICE (THE AUTHORITY)

and

(2) ABBOTT TOXICOLOGY LIMITED (THE SUPPLIER)

AGREEMENT

relating to

The provision of Drugs Testing: Laboratory Analysis Goods, Services and Prevalence Testing

MoJ Contract reference: con_24669



Government Legal Department

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THIS AGREEMENT is made on

BETWEEN:

- (1) **Secretary of State for Justice** of the MINISTRY OF JUSTICE (the "**Authority**"); and
- (2) ABBOTT TOXICOLOGY LIMITED a company registered in England and Wales under company number **05396234** whose registered office is at **21 Blacklands Way, Abingdon, Oxfordshire, England, OX14 1DY** (the "**Supplier**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The Authority undertakes drugs testing of prisoners in custody as a key strategic tool in tackling substance abuse and to measure the prevalence of drug use within the criminal justice system and to help manage the risk of harm. The Authority wishes to engage a supplier for the provision of testing services within the prison setting.
- (B) On 21st December 2023, the Authority advertised on the Find a Tender service (reference 2023/S 000-037758), inviting prospective suppliers to submit proposals for the provision of testing services.
- (C) The Supplier is a leading provider of drugs testing services.
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.8 unless otherwise provided and save for references in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - 1.2.9 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.

- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Clauses and Schedule 1 (*Definitions*);
 - 1.4.2 Schedules 2.1 (*Specification*) and 2.2 (*Performance Levels*) and their Annexes;
 - 1.4.3 any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and
 - 1.4.4 Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement, the Authority is acting as part of the Crown.

2 DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (a) the Authority Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Authority;
 - (d) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

- (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Authority in writing of:

- (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (b) the actions needed to remedy each such unsuitable aspect; and
- (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Specification and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of:

- 2.2.1 any unsuitable aspects of the Operating Environment;
- 2.2.2 any misinterpretation of the Authority Requirements; and/or
- 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 WARRANTIES

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 3.1.2 this Agreement is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

- 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and

representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

- 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.10 it has all necessary rights in and to any Intellectual Property Rights in the Goods and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of or use of the Goods or the Services by the Authority or any other Approved User or End User;
- 3.2.11 it has all necessary rights in and to the Third Party IPRs, Third Party Software, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Goods or the Services by the Authority;
- 3.2.12 the Financial Model submitted as part of the Supplier Tender is a true and accurate reflection of the Supplier costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Goods or Services inconsistent with the Financial Model;
- 3.2.13 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 3.2.14 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 3.2.15 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force)

and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist;

- 3.2.16 the Goods are suitable for the purposes as set out in the Specification, are of satisfactory quality, and comply with the Standards and requirements set out in this Agreement;
- 3.2.17 the Tests are capable of consistently identifying all of the Drugs to the degree of accuracy set out in the Supplier Solution, and in any event, shall be capable of identifying beyond reasonable doubt the Drugs in any Sample where the levels of those Drugs in such Sample are equal to or greater than the Cut-Off Level for the relevant Drug at the time of Testing;
- 3.2.18 any Cut-Off Levels included in the Supplier Solution and any other Cut-Off Levels proposed by the Supplier in connection with any new Drug are prepared by reference to and are consistent with existing standards for such levels published by relevant accredited bodies and in accordance with Good Industry Practice;
- 3.2.19 it shall ensure that, prior to actual delivery of the Goods to the Authority, the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 3.2.20 the Charges for the Goods and Services represent Value for Money;
- 3.2.21 at the point that the Goods are supplied to the Authority, the Goods shall have valid CE marking (or pre-approved equivalent) as required by the Specification or any Law and Guidance and 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 have been complied with. Without limitation to the foregoing warranty, 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;
- 3.2.22 without prejudice to the generality of the warranty at Clause 3.2.19, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and

in accordance with any specific instructions of the manufacturer of the Goods;

- 3.2.23 it shall ensure that all facilities used to manufacture, store and distribute the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in connection with this Agreement;
- 3.2.24 it has, or the manufacturer has manufacturing and warehousing capacity sufficient to comply with its obligations under this Agreement;
- 3.2.25 it will ensure that sufficient stock levels are maintained to comply with its obligations under this Agreement in accordance with Clause 5.10;
- 3.2.26 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 3.2.27 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;
- 3.2.28 where there is any Documentation instruction information including without limitation user information or leaflets, that accompany the Goods such information shall be comprehensive, accurate, in English (with a Welsh Language translation) and prepared in accordance with Good Industry Practice and it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 3.2.29 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Agreement and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 3.2.30 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods or Services without notifying the Authority in writing at least twenty-one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 3.2.31 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 and for the avoidance of doubt, unless otherwise agreed between the parties in writing, any such changes or substitute goods, if accepted, shall not lead to an increase in the Charges;

- 3.2.32 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;
- 3.2.33 receipt of the Goods or Services by or on behalf of the Authority and use of the Goods or Services 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;
- 3.2.34 it will promptly (and in any event within one (1) Working Day) notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 3.2.35 it will fully and promptly respond to all requests for information regarding this Agreement and the Goods and Services at the frequency and in the format that the Authority may reasonably require;
- 3.2.36 where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Agreement 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 and undertakes that:
 - (a) 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 3, 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

- (b) 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 any 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 Agreement.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 3.8 If the Supplier is in breach of the warranties at Clause 3.2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods or Services and 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 suffered or incurred by the Authority as a result of such breach.

SECTION B – THE SERVICES**4 TERM****4.1 This Agreement shall:**

- 4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 39 (*Waiver and Cumulative Remedies*), 40 (*Relationship of the Parties*), 42 (*Severance*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 46 (*Notices*), 47 (*Disputes*) and 48 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), terminate:
 - (a) at the end of the Initial Term; or
 - (b) if the Authority elects to extend the Initial Term by giving the Supplier at least 20 Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 25 (*Publicity and Branding*), 26 (*Limitations on Liability*), 39 (*Waiver and Cumulative Remedies*), 40 (*Relationship of the Parties*), 42 (*Severance*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 46 (*Notices*), 47 (*Disputes*) and 48 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
 - 4.3.1 this Agreement shall automatically cease and shall not come into effect; and

- 4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the Condition Precedent set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the Condition Precedent and of any circumstances which are likely to result in the Condition Precedent not being satisfied by the date set out in Clause 4.3.

5 SERVICES AND GOODS

Standard of Services and Goods

- 5.1 The Supplier shall provide:
- 5.1.1 the Mobilisation Services from (and including) the Effective Date;
 - 5.1.2 the Pilot Goods and Services from the date Approved by the Authority and set out within the Agreed Mobilisation Plan with the relevant Goods to be provided at least one week prior to the commencement of the Pilot; and
 - 5.1.3 the Services in each case from (and including) the Operational Commencement Date.
- 5.2 The Supplier shall provide the Goods from the date at least one Month prior to the Operational Commencement Date.
- 5.3 The Supplier shall ensure that:
- 5.3.1 the Services:
 - (a) comply in all respects with the Specification; and
 - (b) are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and
 - 5.3.2 the Goods:
 - (a) comply in all respects with the Specification;
 - (b) are supplied in accordance with the Supplier Solution and the provisions of this Agreement;

- (c) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for purpose held out by the Supplier or made known to the Supplier by the Authority expressly or by implication;
- (d) are free from Defects in design material and workmanship; and
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, loading and unloading, and Delivery of the Goods.

5.4 The Supplier shall:

- 5.4.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards (including, without limitation, any ethical standard requirement set out in the Specification);
 - (d) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clause 5.4.1(a) to 5.4.1(c);
- 5.4.2 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure Value for Money and the accuracy of the outcome of the Tests;
- 5.4.3 ensure that the integrity of the Samples collected and retained at the Supplier's premises is maintained for the duration that such Samples are in the possession of the Supplier and are required for Testing;
- 5.4.4 ensure that the Samples are stored:
 - (a) safely and securely;
 - (b) separate from other Samples;
 - (c) in accordance with appropriate temperature controls;
 - (d) in accordance with Good Industry Practice and any applicable laws and/or Guidance; and
 - (e) in accordance with the Specification and the Supplier Solution;

- 5.4.5 ensure that the Samples are only used in connection with the provision of the Services;
 - 5.4.6 ensure that Samples are disposed of in accordance with the requirements of the Specification, and in all cases in accordance with all applicable Laws, Guidance and Good Industry Practice.
 - 5.4.7 in the event of a challenge to the Test Results by a Test Recipient, or as otherwise represented by the Authority, within 14 days (or such other shorter period as reasonably requested by the Authority) of a request by the Authority send the relevant Sample to the specified address for independent testing; and
 - 5.4.8 on request by the Authority provide any relevant Sample and any samples of any goods, materials or other documentation relating to the Tests, Testing methods and Test Results to the Authority and the Authority may carry out validation testing on any such Samples either itself or through the Authority Quality Assurance Provider.
- 5.5 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.4.1(a) to 5.4.1(c), the Supplier shall immediately notify the Authority Operational Contract Manager in writing of such inconsistency and the Authority Operational Contract Manager shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Forecasting

- 5.6 During the Term, the Authority will give the Supplier:
- 5.6.1 not less than five days before the beginning of each month, a forecast of the Goods and Services it expects to purchase during the three months following that month; and
 - 5.6.2 not less than one month before the end of each year, a forecast of the Goods and Services it expects to purchase during the following year.
- 5.7 Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within two Working Days. The Authority shall act in good faith when forecasting its requirements for the Goods and Services.
- 5.8 Forecasts provided under this Clause 5 are provided for information purposes only, are not binding and do not constitute an Order.

- 5.9 If the Supplier anticipates that it will be unable to meet the Authority's forecasted requirements provided in accordance with Clause 5:
- 5.9.1 the Supplier shall inform the Authority in writing as soon as practicable; and
 - 5.9.2 without limiting any other right or remedy that the Authority may have, the Authority may at its option agree alternative delivery dates for the relevant Goods and Services, or obtain from any other person substitute goods and services for the Goods and Services which the Supplier anticipates it will be unable to supply.
- 5.10 The Supplier shall at all times (subject to the provisions of any Exit Plan), without prejudice to Clause 5.18, and at no additional cost to the Authority, hold sufficient stock in UK based storage facilities to meet the Authority's forecasted requirements in any Service Period (or such other period as the Authority may reasonably request) provided in accordance with Clause 5.6 (the "**Retained Stock**"). The Supplier shall store and manage any Retained Stock in accordance with Good Industry Practice and shall at the Authority's reasonable request, store a defined amount of Retained Stock for a period or periods as determined by the Authority (acting reasonably).
- 5.11 Any request to store a defined amount of Retained Stock is not a commitment by the Authority to purchase such Retained Stock and the Supplier shall be responsible for such Retained Stock and shall manage and rotate the Retained Stock in accordance with Good Industry Practice and to ensure that the shelf life of the Retained Stock at any given time is in accordance with the minimum shelf life as set out in the Supplier Solution.

Ordering Process

- 5.12 From at least one Month prior to the Operational Commencement Date, the Authority (and/or any Approved User) may order Goods and certain training related Services by submitting to the Supplier an Order specifying the type and quantity of Goods required or type of training related Services required, the required Delivery Date and where applicable, the Delivery Location.
- 5.13 From the date specified in the Agreed Mobilisation Plan as the date upon which the Pilot shall commence (or such other date as Approved by the Authority), the Authority (on behalf of the Pilot Establishments) may order the Pilot Goods and Services by submitting to the Supplier an Order specifying the type and quantity of the Pilot Goods and Services required, the required Delivery Date and where applicable, the Delivery Location.

- 5.14 From the Operational Commencement Date, the Authority (and/or any Approved User) may order Goods and Services by submitting to the Supplier an Order specifying the type and quantity of Goods required and/or type of Services required, the required Delivery Date and where applicable, the Delivery Location.
- 5.15 Upon receiving an Order for Goods and/or Services, the Supplier shall:
- 5.15.1 within 2 days acknowledge receipt and acceptance of the Order; and
 - 5.15.2 Deliver the Goods to the Delivery Location on the Delivery Date or where the Delivery Date is not specified within the Order, within the timescales set out in the applicable KPIs for delivery in Schedule 2.2 (*Performance Levels*); and/or
 - 5.15.3 where the Order is in respect of ordered Services, collect Samples and deliver the Services by the Delivery Date specified in the Order.
- 5.16 In respect of the Analysis Services (not including any Analysis Services required during the Pilot), from the Operational Commencement Date, the Supplier shall collect the available Samples from the Collection Points on Working Day(s) each week specified by the Authority and/or an Approved User (as the case may be) or upon their request from time to time during the relevant Collection Windows (the **Weekly Collection**).
- 5.17 The Authority (or the Approved User as the case may be) shall provide the relevant Sample(s) to the Supplier or the Supplier's courier (as the case may be) at the Weekly Collection and the Supplier shall provide the results of the Testing of such Samples in accordance with the KPIs in Schedule 2.2 (*Performance Levels*).
- 5.18 The Authority may at any time prior to the dispatch of the Goods amend or cancel an Order by written notice to the Supplier without liability to the Supplier.
- 5.19 The Parties agree and acknowledge that Goods and Services may be used by Approved Users, and where Goods and Services are used by an Approved User any right or remedy contained in this Agreement (including any licence or indemnity), shall apply for the benefit of the Approved User, and any references to Authority shall be read as references to the Approved User for the purposes of such rights or remedies.

Supply of Goods

- 5.20 Where, as part of the Services, the Supplier provides Goods to the Authority:
- 5.20.1 the relevant Goods shall be as set out in the Specification;

- 5.20.2 the Supplier warrants that on Delivery any Goods with a shelf life shall comply with the minimum requirements detailed for the length of outstanding shelf life set out in the Supplier Solution. Where the Goods do not comply with such minimum requirements the Supplier shall as soon as reasonably practicable, replace such defective Goods at its own expense;
- 5.20.3 the Supplier shall ensure that sufficient volumes of Goods are available and shall Deliver sufficient volumes of Goods to meet all Orders placed for Goods by the Authority in accordance with the Specification; and
- 5.20.4 the Supplier shall ensure that the Goods are Delivered to Delivery Locations in accordance with the Specification and within the delivery windows set out for each Delivery Location in the Order.
- 5.21 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all relevant costs, and all other costs associated with the delivery of the Goods to the Delivery Location and unloading of the Goods at the Delivery Location. Without limitation to the foregoing provision of this Clause 5.21, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplier from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Order. Where the Supplier fails to make Delivery in accordance with Clause 5.17, then the Supplier shall at its own cost procure that a further attempt at delivery is made to the Authority on further Delivery Date to be agreed between the parties (and which shall be no later than 5 Working Days from the planned Delivery Date).
- 5.22 Delivery shall be completed when the Goods have been unloaded at the Delivery Location and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall use reasonable endeavours to 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.
- 5.23 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information agreed with the Authority in writing including (without limitation) in any Order. Where such information
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requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description, the quantity and specific storage instructions (if any) of the Goods, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the manufactured on and use by dates.

- 5.24 Part deliveries and/or deliveries outside of the agreed Delivery Date or times 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 5.24, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with agreed Delivery Date or time. Where the Authority accepts delivery more than five (5) days before the Delivery Date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed Delivery Date.
- 5.25 All third party carriers or any Sub-contractors engaged to deliver the Goods shall at no time be an agent of the Authority or any Approved User and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers and Sub-contractors engaged to deliver the Goods to the Authority.
- 5.26 The Authority is under no obligation to accept any Goods delivered in excess of the quantity ordered or where Goods are delivered in error or to the wrong delivery point.

Inspection, rejection, returns and recall

- 5.27 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Agreement and/or that stock holding and quality assurance processes are in accordance with the requirements of this Agreement.
- 5.28 Without prejudice to the provisions of Clause 5.31, the Authority shall visually inspect the Goods within a reasonable time following delivery and may by written notice reject any Goods found to be damaged, or delivered late, or otherwise not in accordance with the requirements of this Agreement ("**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 Agreement.

- 5.29 Without prejudice to the provisions of Clause 5.31, upon the rejection of any Goods in accordance with Clause 5.28, the Supplier shall at the Authority's written request:
- 5.29.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Working Days of issue of written notice from the Authority rejecting the Goods and reimburse the Authority within 30 days of collection, any Charges paid in connection with the Goods (including without limitation any pre-payment or advance payments) along with any costs reasonably incurred by the Authority as a result of any such rejection; and
 - 5.29.2 without extra charge, promptly (and in any event within five (5) Working Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 5.31 (provided that in the event that the Supplier fails to deliver replacements for the Rejected Goods in the time required under this Clause 5.29, the Authority may at its option reject such replacements, in which case Clause 5.29.1 shall apply).
 - 5.29.3 If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.
- 5.30 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 5.29; or (b) immediately following the expiry of ten (10) Working Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Working Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Working Days from the date of notification of rejection.
- 5.31 Where the Authority rejects any Goods in accordance with Clauses 5.28 and/or **Error! Reference source not found.** and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid (in whole or in part) for such Rejected Goods, the Supplier shall refund such payment along with any
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costs reasonably incurred by the Authority as a result of any such rejection to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

- 5.32 Without prejudice to any other provisions of this Agreement or any other warranties or guarantees applicable to the Goods supplied 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, upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 5.28 to 5.31.
- 5.33 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:
- 5.33.1 promptly (taking into consideration the potential impact of the continued use of the Goods on Test Recipients, 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;
 - 5.33.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause **Error! Reference source not found.**;
 - 5.33.3 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
- 5.34 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.

Risk and Title

- 5.35 Without prejudice to any other rights or remedies of the Authority:
- 5.35.1 risk in the Goods shall pass to the Authority when the Goods are Delivered to the relevant Delivery Location; and

- 5.35.2 ownership of the Goods shall pass to the Authority at the time of unloading at the relevant Delivery Location; and
 - 5.35.3 title to any Samples shall remain with the Test Recipient and risk in any Samples shall pass to the Supplier at the time of loading onto any vehicle of the Supplier or it's Sub-contractor at the relevant Collection Point.
- 5.36 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Agreement shall be and remain at the sole risk of the Supplier, whether or not they are situated at a Delivery Location.

Packaging and Labelling

5.37 The Supplier shall:

- 5.37.1 ensure that the Goods are properly packed in tamper-proof and traceable packaging in accordance with the Specification, Supplier Solution and Good Industry Practice;
- 5.37.2 ensure that the Goods and Samples are stored and packaged in such a manner to ensure that the integrity of the Goods and Samples are maintained during storage and transport;
- 5.37.3 ensure that the Goods and Samples are traceable in accordance with the Authority's labelling or naming conventions; and
- 5.37.4 ensure that the Samples are stored separately and within sealed packaging;
- 5.37.5 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;
- 5.37.6 unless otherwise agreed with the Authority in writing, ensure that the Goods and Samples are securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation;

5.37.7 comply with any labelling requirements in respect of the Goods and Samples:

- (a) specified in the Order; and/or
- (b) agreed with the Authority; and/or
- (c) required to comply with Law or Guidance

and shall ensure that any labelling in respect of the Goods and Samples is in English (with a Welsh language translation).

Courier

5.38 The Supplier shall ensure that its courier service and any Sub-contractors used in the collection, Testing, transport and storage of the Samples keep the Tests and Samples:

- 5.38.1 safe and secure and in such a way as to maintain the integrity of the Samples in accordance with Clause 5.4.3 above;
- 5.38.2 separate from other Tests and Samples to the extent required to ensure no cross-contamination occurs between Samples;
- 5.38.3 in accordance with appropriate temperature controls;
- 5.38.4 in tamper-proof, traceable packaging;
- 5.38.5 in accordance with Good Industry Practice and any applicable laws and/or guidance; and
- 5.38.6 in accordance with the Specification and Supplier Solution and this Agreement.

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Supplier covenants

5.39 The Supplier shall:

- 5.39.1 comply with all Law, Guidance and Policies in place and as updated from time to time in so far as is relevant to the supply of the Goods and the Services and otherwise in the performance of its obligations under this Agreement;

- 5.39.2 at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and Services in accordance with this Agreement;
- 5.39.3 provide the Authority with the Test Results and Test Reports, in accordance with the Specification in an eye readable format (such format to be agreed with the Authority);
- 5.39.4 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 14 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.39.5 ensure that:
- (a) it shall continue to have all necessary rights in and to the Third Party IPRs, Third Party Software, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Goods and/or Services by the Authority;
 - (b) the release of any new software or upgrade to any software to the Supplier System, complies with the interface requirements in the Specification (or as otherwise notified by the Authority to the Supplier from time to time) and (except in relation to new software or upgrades which are released to address malicious software or to comply with the security requirements of the Authority) shall notify the Authority 3 months before the release of any new software or upgrade;
 - (c) all software including upgrades, updates and new releases used by or on behalf of the Supplier are currently supported versions of that software and perform in all material respects in accordance with the relevant specification;
 - (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Goods and/or Services shall enable the Goods and/or Services to meet the Authority Requirements; and

- (e) the Supplier System and Assets used in the performance of the Services or provision of the Goods, will be free of all encumbrances (except as agreed in writing with the Authority);
- 5.39.6 ensure that any equipment, lab or Site it uses in the manufacture and delivery of the Goods or the delivery of the Services:
 - (a) meet all accreditation and other requirements set out in the Specification;
 - (b) comply with all relevant Law and Guidance;
 - (c) are fit for their intended purpose; and
 - (d) are maintained fully in accordance with any manufacturer's specification (in the case of equipment) and in accordance with Good Industry Practice;
- 5.39.7 minimise any disruption to the Services, the Operating Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- 5.39.8 any Documentation and training provided by the Supplier to the Authority is comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.39.9 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Authority System and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) and the Authority Data (as the case may be) to the Authority and/or to any Replacement Supplier;
- 5.39.10 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Goods and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.39.11 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.39.10;

- 5.39.12 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Goods and Services;
 - 5.39.13 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
 - 5.39.14 notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - 5.39.15 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 5.39.16 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority;
 - 5.39.17 manage closure or termination of the Services and end of life of the Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.40 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.41 Without prejudice to Clauses 20.2 and 20.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- 5.41.1 remedy any breach of its obligations in Clauses 5.39.4, 5.39.5 and 5.39.7 inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.41.2 remedy any breach of its obligations in Clauses 5.39.1 and 5.39.2 and Clauses 5.39.8 to 5.39.13 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

5.41.3 meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.41.1 or Clause 5.41.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Goods and Services

5.42 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Goods or Services, notwithstanding:

5.42.1 any withholding of the Charges by the Authority pursuant to Clause 9.2 (Performance Failures);

5.42.2 the existence of an unresolved Dispute; and/or

5.42.3 any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 34.4.1 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Power of attorney

5.43 By way of security for the performance of its obligations under Clauses 5.39.10 and 5.39.11 (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.43 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

5.44 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

6 MOBILISATION AND PILOT

Mobilisation

- 6.1 During the Mobilisation Period, the Parties shall comply with the provisions of Schedule 6.1 (Mobilisation Plan) in relation to the agreement and maintenance of the Agreed Mobilisation Plan.
- 6.2 The Supplier shall:
- 6.2.1 comply with the Outline Mobilisation Plan, until such time as the Outline Mobilisation Plan is Approved and becomes the Agreed Mobilisation, at which point the Supplier shall comply with the Agreed Mobilisation Plan;
 - 6.2.2 ensure that each Milestone is Achieved on or before its Milestone Date; and
 - 6.2.3 ensure that all Milestones have been Achieved on or before the commencement of the Pilot.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
- 6.3.1 notify the Authority in accordance with Clause 29 (Rectification Plan Process); and
 - 6.3.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - 6.3.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
- 6.4 Where the Supplier does not comply with Clause 6.2.3 (for whatever reason), the Authority reserves the right to extend the Mobilisation Period to the duration necessary to ensure compliance with Clause 6.2.3.

Pilot

- 6.5 During the Pilot Period, the Supplier shall deliver the Pilot Goods and Services to the Pilot Establishments.
- 6.6 The terms of this Agreement shall apply to the delivery of the Pilot.
- 6.7 In the event that the Supplier fails to deliver the Pilot Goods and Services in line with this Agreement during the Pilot Period, the Supplier shall comply with the Rectification Plan Process in order to address such failure.
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7 TRAINING AND HELPDESK

- 7.1 The Supplier shall provide from at least one Month prior to the Operational Commencement Date, free of charge training relating to the use, storage and administration of the Tests to identify the Drugs, such training to:
- 7.1.1 be delivered at the locations (online or in person) and frequency as the parties may agree from time to time (acting reasonably), and in any case to be delivered in the event that the Test, Test Devices or Drugs are changed;
 - 7.1.2 include the provision of clear and accurate training materials to support the training;
 - 7.1.3 be delivered in accordance with Good Industry Practice by suitably qualified training personnel;
 - 7.1.4 meet any requirements and/or descriptions set out in the Specification and the Supplier Solution.
- 7.2 The Supplier and the Authority shall once in each Contract Year hold the Contract Review Meeting on or around the 1 April in each Contract Year in order to meet and discuss and agree the training needs of the Authority, and required training content and schedule for the upcoming Contract Year.
- 7.3 The Supplier shall provide, free of charge, a helpdesk facility providing support to users of the Tests in the use, storage and administration of the Tests to identify the Drugs, such helpdesk to:
- 7.3.1 be available between the hours of 9am and 5pm on Working Days;
 - 7.3.2 be delivered in accordance with Good Industry Practice by suitable qualified personnel; and
 - 7.3.3 meet any requirements and/or descriptions set out in the Specification and the Supplier Solution.
- 7.4 The Supplier shall during the Term maintain and make available to the Authority updated materials and support documentation relating to the Services and use of the Test Devices and collection of Samples.

8 CONTINUOUS IMPROVEMENT AND VALIDATION

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Goods and Services in accordance with this Clause 8.1 and paragraph 25 of the Specification. As part of this obligation the Supplier shall at least once every 12 months identify and report to the relevant Contract Review Meeting on:

- 8.1.1 the emergence of new and evolving relevant technologies which could improve the accuracy of the Goods, Services and/or range of Drugs capable of being tested, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- 8.1.2 changes in business processes and ways of working that would enable the Goods and/or Services to be delivered at lower cost and/or with greater benefits to the Authority;
- 8.1.3 changes to the business processes and ways of working that would enable reductions in the total energy consumed in the manufacture and delivery of the Goods and provision of the Services; and/or
- 8.1.4 any savings which could be made by the Authority where the volume of Goods and Services ordered by the Authority increases materially over the course of any Contract Year.

8.2 The Supplier shall at least once every 12 months:

- 8.2.1 conduct a full and comprehensive review of the Goods, Services and the Charges to demonstrate that they continue to be Value for Money to the Authority;
 - 8.2.2 identify, and provide its plans to implement (where appropriate), new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 8.2.3 identify, and provide its plans to implement (where appropriate), new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
 - 8.2.4 conduct a full and comprehensive review of all standard operating procedures (including any quality assurance processes as further
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described in the Specification) in the manufacture and delivery of Goods and performance of the Services;

- 8.2.5 conduct validation testing (in accordance with the Specification and Good Industry Practice) for all Goods and Services which shall test (without limitation) the accuracy and precision of test results in respect of all Drugs and any other tests that the Authority may reasonably require; and
- 8.2.6 provide to the Authority full reports on the outputs of the review and testing activity required under Clause 12.2 along with any published scientific papers which support the design and manufacture for the Goods and provision of the Services.
- 8.3 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.4 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.
- 8.5 The Supplier shall notify the Authority immediately (and in any event within 1 Working Day on becoming aware of any breach of this Agreement, failure to deliver the Services or Goods in accordance with the Key Performance Indicators, or any event that may lead to such a breach of this Agreement or failure to deliver the Services or Goods in accordance with the Key Performance Indicators by the Supplier.

Validation

- 8.6 In the event that any validation testing carried out by the Supplier in accordance with the Specification and Good Industry Practice, or by the Authority further to Clause 5.4.8 reveals a Test Result Failure or otherwise reveals an inconsistency between the Test Result and the validation test result, then the Authority may conduct or require the Supplier to conduct additional validation testing in accordance with Clause 8.7.
- 8.7 In the event that any further validation testing carried out in accordance with Clause 8.6 reveals further Test Result Failures or inconsistency between the Test Result and the validation test result, then the Parties shall work together in good faith to determine the reason for the Test Result Failure (or any other inconsistency between the Test Result and validation test result from any Sample) and where the Authority reasonably determines that the Test Result Failure arises from a failure of the Supplier

to deliver the Services in accordance with the terms of this Agreement the parties shall follow the Rectification Plan Process.

9 PERFORMANCE INDICATORS

9.1 The Supplier shall:

- 9.1.1 provide the Pilot in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator during the Pilot Period;
- 9.1.2 provide the Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Operational Commencement Date; and
- 9.1.3 comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.

Performance Failures

9.2 If in any Service Period:

- 9.2.1 a KPI Failure occurs, subject to paragraph 9.3A below, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);
- 9.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process as outlined in Clause 29 (Rectification Plan Process) (in addition to Service Credits accruing in accordance with Clause 9.2.1).

9.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

- 9.3.1 the Supplier has over the previous Contract Year accrued Service Credits in excess of the Service Credit Cap;
- 9.3.2 the KPI Failure:
 - (a) breaches the relevant KPI Service Threshold;
 - (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or

- (c) results in:
 - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 21.6 (*Authority Data and Security Requirements*) shall also be available); and/or
 - (ii) the Authority being required to make a compensation payment to one or more third parties;

9.3.3 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or

9.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 34.2.2 (*Termination by the Authority*)

9.3A Service Credits shall not accrue in respect of KPI Failures during the Pilot Period.

Unacceptable KPI Failure

9.4 If in any Service Period an Unacceptable KPI Failure occurs:

9.4.1 the Authority shall (subject to the Service Credit Cap set out in Clause 26.4.2 (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and

9.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 9.5 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

9.5 The Supplier:

9.5.1 agrees that the application of Clause 9.5 is commercially justifiable where an Unacceptable KPI Failure occurs; and

- 9.5.2 acknowledges that it has taken legal advice on the application of Clause 9.5 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 9.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 34.1 or 34.3 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

- 9.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice:
 - 9.7.1 change the weighting that applies in respect of one or more specific Key Performance Indicators
- 9.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 9.7, or increase the Service Charges as a result of such changes provided that:
 - 9.8.1 the total number of Key Performance Indicators does not exceed 20;
 - 9.8.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
 - 9.8.3 there is no change to the Service Credit Cap.

Complaints and Incidents

- 9.9 The Supplier shall manage all Complaints and Incidents promptly and professionally and in accordance with the Specification.
- 9.10 The Supplier shall notify the Authority if it identifies a Performance Failure or Service delivery issue as a result of receiving a Complaint.

10 EQUIPMENT AND MAINTENANCE

Authority Premises

- 10.1 The Authority shall, subject to the Supplier's compliance with any security requirements of the Authority as notified to the Supplier from time to time, provide the Supplier with access to such parts of the Authority's Premises as the Supplier

reasonably requires for the purposes only of properly providing the Services and the Goods.

- 10.2 Any land or premises made available from time to time to the Supplier by the Authority in connection with this Agreement are on a non-exclusive licence basis free of charge and are used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier has the use of such land or premises as licence and shall vacate the same on termination of the Agreement or as otherwise instructed by the Authority.
- 10.3 The Supplier shall (and shall ensure that any Supplier Personnel on the Authority Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority Premises as determine by the Authority including, but not limited to, those rules and standards set out in Schedule 2.3 (*Standards*) or any security requirements of the Authority as notified to the Supplier from time to time.
- 10.4 Nothing in this Agreement is intended to create a tenancy of any nature in favour of the Supplier and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority may use the premises owned or occupied by it in any manner it sees fit.
- 10.5 Any access to the Authority Premises and any labour and equipment provided by the Authority in connection with delivery is provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.

Supplier Equipment

- 10.6 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise, on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 10.7 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

- 10.8 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**11 FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 11.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 11.2 Except as otherwise provided, the Supplier shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 13 (*Records, Reports, Audits and Open Book Data*), 23 (*Transparency and Freedom of Information*), 24 (*Protection of Personal Data*) and, to the extent specified therein, Clause 30 (*Step-In Rights*).
- 11.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 11.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 11.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 11.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 11.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.

- 11.7 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 11.6; it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Financial Distress

- 11.8 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

- 11.9 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 11.9.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - 11.9.2 promptly provide to the Authority:
 - (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D – CONTRACT GOVERNANCE**12 GOVERNANCE**

- 12.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.
- 12.2 The Supplier shall upon the request of the Authority (which shall be not more than once per Contract Year) provide to the Authority reasonable co-operation and information relating to the Goods, Services and the Charges to enable the Authority to review the Charges against the market for similar goods and to measure compliance against Clause 3.2.20 and Clause 8.2.1. The results of any such review will be discussed in good faith at the Contract Review Meeting, with changes being agreed in accordance with the Change Control Procedure.

Representatives

- 12.3 Each Party shall have an Operational Contract Manager for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 12.4 The initial Supplier Operational Contract Manager shall be the person named as such in Schedule 8.1 (*Governance*). Any change to the Supplier Operational Contract Manager shall be agreed between the parties (acting reasonably).
- 12.5 The Supplier shall appoint a suitably qualified Supplier Contract Liaison who will act as a technical interface between the Supplier and the Authority, the initial Supplier Contract Liaison shall be the person named as such in Schedule 8.1 (*Governance*). The Supplier shall ensure that the Supplier Contract Liaison shall be available by telephone and email between 9am and 5pm on each Working Day during the term and shall provide suitably qualified substitutes for any period of absence of the Supplier Contract Liaison. Any change to the Supplier Contract Liaison shall be agreed between the parties (acting reasonably).
- 12.6 The Authority shall notify the Supplier of the identity of the initial Authority Operational Contract Manager within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Operational Contract Manager or appoint a new Authority Operational Contract Manager.

13 RECORDS, REPORTS AND AUDITS AND ASSURANCE AND OPEN BOOK DATA

13.1 The Supplier shall comply with the provisions of:

- 13.1.1 Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
- 13.1.2 Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of the Open Book Data.

13.2 The Parties shall comply with the provisions of:

- 13.2.1 Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
- 13.2.2 Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

Assurance Visits

13.3 Without prejudice to any other audit rights of the Authority, the Authority, acting by itself or through its Audit Agents (which may include the Authority Quality Assurance Provider), shall have the right during the Term and for a period of 18 months thereafter to access the Supplier's Sites and those of its Key Sub-Contractors to observe, assess and investigate the treatment, integrity and security of any Samples or Testing processes undertaken by the Supplier (or its Key Sub-Contractors). The Supplier shall at no additional cost to the Authority provide all support, access, access to suitably qualified Personnel, and documentation as the Authority may reasonably require in the exercise of its rights under this Clause 13.3, subject to the Supplier's compliance with Data Protection Legislation.

13.4 The Supplier shall make available within fourteen (14) days of request by the Authority Samples, Test Reports and other information or materials as reasonably requested by the Authority to the Authority Quality Assurance Provider for the purposes of the performance of quality assurance assessments.

14 CHANGE**Change Control Procedure**

14.1 Any requirement for a Change shall be subject to the Change Control Procedure.

- 14.2 Any agreed Drug Change will be actioned by the Supplier within the timescales agreed between the parties and any failure by the Supplier to meet such timescales shall result in a material breach of this Agreement.

Change in Law

- 14.3 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- 14.3.1 a General Change in Law; or
 - 14.3.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 14.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 14.3.2), the Supplier shall:
- 14.4.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (a) whether any Change is required to the Services, the Charges or this Agreement; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Target Performance Levels; and
 - 14.4.2 provide the Authority with evidence:
 - (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Continuous Improvement*), has been taken into account in amending the Charges.
- 14.5 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 14.3.2) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**15 SUPPLIER PERSONNEL****15.1 The Supplier shall:**

- 15.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 15.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Specification*) and any reasonable requirements of the Authority; and
 - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including any security requirements of the Authority as notified to the Supplier from time to time.
- 15.1.3 subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 15.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- 15.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 15.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 15.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 15.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

- 15.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- 15.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
 - 15.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Employment Indemnity

- 15.3 The Parties agree that:
- 15.3.1 the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
 - 15.3.2 the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

- 15.4 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- 15.4.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - 15.4.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

- 15.5 The Parties agree that where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply and Part C of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

16 SUPPLY CHAIN RIGHTS AND PROTECTIONS**Advertising Sub-contract Opportunities**

- 16.1 The Supplier shall:
- 16.1.1 subject to Clauses 16.3 and 16.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
 - 16.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - 16.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 16.1.4 provide reports on the information at Clause 16.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
 - 16.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 16.2 Each advert referred to in Clause 16.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 16.3 The obligation at Clause 16.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 16.4 Notwithstanding Clause 16.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 16.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 16.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 16.5.2 comply with its obligations under this Agreement in the delivery of the Services; and
 - 16.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 16.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
- 16.6.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 16.6.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 16.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 16.7 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 16.6, the Supplier shall also provide:
- 16.7.1 a copy of the proposed Sub-contract;
 - 16.7.2 details of the proposed Sub-Contractor's quality management processes, lead times and contingency plans;
 - 16.7.3 details of the procurement policy and evaluation undertaken in the proposed appointment of the Sub-Contractor; and
 - 16.7.4 any further information reasonably requested by the Authority.
- 16.8 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 16.6 (or, if later, receipt of any further information requested

pursuant to Clause 16.7), object to the appointment of the relevant Sub-contractor if it considers that:

- 16.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- 16.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 16.8.3 the proposed Sub-contractor employs unfit persons; and/or
- 16.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 16.22 (*Termination of sub-contracts*);

in which case, the Supplier shall not proceed with the proposed appointment.

16.9 If:

- 16.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (a) the Supplier's notice issued pursuant to Clause 16.6; and
 - (b) any further information requested by the Authority pursuant to Clause 16.7; and
- 16.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 16.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 16.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may

withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- 16.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - 16.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 16.10.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 16.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 16.22 (*Termination of sub-contracts*).
- 16.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).
- 16.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 16.12.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - 16.12.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - 16.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - 16.12.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - 16.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (a) data protection requirements set out in Clauses 21 (*Authority Data and Security Requirements*) and 24 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 23 (*Transparency and Freedom of Information*);

- (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.39.16 (*Services*);
 - (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*).
- 16.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 34.2.1 (*Termination by the Authority*)
- 16.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 16.12.8 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);
- 16.12.9 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 16.12.10 a provision requiring the Key Sub-contractor to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,
 - (iii) and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting

with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

- 16.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 16.14 The Supplier shall ensure that all Sub-contracts (which in this sub-Clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- 16.14.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - 16.14.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 16.14.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-Clause 16.14.2, the invoice shall be regarded as valid and undisputed for the purpose of sub-Clause 16.14.4 after a reasonable time has passed;
 - 16.14.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - 16.14.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 16.14.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 16.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

16.15 The Supplier shall:

- 16.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 16.15.2 report to the Authority on an annual basis as part of the Annual Service Performance Report (as set out in Schedule 8.4) a summary of its compliance with Clause 16.15.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

16.16 Without prejudice to Clause 16.15.1, the Supplier shall:

- 16.16.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 16.16.2 report to the Authority as part of the Annual Service Performance Report a summary of its compliance with Clause 16.16.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

16.17 If any reporting to the Authority in accordance with this Clause 16 shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall 15 Working Days of submission of the latest Annual Service Performance Report submit to the Authority, an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- 16.17.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- 16.17.2 actions to address each of the causes set out in sub-clause 16.17.1; and
- 16.17.3 mechanism for and commitment to regular reporting on progress to the Supplier's Board.

- 16.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is submitted to the Authority.
- 16.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 16.20 The Supplier shall comply with the Action Plan, or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 16.21 Notwithstanding any provision of Clauses 22 (*Confidentiality*) and 25 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in Annual Service Performance Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 16.22 The Authority may require the Supplier to terminate:
- 16.22.1 a Sub-contract where:
- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.2.2 (*Termination by the Authority*);
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 16.27; and
- 16.22.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
- (a) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (b) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

- 16.23 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- 16.23.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - 16.23.2 enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 16.24 If the Authority exercises either of its options pursuant to Clause 16.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 16.25 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 16.25.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - 16.25.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

16.26 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 16, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

16.27 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

16.27.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

16.27.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

16.28 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

16.29 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**17 INTELLECTUAL PROPERTY RIGHTS**

17.1 Except as expressly set out in this Agreement:

17.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Third Party IPRs;
- (b) Third Party Software; and
- (c) the Supplier Background IPRs;

17.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (a) the Authority Software;
- (b) the Authority Data;
- (c) the Authority System; and
- (d) the Authority Background IPRs;

17.1.3 Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

17.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 17.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

17.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

18 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Project Specific IPRs

- 18.1 The Supplier hereby agrees to assign and transfer to the Authority, or shall procure the assignment or transfer to the Authority of, all rights (subject to Clause 17.1.1 (*Intellectual Property Rights*)) in the Project Specific IPRs.

Supplier System and Supplier Background IPRs

- 18.2 The Supplier hereby grants to the Authority subject to the provisions of Clause 32 (*Consequences of expiry or termination*):
- 18.2.1 a perpetual, royalty-free and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Supplier Background IPRs; and
 - 18.2.2 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Project Specific IPRs.
- 18.3 The Supplier warrants that:
- 18.3.1 any Supplier Background IPRs required as part of the Supplier's delivery of the Goods and the Services shall be capable of interfacing with the Authority System in accordance with the Specification (or any other interface requirements issued by the Authority from time to time); and
 - 18.3.2 it shall not knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of the Authority System, or any computer software or hardware.

Authority's right to sub-license

- 18.4 The Authority may sub-license:
- 18.4.1 the rights granted under Clause 18.2 (*Supplier System and Supplier Background IPRs*) and 18.8 (*Third Party Software and Third Party IPRs*) to a

third party (including for the avoidance of doubt, an Approved User or any Replacement Supplier) provided that:

- (a) the sub-licence is on terms no broader than those granted to the Authority;
- (b) the sub-licence authorises the third party to use the rights licensed in Clause 18.2 (*Supplier System and Supplier Background IPRs*) only for purposes relating to the provision of the Goods and/or Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's or Approved Users) business or function; and
- (c) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier; and

18.4.2 the rights granted under Clause 18.2 (*Supplier System and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPRs provided that:

- (a) the sub-licence is on terms no broader than those granted to the Authority; and
- (b) the Supplier has received a confidentiality undertaking in its favour duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

18.5 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 18.2 (*Supplier System and Supplier Background IPRs*) to:

- 18.5.1 a Central Government Body;
- 18.5.2 an Approved User; or
- 18.5.3 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

18.6 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 18.2 (*Supplier System and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled

to the benefit of the licence granted in Clause 18.2 (*Supplier System and Supplier Background IPRs*).

- 18.7 If a licence granted in Clause 18.2 (*Supplier System and Supplier Background IPRs*) is novated under Clause 18.5 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 18.6, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 18.8 The Supplier shall, grant to the Authority and Approved Users, a royalty-free and non-exclusive licence(s) to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Third Party IPRs and any Third Party Software for the Term.
- 18.9 The Supplier shall:
- 18.9.1 notify the Authority in writing of all Third Party IPRs and Third Party Software that it uses and the terms on which it uses them; and
 - 18.9.2 use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party IPRs and/or the Intellectual Property Rights in the Third Party Software, grants a direct licence to the Authority and any Approved User on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 18.10 Should the Supplier become aware at any time, including after termination, that the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

- 18.11 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 18.

18.12 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) (and where reasonably required to allow the Authority (or any Approved User) to access the Test Results) and at the Supplier's cost:

18.12.1 grant (or procure the grant) to any Replacement Supplier of:

- (a) a licence to use any Supplier Background IPRs; and/or
- (b) Third Party IPRs; and/or
- (c) Third Party Software,

on a royalty-free basis to the Authority or a Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant IPRs pursuant to or as contemplated by this Clause 18 subject to receipt by the Supplier of a confidentiality undertaking in its favour duly executed by the Authority or the Replacement Supplier.

19 LICENCES GRANTED BY THE AUTHORITY

19.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services and providing the Goods in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

19.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (*Confidentiality*); and

19.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

19.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 19.1 and any sub-licence granted by the Supplier in accordance with Clause 19.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

19.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs, Project Specific IPRs and the Authority Data (as the case may be);

- 19.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, Project Specific IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
- 19.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs, Project Specific IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs, Project Specific IPRs and/or Authority Data.

20 IPRs INDEMNITY

- 20.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 20.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 20.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- 20.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
- (b) the replaced or modified item does not have an adverse effect on any other services or the Authority System;
- (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

- (d) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

20.3 If the Supplier elects to procure a licence in accordance with Clause 20.2.1 or to modify or replace an item pursuant to Clause 20.2.2, but this has not avoided or resolved the IPRs Claim, then:

20.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

20.3.2 without prejudice to the indemnity set out in Clause 20.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

21 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

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

21.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Specification*).

21.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

21.5 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with any IT security requirements of the Authority that they notify to the Supplier from time to time.

21.6 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

21.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as

practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or

- 21.6.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 21.7 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 21.8 The Supplier shall comply with any security requirements of the Authority as notified to the Supplier from time to time.

22 CONFIDENTIALITY

- 22.1 For the purposes of this Clause 22, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 22.2 Except to the extent set out in this Clause 22 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 22.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 22.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
- 22.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
- 22.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

- 22.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 22.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - 22.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (c) the conduct of a Central Government Body review in respect of this Agreement; or
 - 22.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 22.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 22.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 22.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - 22.5.2 its auditors; and
 - 22.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 22.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

22.6 The Authority may disclose the Confidential Information of the Supplier:

- 22.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- 22.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 22.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 22.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 22.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- 22.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*) and Exit Management rights; or
- 22.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 22.

22.7 Nothing in this Clause 22 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

23 TRANSPARENCY AND FREEDOM OF INFORMATION

23.1 The Parties acknowledge that:

23.1.1 the Transparency Reports;

23.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for –

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(b) Commercially Sensitive Information; and

(c) the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

23.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

23.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).

23.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

23.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is

being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 23.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 22.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 23.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 23.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 23.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 23.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 23.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 23.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its

absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

24 PROTECTION OF PERSONAL DATA

- 24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier may process Personal Data as a Processor on behalf of the Authority or a Prison, Approved Premises or Approved User as the Controller (the **Relevant Controller**).
- 24.2 Schedule 11 (*Processing Personal Data*) sets out the details of the Personal Data processing activities that may be carried out by the Supplier on behalf of the Relevant Controller. To the extent that the Supplier processes Personal Data on behalf of the Relevant Controller, the Supplier shall comply with this Clause 24. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

Where one Party is Controller and the other Party its Processor

- 24.3 The only processing that the Supplier is authorised to do is listed in Schedule 11 (*Processing Personal Data*). The Supplier shall process the Personal Data only in accordance with Schedule 11 (*Processing Personal Data*), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Relevant Controller before processing the Personal Data unless prohibited by Law.
- 24.4 The Supplier shall notify the Relevant Controller immediately if it considers that any of the Relevant Controller's instructions infringe the Data Protection Legislation.
- 24.5 The Supplier shall provide all reasonable assistance to the Relevant Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Relevant Controller, include assisting with the following tasks and/or providing the following information:
- 24.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 24.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 24.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

- 24.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 24.6 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 24.6.1 ensure that it has in place Protective Measures, including the measures set out in Clause 21 (*Authority Data and Security Requirements*), which the Relevant Controller may reasonably reject (but failure to reject shall not amount to approval by the Relevant Controller of the adequacy of the Protective Measures) having taken account of the:
- (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 24.6.2 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause, Clauses 22 (*Confidentiality*) and 21 (*Authority Data and Security Requirements*);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Relevant Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

- 24.6.3 not transfer Personal Data outside of the United Kingdom, other than to the Relevant Controller, unless the prior written consent of the Relevant Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with the Data Protection Legislation;
 - (b) the Relevant Controller or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation as determined by the Relevant Controller;
 - (c) the Data Subject has enforceable rights and effective legal remedies;
 - (d) 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 Relevant Controller in meeting its obligations); and
 - (e) the Supplier complies with any reasonable instructions notified to it in advance by the Relevant Controller with respect to the processing of the Personal Data; and
 - (f) at the written direction of the Relevant Controller, delete or return Personal Data (and any copies of it) to the Relevant Controller on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 24.7 Subject to Clause 24.8, the Supplier shall notify the Relevant Controller immediately if it:
- 24.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 24.7.2 receives a request to rectify, block or erase any Personal Data;
 - 24.7.3 receives any other request, complaint or communication relating to either Party's obligations under Data Protection Legislation;
 - 24.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 24.7.5 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
-

- 24.7.6 becomes aware of a Data Loss Event.
- 24.8 The Supplier's obligation to notify under Clause 24.7 shall include the provision of further information to the Relevant Controller in phases, as details become available.
- 24.9 Taking into account the nature of the processing, the Supplier shall provide the Relevant Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 24.7 (and insofar as possible within the timescales reasonably required by the Relevant Controller) including by promptly providing:
- 24.9.1 the Relevant Controller with full details and copies of the complaint, communication, or request;
 - 24.9.2 such assistance as is reasonably requested by the Relevant Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 24.9.3 the Relevant Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 24.9.4 assistance as requested by the Relevant Controller following any Data Loss Event; and/or
 - 24.9.5 assistance as requested by the Relevant Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 24.10 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 24. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 24.10.1 the Relevant Controller determines that the processing is not occasional;
 - 24.10.2 the Relevant Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 24.10.3 the Relevant Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 24.11 The Supplier shall allow for audits of its Data Processing activity by the Relevant Controller or the Relevant Controller's designated auditor.
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- 24.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 24.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 24.13.1 notify the Relevant Controller in writing of the intended Sub-processor and processing;
 - 24.13.2 obtain the written consent of the Relevant Controller;
 - 24.13.3 enter into a written agreement with the Sub-processor which contains terms substantially equivalent to those set out in this Clause 24 such that they apply to the Sub-processor; and
 - 24.13.4 provide the Relevant Controller with such information regarding the Sub-processor as the Relevant Controller may reasonably require.
- 24.14 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 24.15 The Supplier shall, in respect of any transfers of Personal Data outside of the United Kingdom that are authorised by the Relevant Controller in accordance with Clause 24.6.1(c), to the extent permitted by Law:
- 24.15.1 provide reasonable assistance to the Relevant Controller to enable the Relevant Controller to conduct a transfer risk assessment in respect of such transfers if required to ensure compliance with the Data Protection Legislation;
 - 24.15.2 notify the Relevant Controller immediately if it becomes aware of any change to the relevant country's data protection laws;
 - 24.15.3 work with the Relevant Controller to implement any additional safeguards or supplementary measures reasonably requested by the Relevant Controller to ensure compliance with Data Protection Legislation;
 - 24.15.4 notify the Relevant Controller immediately if it becomes aware of any request from a government or law enforcement agency (**Requesting Body**) in any third country for a copy of, or access to, Personal Data (a **Request**) and, in such circumstances:
 - (a) inform the Requesting Body that Personal Data may not be disclosed to the Requesting Body without the Authority's consent; and
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- (b) not provide a copy of or access to Personal Data, or allow a copy or access to be provided, in response to any Request without the Authority's prior written consent.

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

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

24.18 If and to the extent that the Parties process Personal Data as independent Controllers, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

25 PUBLICITY AND BRANDING

25.1 The Supplier shall not:

- 25.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

- 25.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

25.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

LIABILITY, INDEMNITIES, AND INSURANCE**26 LIMITATIONS ON LIABILITY****Unlimited liability**

26.1 Neither Party limits its liability for:

- 26.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 26.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 26.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 26.1.4 any liability to the extent it cannot be limited or excluded by Law.

26.2 The Supplier's liability in respect of the indemnities in Clause 11.5 (VAT), Clause 15.3 (*Employment Indemnity*), Clause 15.4 (*Income Tax and National Insurance Contributions*), Clause 20 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

26.3 The Authority's liability in respect of the indemnities in Clause 15.3 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

26.4 Subject to Clauses 26.1 and 26.2 (*Unlimited Liability*) and Clause 26.7 (*Consequential losses*):

- 26.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- 26.4.2 the Supplier's aggregate liability in respect of:
 - (a) loss or damage to Authority Data;
 - (b) breach of the Data Protection Legislation,

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;

26.4.3 the Supplier's aggregate liability in respect of all:

- (a) Service Credits; and
- (b) Compensation for Unacceptable KPI Failure;

incurred in any Contract Year shall be subject to the Service Credit Cap; and

26.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

- (a) in relation to Defaults occurring during any Contract Year, the greater of £10 million or an amount equal to 150% of the Charges paid or due to be paid to the Supplier under this Agreement in the relevant Contract Year; and
- (b) in relation to Defaults occurring after the end of the Term, an amount equal to the greater of £10 million or 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 26.4.4 have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

26.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 26.4.3.

26.6 Subject to Clauses 26.1 and 26.3 (*Unlimited Liability*) and Clause 26.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

26.6.1 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:

(a) in relation to Defaults occurring in the first Contract Year, an amount equal to the estimated Charges for the first Contract Year (as set out in the Financial Response Template);

(b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

26.7 Subject to Clauses 26.1, 26.2 and 26.3 (*Unlimited Liability*) and Clause 26.8, neither Party shall be liable to the other Party for:

26.7.1 any indirect, special or consequential Loss; or

26.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

26.8 Notwithstanding Clause 26.7 but subject to Clause 26.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

26.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

26.8.2 any wasted expenditure or charges;

26.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Goods, which shall include any

incremental costs associated with such Replacement Services and/or replacement Goods above those which would have been payable under this Agreement;

- 26.8.4 any compensation or interest paid to a third party by the Authority arising out of any claim by a third party or a complaint by a prisoner;
- 26.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- 26.8.6 costs associated with advising, screening or retesting or otherwise providing healthcare to Test Recipients.

Indemnity

26.9 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:

- 26.9.1 any injury or allegation of injury to any person, including injury resulting in death; and/or
- 26.9.2 any loss of or damage to property (whether real or personal);

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

Conduct of indemnity claims

26.10 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

26.11 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for

which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

27 INSURANCE

The Supplier shall comply with the provisions of Schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

28 REMEDIES AND RELIEF

29 RECTIFICATION PLAN PROCESS

29.1 In the event that:

- 29.1.1 there is, or is reasonably likely to be a Delay; and/or
- 29.1.2 in any Service Period there has been:
 - (a) a Material KPI Failure; and/or
 - (b) a persistent Test Result Failure as further described in Clause 8.7; and/or
- 29.1.3 in any Mobilisation Period there has been:
 - (a) a Material KPI Failure; and/or
 - (b) any Milestone is not Achieved on or before its Milestone Date; and/or
- 29.1.4 in any Pilot Period there has been:
 - (a) a KPI Failure and/or a Material KPI Failure; and/or
 - (b) any failure to deliver the Pilot Goods and/or Services; and/or
- 29.1.5 the Supplier commits a material Default of this Agreement or a material failure to meet the Authority Requirements that is capable of remedy (and for these purposes a material Default or failure may be a single material Default or failures or a number of Defaults or failures or repeated Defaults or failures (whether of the same or different obligations and regardless of whether such Defaults or failures are remedied) which taken together constitute a material Default or failure); and/or
- 29.1.6 there is any Serious KPI Failure arising in respect of the same KPI for 2 or more Service Periods in any 3 Month rolling period,

(each a "**Notifiable Default**"), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

29.2 If:

29.2.1 the Supplier notifies the Authority pursuant to Clause 29.1 that a Notifiable Default has occurred; or

29.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

29.3 The "**Rectification Plan Process**" shall be as set out in Clauses 29.4 (*Submission of the draft Rectification Plan*) to 29.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

29.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 29.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

29.5 The draft Rectification Plan shall set out:

29.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

29.5.2 the actual or anticipated effect of the Notifiable Default; and

29.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from

recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 29.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 29.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 29.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 29.7.2 will take too long to complete;
 - 29.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 29.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 29.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 29.9 If the Authority consents to the Rectification Plan:
- 29.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 29.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.
- 29.10 The Parties shall meet and discuss the Supplier's performance against any Rectification Plan at the next Performance Management Meeting, as defined in Schedule 8.1 (*Governance*).

30 STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 22 (*Confidentiality*)). The Step-In Notice shall set out the following:
- 30.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
 - 30.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - 30.1.3 the date on which it wishes to commence the Required Action;
 - 30.1.4 the time period which it believes will be necessary for the Required Action;
 - 30.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 30.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 30.2 Following service of a Step-In Notice, the Authority shall:
- 30.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 30.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 30.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 30.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 30.

- 30.3 For so long as and to the extent that the Required Action is continuing, then:
- 30.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 30.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
 - 30.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 30.4.1 the degradation of any Services not subject to the Required Action; or
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 30.5 Before ceasing to exercise its step in rights under this Clause 30 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 30.5.1 the Required Action it has actually taken; and
 - 30.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
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30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

30.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

30.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

31 AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

31.1.1 provide the Services in accordance with the Target Performance Levels; and/or

31.1.2 comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

(a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(i) to terminate this Agreement pursuant to Clause 34.2.2 (Termination by the Authority); or

(ii) to take action pursuant to Clause 30 (Step-In);

(c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

- (ii) if the Authority, acting reasonably, considers it appropriate, the Agreed Mobilisation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or
 - (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 9.5.1 (*Unacceptable KPI Failure*); and
 - (iii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,
 - (iv) in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.
 - 31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:
 - 31.2.1 the Supplier Non-Performance;
 - 31.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;
 - 31.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
 - 31.2.4 the relief and/or compensation claimed by the Supplier.
 - 31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
 - 31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the
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Supplier may incur and the duration and consequences of any delay or other service performance issue or anticipated delay or service performance issue.

31.5 Without prejudice to Clause 5.42 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

31.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

31.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

31.6 Any Change that is required to the Agreed Mobilisation Plan or to the Charges pursuant to this Clause 31 shall be implemented in accordance with the Change Control Procedure.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly prevented by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

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

- 32.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - 32.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- 32.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 34.2.3 (*Termination by the Authority*) or Clause 34.4.2 (*Termination by the Supplier*); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 32.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
 - (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (ii) to receive Service Credits, withhold and retain any of the Service Charges as compensation pursuant to Clause 9.5.1 (*Unacceptable*

KPI Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

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

32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 32.7.

33 TERMINATION AND EXIT MANAGEMENT

34 TERMINATION RIGHTS

Termination by the Authority

34.1 The Authority may terminate this Agreement for convenience at any time by giving the Supplier at least 6 months written notice.

34.2 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- 34.2.1 where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU or any such replacement domestic law in place from time to time;

- 34.2.2 if a Supplier Termination Event occurs;

- 34.2.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

- 34.2.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

34.3 Where the Authority:

34.3.1 is terminating this Agreement under Clause 34.2.2 due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

34.3.2 has the right to terminate this Agreement under Clause 34.2.2 or Clause 34.2.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

34.4 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

34.4.1 this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **an amount equivalent to the Monthly Average Charges** and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or

34.4.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 34.4.2 would result in a Partial Termination, the provisions of Clause 34.5 (*Partial Termination*) shall apply.

Partial Termination

34.5 If the Supplier notifies the Authority pursuant to Clause 34.4.2 (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of

receiving the Supplier's Termination Notice. For the purpose of this Clause 34.5, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

34.6 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

34.6.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

34.6.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

34.6.3 the Supplier shall not be entitled to reject the Change.

35 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

35.1 The provisions of Clauses 11.4 and 11.5 (VAT), 11.6 and 11.7 (*Set-off and Withholding*), 13 (*Records, Reports, Audits and Assurance and Open Book Data*), 15.3 (*Employment Indemnity*), 15.4 (*Income Tax and National Insurance Contributions*), 17 (*Intellectual Property Rights*), 18 (*Transfers and Licences Granted by the Supplier*), 20.1 (*IPRs Indemnity*), 22 (*Confidentiality*), 23 (*Transparency and Freedom of Information*), 24 (*Protection of Personal Data*), 26 (*Limitations on Liability*), 35 (*Consequences of Expiry or Termination*), 42 (*Severance*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 47 (*Disputes*) and 48 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

35.2 The Parties shall comply with the provisions of Schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Supplier

- 35.3 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

36 MISCELLANEOUS AND GOVERNING LAW

37 COMPLIANCE

Health and Safety

- 37.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- 37.1.1 all applicable Law regarding health and safety; and
 - 37.1.2 the Health and Safety Policy whilst at the Authority Premises.
- 37.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

- 37.3 The Supplier shall:
- 37.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Authority's equality and diversity policy as provided to the Supplier from time to time and provide evidence of its compliance upon reasonable request from the Authority; and
 - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
-

- 37.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation); and
- 37.3.3 provide copies upon request of the Supplier's equality and diversity policy, and notify the Authority of any update to such policy

Modern Slavery

- 37.4 The Supplier shall, and procure that each of its Sub-contractors shall, comply with:
 - 37.4.1 the Modern Slavery Act 2015 ("Slavery Act"); and
 - 37.4.2 the Authority's anti-slavery policy as provided to the Supplier from time to time ("Anti-slavery Policy").
- 37.5 The Supplier shall:
 - 37.5.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
 - 37.5.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 37.5.3 prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
 - 37.5.4 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority regarding the Agreement; and
 - 37.5.5 implement a system of training for its employees to ensure compliance with the Slavery Act.
- 37.6 The Supplier represents, warrants and undertakes throughout the Term that:
 - 37.6.1 It conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;

- 37.6.2 Its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
- 37.6.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it:
 - (a) has been convicted of any offence involving slavery and trafficking; or
 - (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.
- 37.7 The Supplier shall notify the Authority as soon as it becomes aware or:
 - 37.7.1 any breach, or potential breach, of the Anti-Slavery Policy; or
 - 37.7.2 any actual or suspected slavery or trafficking in a supply chain which relates to the Agreement.
- 37.8 If the Supplier notifies the Authority pursuant to Clause 37.7, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
- 37.9 If the Supplier is in Default under Clauses 37.5 or 37.6 the Authority may by notice:
 - 37.9.1 require the Supplier to remove from performance of the Agreement any Sub-contractor or other persons associated with it whose acts or omissions have caused the Default; or
 - 37.9.2 immediately terminate the Agreement.

Environment and Sustainability

- 37.10 The Supplier shall at all times comply with the environmental and sustainability requirements set out in the Specification, in Schedule 2.3 (*Standards*) and in any Authority policy from time to time.

Official Secrets Act and Finance Act

- 37.11 The Supplier shall comply with the provisions of:
 - 37.11.1 the Official Secrets Acts 1911 to 1989; and
 - 37.11.2 section 182 of the Finance Act 1989.

38 ASSIGNMENT AND NOVATION

38.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

38.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

38.2.1 any Central Government Body; or

38.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 38.2.

38.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 38.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

38.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

39 WAIVER AND CUMULATIVE REMEDIES

39.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 39.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

40 RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

41 PREVENTION OF FRAUD AND BRIBERY

- 41.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- 41.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 41.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 41.2 The Supplier shall not during the term of this Agreement:
- 41.2.1 commit a Prohibited Act; and/or
 - 41.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 41.3 The Supplier shall during the term of this Agreement:
- 41.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- 41.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 41.3.3 keep appropriate records of its compliance with its obligations under Clause 41.3.1 and make such records available to the Authority on request; and
 - 41.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 41.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 41.1 and/or 41.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 41.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 41.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 41.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 41.5 If the Supplier makes a notification to the Authority pursuant to Clause 41.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 13 (*Records, Reports, Audits and Assurance and Open Book Data*).
- 41.6 If the Supplier is in Default under Clauses 41.1 and/or 41.2, the Authority may by notice:
- 41.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 41.6.2 immediately terminate this Agreement.
-

- 41.7 Any notice served by the Authority under Clause 41.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

42 SEVERANCE

- 42.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 42.2 In the event that any deemed deletion under Clause 42.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 42.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 42.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 42.3.

43 FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

44 ENTIRE AGREEMENT

- 44.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements,

understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

- 44.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

45 THIRD PARTY RIGHTS

- 45.1 The provisions of Clause 20.1 (*IPRs Indemnity*), Clause 5.18, Paragraphs 2.1 and 2.3 of Part A, Part B and Paragraphs 1.4, 2.3 and 2.8 of Part C of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 45.2 Notwithstanding the generality of Clause 45.1, the Parties agree and acknowledge that any Approved User may use the Goods and Services under this Agreement with the Supplier, and shall be entitled to enforce any rights and remedies of the Authority as if it were its own by virtue of CRTPA.
- 45.3 Subject to Clause 45.1 and 45.2, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 45.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 45.5 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 45.1 and 45.2 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

46 NOTICES

- 46.1 Any notices sent under this Agreement must be in writing.

- 46.2 Subject to Clause **Error! Reference source not found.**, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 46.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact	REDACTED	REDACTED
Address	REDACTED	REDACTED
Email	REDACTED	REDACTED

- 46.4 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

47 DISPUTES

- 47.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 47.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

48 GOVERNING LAW AND JURISDICTION

- 48.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 48.2 Subject to Clause 47 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of)
ABBOTT TOXICOLOGY LIMITED by a)
director:)

Signature: **REDACTED**

Name (block capitals): **REDACTED**

Director

SIGNED for and on behalf of)
MINISTRY OF JUSTICE)
)
)

Signature: **REDACTED**

Name (block capitals): **REDACTED**

Position: **REDACTED**

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 1

DEFINITIONS

Definitions

- 1.1 Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements;
“Achieve”	means in respect of a Milestone, the Approval of achievement of that Milestone in line with the Agreed Mobilisation Plan, and “Achieved” and “Achievement” shall be construed accordingly;
“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Analysis Services”	means the urine and oral fluid laboratory analysis testing as further detailed in Part 5 of the Specification, excluding prevalence testing;
“Agreed Mobilisation Plan”	means the finalised Mobilisation Plan as agreed by both parties in accordance with Schedule 6.1 (Mobilisation Plan);
“Annual Contract Report”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Annual Report”	means the annual report further described in Schedule 8.4 (<i>Reports and Records</i>);
“Annual Revenue”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <p>(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and</p>

- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

“Approve”

means the prior written approval of the Authority and **“Approved”** and **“Approving”** shall be construed accordingly;

“Approved Premises”

means the establishments further described at: [Probation Finder - GOV.UK \(www.gov.uk\)](http://www.gov.uk) as updated from time to time;

“Approved Sub-Licensee”

means any of the following:

- (c) a Central Government Body;
- (d) any third party providing services to a Central Government Body; and/or
- (e) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;

“Approved User”

means any body which the Authority authorises and notifies to the Supplier from time to time to place orders with and take the benefit of this Agreement, which at the date of this Agreement shall include any Private Prison;

“Assets”

means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;

“Associated Person”

has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”

means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

“Assurance”

means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

“Audit”	means any exercise by the Authority of its Audit Rights pursuant to Clause 13 (<i>Records, Reports and Audit</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	means: <ul style="list-style-type: none"> (f) the Authority’s internal and external auditors; (g) the Authority’s statutory or regulatory auditors; (h) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (i) HM Treasury or the Cabinet Office; (j) any party formally appointed by the Authority to carry out audit or similar review functions; and (k) successors or assigns of any of the above;
“Audit Rights”	means the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Authority Assets”	means the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	means: <ul style="list-style-type: none"> (l) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures; and/or (m) IPRs created by the Authority independently of this Agreement; and/or (n) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; but excluding IPRs owned by the Authority subsisting in the Authority Software;
“Authority Cause”	means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (o) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (p) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Authority Data”

means:

- (q) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority or any Approved User; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (r) any Personal Data for which the Authority is the Data Controller; and
- (s) Test Reports;

“Authority Financial Year”

means the consecutive twelve (12) month period from the beginning of 1 April of one calendar year to the end of 31 March of the following calendar year;

“Authority Premises”

means premises owned, controlled or occupied by the Authority and/or any Central Government Body and/or any Approved User which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

“Authority Quality Assurance Provider”

means a suitably qualified UKAS accredited QA professional appointed by the Authority from time to time;

“Authority Requirements”

means the requirements of the Authority set out in Schedules Schedule 2.1 (*Specification*), Schedule 2.2 (*Performance Indicators*), Schedule 2.3 (*Standards*), Schedule 2.5 (*Insurance Requirements*), Schedule 8.4 (*Reports and Records Provisions*), Schedule 8.5 (*Exit Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

“Authority Responsibilities”

means the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*);

“Authority Software”	means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
“Authority System”	means the Authority’s IT system used for the collection and storage of data relating to the Testing of the Samples and the Test Results;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (<i>Financial Distress</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“CE Marking”	means a marking of the letters ‘C’ and ‘E’, or such updated conformity marking as is adopted by the UK from time to time, by which the manufacturer indicates that the Goods are in conformity with all legal requirements to achieve a CE Marking;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (t) Government Department; (u) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (v) Non-Ministerial Department; or (w) Executive Agency;
“Change”	means any change to this Agreement;
“Change Authorisation Note”	means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);

“Change Control Procedure”	means the procedure for changing this Agreement set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	means the Service Charges set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) and any Mobilisation Costs;
“Collection Point”	<p>means any location nominated by the Authority from which the Supplier shall collect Samples as updated from time to time and as further described in the link at section 10 of the Specification and including:</p> <ul style="list-style-type: none"> (a) any Prison (including Private Prisons); (b) any Probation Office; and (c) any Approved Premises.
“Collection Window”	means the period of time specified by the Authority either within an Order, as part of a request for Services or otherwise from time to time, during which the Supplier shall arrange for the available Samples to be collected and taken for Testing;
“Commercially Sensitive Information”	<p>means the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (x) the pricing of the Services; (y) details of the Supplier’s IPRs; and (z) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>

“Comparable Supply”	means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Complaints”	means communication of any issue, Incident, service failure or grievance by the Authority and/or an Approved User or their employees which the Authority and/or an Approved User or their employees come across as part of its receipt of the Goods and/or Services where the provision of such Goods and/or Services deviates from the terms of the Contract;
“Condition Precedent”	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);
“Confidential Information”	means: <ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; or (iii) in the case of any Approved User shall include any information provided by the Approved User; (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement; (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and

- (d) Information derived from any of the above,
but not including any Information which:
- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or
 - (v) relates to the Supplier's:
 - (A) performance under this Agreement; or
 - (B) failure to pay any Sub-contractor as required pursuant to Clause 16.15.1 (*Supply Chain Protection*);

“Contract Change” means any change to this Agreement other than an Operational Change or Drug Change;

“Contract Review Meeting” means the meeting as detailed in Schedule 8.1;

“Contract Year” means:

- (e) the period commencing on the Effective Date until 31st March 2026 (the first Contract Year); or
- (f) the period 1st April 2026 until 31st March 2027 (the second Contract Year); or
- (g) thereafter a period of 12 months commencing on each anniversary of the 1 April 2026;

provided that the final Contract Year shall end on the expiry or termination of the Term;

“Control”

means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Controller”

has the meaning given in the GDPR;

“Corporate Change Event”

means:

- (h) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (i) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (j) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (k) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (l) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (m) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (n) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (o) any member of the Supplier Group stopping payment of its debts generally or becoming unable

to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;

- (p) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (q) any process or events with an effect analogous to those in paragraphs (l) to (n) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Resolution Planning Information”

means, together, the:

- (r) Group Structure Information and Resolution Commentary; and
- (s) UK Public Sector and CNI Contract Information;

“Credit Note”

means the credit note issued by the Supplier to the Authority in line with Schedule 7.1;

“Critical National Infrastructure”

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (t) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (u) significant impact on the national security, national defence, or the functioning of the UK;

“Critical Performance Failure”

means:

- (v) the Supplier accruing in aggregate 20 or more Service Points (in terms of the number of points allocated) in any period of 3 months; or

	(w) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of the Services provided under this Agreement as determined by the Authority and specified in paragraph 10.1 of Part B to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	means the Contracts (Rights of Third Parties) Act 1999;
“Cut-Off Level”	means the level (measured in nanograms per ml (or such other unit as may be set out in the Supplier Solution) of any Drug to be present in a Sample to deliver a positive test result and as further defined in the European Guidelines for Workplace Drug Testing. The Cut-Off Levels for each of the Drugs shall be as set out in the Supplier Solution;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;
“Data Protection Legislation”	means, to the extent applicable: <ul style="list-style-type: none"> (x) the EU GDPR, the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time; and (y) all applicable Law about the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;

“Data Subject 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 their Personal Data or any other request made by or on behalf of a Data Subject in relation to Personal Data processed about that Data Subject;
“Deductions”	means all Service Credits, Compensation for Unacceptable KPI Failure or any other deduction which is paid or payable to the Authority under this Agreement;
“Default”	<p>means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(z) in the case of the Authority, of its employees, servants, agents; or</p> <p>(aa) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Defect”	<p>means:</p> <p>(bb) any error, damage or defect in the manufacturing of the Goods; or</p> <p>(cc) any failure of any Goods to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times);</p>
“Delay”	<p>means:</p> <p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Agreed Transition Management Plan;</p>

“Deliverable”	means an item or feature (including any of the Goods) delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Delivery”	means the delivery of the Goods in accordance with Clause 5.20 and “Deliver” and “Delivered” shall be construed accordingly;
“Delivery Date”	means the delivery date specified on the Order (or where no such delivery date is so specified shall be a date no later than 5 [Working Days] after the date of the Order;
“Delivery Location”	means any one of the nominated locations as set out on the Effective Date in the link at section 10 of the Specification and as updated from time to time by the Authority and notified to the Supplier and which includes the Approved Premises;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Desirable Drug”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Disclosing Party”	has the meaning given in Clause 22.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	means: <ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Crown Body with which the Authority or the Supplier interacts in connection with this Agreement;
“Dispute”	means any dispute, difference or question of interpretation arising out of or in connection with this

Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Notice”

means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

“Dispute Resolution Procedure”

means the dispute resolution procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*);

“Documentation”

means such detailed specification, descriptions of the Services and Performance Indicators, design and technical information, user manuals, instructions for use relating to the Goods, details of the Supplier System user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (c) is required to be supplied by the Supplier to the Authority under this Agreement;
- (d) would reasonably be required by a competent person to administer tests using the Tests or otherwise use the Goods;
- (e) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (f) is required by the Supplier in order to provide the Services; and/or
- (g) has been or shall be generated for the purpose of providing the Services;

“DOTAS”

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868)

made under section 132A of the Social Security Administration Act 1992;

“DPA”

means the Data Protection Act 2018;

“Drugs”

means any of the drugs listed in the Drug Panel;

“Drug Change”

means a change to the Drug Panel in accordance with Paragraph 10 of the Change Control Procedure;

“Drug Panel”

means the panel of Drugs listed at Annex A to Schedule 2.1 (*Specification*), as the same may be updated from time to time in accordance with Paragraph 10 of the Change Control Procedure;

“Due Diligence Information”

means any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

“Effective Date”

means the later of:

- (h) the date on which this Agreement is signed by both Parties; and
- (i) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

“EIRs”

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

“Employee Liabilities”

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (j) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (k) unfair, wrongful or constructive dismissal compensation;

- (l) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (m) compensation for less favourable treatment of part-time workers or fixed term employees;
- (n) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (o) employment claims whether in tort, contract or statute or otherwise;
- (p) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“End User” means any persons in receipt of the Services and/or administering the Tests;

“EU GDPR” means the General Data Protection Regulation (EU) 2016/679;

“Euro Compliant” means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

- (q) be able to perform all such functions in any number of currencies and/or in euros;

- (r) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
- (s) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (t) incorporate protocols for dealing with rounding and currency conversion;
- (u) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (v) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

“Exit Management”

means the services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (*Exit Management*);

“Exit Plan”

means the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (*Exit Management*);

“Expedited Dispute Timetable”

means the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (*Dispute Resolution Procedure*);

“Expert”

has the meaning given in Schedule 8.3 (*Dispute Resolution Procedure*);

“Expert Determination”

means the process described in Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*);

“Extension Period”

means a period or periods each of not less than 12 months up to a total maximum of 24 months from the end of the Initial Term;

“Financial Distress Event”	means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Remediation Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
“Financial Model”	has the meaning given to it in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Forecast Threshold”	means the level of Goods forecasted by the Authority in any Service Period in accordance with Clause 5, plus 20%;
“FRT”	means the financial response template as submitted as part of the Supplier Solution;

“General Anti-Abuse Rule”	means: <ul style="list-style-type: none"> (w) the legislation in Part 5 of the Finance Act 2013; and (x) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of goods and/or services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	means any goods to be provided by the Supplier to the Authority meeting the requirements of the Specification (including without limitation any Tests and Test Devices) together with any Documentation;
“Group Structure Information and Resolution Commentary”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 1 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Guarantee”	means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
“Guarantor”	means Abbott Laboratories , a company registered in the United States of America with company number SEK CIK # 0000001800 and whose registered office is in the state of Illinois whose principal office is at 100 Park Road, Abbott Park, Illinois, 60064-6400 ;
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to

	the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by any applicable regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
High Volume	means the volume of the Goods and Services in any Contract Year that would attract Rates applicable to such high volumes as set out in Annex B of the Specification;
“HMRC”	means HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Incident”	means any issue, disruption or event which hinders or prevents the Supplier from providing the Services to the standard required under this Agreement;
“Indemnified Person”	means the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Information”	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	means the period commencing on the 16 th July 2025 and ending on 15th July 2030;

“Insolvency Event”

with respect to any person, means:

- (y) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (z) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (aa) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (bb) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days;
- (cc) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (dd) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is

passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
- (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
- (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

- (ee) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Intellectual Property Rights” or “IPRs”

means:

- (ff) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (gg) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (hh) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPRs Claim”	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Specification or the provisions of this Agreement;
“IT”	means information and communications technology;
“IT Environment”	means the Authority System and the Supplier System;
“Key Performance Indicator”	means the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Key Sub-contract”	means each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	means any Sub-contractor: <ul style="list-style-type: none"> (ii) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (jj) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
“Know-How”	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
“KPI Failure”	means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	means the threshold set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);

“Law”	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“LED”	means the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
“Losses”	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Low Volume”	means the volume of the Goods and Services in any Contract Year that would attract Rates applicable to such low volumes as set out in Annex B of the Specification ;
“Management Information”	means the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority and any other such management information as requested by the Authority from time to time;
“Material KPI Failure”	means: <ul style="list-style-type: none"> (a) a Severe KPI Failure; or (b) a failure by the Supplier to meet a KPI Service Threshold;
“Measurement Period”	means, in relation to a Key Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Medium Volume”	means the volume of the Goods and Services in any Contract Year that would attract Rates applicable to such medium volumes as set out in Annex B of the Specification;

“Milestone”	means an event or task described in the Agreed Mobilisation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Date”	means the target date set out against the relevant Milestone in the Agreed Mobilisation Plan by which the Milestone must be Achieved;
“Minor KPI Failure”	shall have the meaning as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Mobilisation Period”	means the period from the Effective Date to the acceptance of the final Milestone in the Agreed Mobilisation Plan, or as extended in accordance with Clause 6.4.
“Mobilisation Costs”	means the Charges payable in relation to the delivery of the Agreed Mobilisation Plan calculated in accordance with paragraphs 2 and 4 of Schedule 7.1 (Charges and Invoicing);
“Mobilisation Services”	means the services and Deliverables (including the Pilot) required for the completion of the Agreed Mobilisation Plan;
“month”	means a calendar month and “ monthly ” shall be interpreted accordingly;
“Monthly Average Charge”	means the average of the first Contract Year charges (as set out in the Financial Model submitted with the Supplier Tender) and thereafter shall be the average of the contract value incurred in the immediately preceding 12 months for each subsequent Contract Year;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);

“Notifiable Default”	shall have the meaning given in Clause 29.1 (<i>Rectification Plan Process</i>);
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none"> (c) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (d) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Operating Environment”	means the Authority Premises, Authority System, Equipment and operational processes and procedures of the Authority;
“Operational Change”	<p>means any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> (e) will not affect the Charges and will not result in any other costs to the Authority; (f) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;

	(g) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and
	(h) will not require a change to this Agreement;
“Operational Commencement Date”	means 16 July 2025 or such other date agreed between the Parties in the event that the Mobilisation Period and/or Pilot Period are extended;
“Operational Contract Manager”	means the individuals appointed as such by the Authority and the Supplier in accordance with Clause 12.3 (<i>Representatives</i>);
“Order”	means an order for the purchase of Services and/or Goods issued from time to time by the Authority or any Approved User in accordance with clause 5.12 (Ordering Process);
“Other Supplier”	means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Outline Mobilisation Plan”	means the outline mobilisation plan set out in Schedule 4.1 (Supplier Solution);
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 34.5 or 34.6 or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Failure”	means a KPI Failure;
“Performance Indicators”	means the Key Performance Indicators;
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR;

“Personal Data Breach”	has the meaning given in the UK GDPR;
“Pilot”	means the delivery of the Pilot Goods and Services at the Pilot Establishments, as further described at section [X] of the Specification, the details of which shall be further described and Approved as part of the Agreement Mobilisation Plan;
“Pilot Establishments”	means the limited Authority Premises listed in Annex F of the Specification;
“Pilot Goods and Services”	means the Goods and Services to be provided as part of the Pilot as set out in Annex F of the Specification (which shall include Analysis Services) and further described and Approved as part of the Agreed Mobilisation Plan;
“Pilot Period”	means the period from and including the date Approved and set out within the Agreed Mobilisation Plan until the Operational Commencement Date;
“Policies”	means any Authority policies in place from time to time and notified to the Supplier;
“Prison(s)”	shall have the meaning given to it in the Specification;
“Private Prison(s) or Privately Managed Prisons”	shall have the meaning given to it in the Specification;
“Processor”	has the meaning given to it under the UK GDPR;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Supplier and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
“Prohibited Act”	means: <ul style="list-style-type: none"> (i) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity;
- (j) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (k) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (l) any activity, practice or conduct which would constitute one of the offences listed under (k) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures”

means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Project Specific IPRs”

means:

- (m) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or

	<p>(n) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement; and/or</p> <p>(o) the Test Reports;</p> <p>but shall not include the Supplier Background IPRs;</p>
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Public Sector Prison”	shall have the meaning given to it in the Specification;
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
“Quarter”	means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
“Rates”	means the rates of Charges applicable to the relevant Volumes as set out in Annex 1 of Schedule 7.1;
“Rebate”	means the discount applied to the Charges (and calculated in accordance with paragraph 3.4 of Schedule 7.1) which reflects the applicable Rates in relation to the actual Volumes incurred in a Contract Year;
“Recipient”	has the meaning given in Clause 22.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	means:

- (p) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 29.4 (*Submission of the draft Rectification Plan*) or 29.8 (*Agreement of the Rectification Plan*);
- (q) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 29.7 (*Agreement of the Rectification Plan*);
- (r) the Supplier failing to rectify a material Default or a material failure to otherwise comply with the Authority Requirements within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 29.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default (or where no such date is specified by the new Contract Review Meetings;
- (s) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (t) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process” means the process set out in Clauses 29.4 (*Submission of the draft Rectification Plan*) to 29.10 (*Agreement of the Rectification Plan*);

“Registers” has the meaning given in Schedule 8.5 (*Exit Management*);

“Reimbursable Expenses”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement including the Supplier Background IPRs and the Third Party IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Authority Data and/or the Authority System;
“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	means a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 31.2 (<i>Authority Cause</i>);
“Replacement Services”	means any goods or services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Retained Stock”	shall have the meaning given to it in Clause 5.10;
“Request For Information”	means a Request for Information under the FOIA or the EIRs;

“Required Action”	has the meaning given in Clause 30.1.1 (<i>Step-In Rights</i>);
“Sample”	means any urine or other sample provided by a Test Recipient for the purposes of conducting a Test;
“Senior Business Owner”	means the duly authorised senior representative of the Authority appointed from time to time;
“Service Charges”	means the payments calculated and made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Goods and Services and the Pilot Goods and Services but excluding any Mobilisation Services;
“Service Continuity Plan”	means any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;
“Service Credit Cap”	means: <ul style="list-style-type: none"> (u) in the first Contract Year, 8% of the estimated Charges for the first Contract Year (as set out in the Financial Model submitted with the Supplier Tender); and (v) during the remainder of the Term, 8% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;
“Service Credits”	means credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Period”	means a calendar month, save that: <ul style="list-style-type: none"> (w) the first service period shall begin on the Effective Date and shall expire at the end of the calendar month in which the Effective Date falls; and (x) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

“Service Points”	means, in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Services”	means any and all of the services to be provided by the Supplier under this Agreement, including those set out in the Specification and for the avoidance of doubt, including the Analysis Services, the Pilot Goods and Services and the Mobilisation Services;
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Specification”	means the services description set out in Schedule 2.1 (<i>Specification</i>);
“Severe KPI Failure”	shall have the meaning set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Sites”	<p>means any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(y) from, to or at which:</p> <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or <p>(z) where:</p> <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with the Authority System takes place;
“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Social Value”	means the social, economic or environmental benefits set out in the Authority’s Requirements;

“Specific Change in Law”	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Standards”	means the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 30.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	means: <ul style="list-style-type: none"> (aa) any event falling within the definition of a Supplier Termination Event; (bb) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (cc) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement; (dd) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 30 (<i>Step-In Rights</i>) is necessary; (ee) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (ff) a need by the Authority to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 30.5.2 (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor)

and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor”

means any third party with whom:

(gg) the Supplier enters into a Sub-contract; or

(hh) a third party under (gg) above enters into a Sub-contract,

or the servants or agents of that third party;

“Sub-processor”

means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;

“Subsidiary Undertaking”

has the meaning set out in section 1162 of the Companies Act 2006;

“Successor Body”

has the meaning given in Clause 38.4 (*Assignment and Novation*);

“Supplier Background IPRs”

means:

(ii) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or

(jj) Intellectual Property Rights created by the Supplier independently of this Agreement,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services;

“Supplier Contract Liaison”

means the individual appointed by the Supplier pursuant to Clause 12.5 (*Representatives*) who at the Effective Date shall be the person named in Schedule 8.1 (Governance);

“Supplier Equipment”

means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but

	not hired, leased or loaned from the Authority) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-Performance”	has the meaning given in Clause 31.1 (<i>Authority Cause</i>);
“Supplier Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Solution”	means the Supplier's solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Tender”	means the Supplier’s tender response to the Authority’s advertisement on Find a Tender Service as further described in the Introduction to this Agreement (which includes without limitation the Supplier Solution and the Financial Model);
“Supplier Termination Event”	means: <ul style="list-style-type: none"> (kk) the Supplier’s level of performance constituting a Critical Performance Failure; (ll) the Supplier committing a material Default which is irremediable; (mm) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed

80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 26.4.4 (*Financial and other Limits*);

- (nn) a failure to deliver the Mobilisation Services in accordance with the Agreed Mobilisation Plan;
- (oo) a Rectification Plan Failure;
- (pp) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 20 (*IPRs Indemnity*);
 - (ii) Clause 41.6.2 (*Prevention of Fraud and Bribery*); and/or
 - (iii) Paragraph 6 of Schedule 7.4 (*Financial Distress*);
 - (iv) Paragraph 12 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (qq) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (*Warranties*) being materially untrue or misleading;
- (rr) the Supplier committing a material Default under Clause 11.9 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 11.9 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (ss) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5 (*Services*);
 - (ii) Clause 24 (*Protection of Personal Data*);
 - (iii) Clause 23 (*Transparency and Freedom of Information*);
 - (iv) Clause 22 (*Confidentiality*); and
 - (v) Clause 37 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2.1 (*Specification*), or otherwise notified to the Supply by the Authority; and/or

in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);

- (tt) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (uu) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (vv) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control;
- (ww) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 16.10 (*Appointment of Key Sub-contractors*);
- (xx) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*);
- (yy) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;

	(zz) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;
“Supply Chain Transparency Report”	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Target Performance Level”	means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Term”	means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Notice”	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	means the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test(s)”	means a test of a Sample for the detection of a Drug(s) administered by the Supplier and “Testing” and “Tested”

shall be construed accordingly and shall include, without limitation, Test Devices and any prevalence test or analysis test as further described in the Specification;

“Test Devices”

means those Goods comprising testing devices for the identification of Drugs within a Sample and any other consumables necessary to complete the Drug Test including without limitation any swabs, sample pots, tamper strips and any necessary guidance or instructions;

“Test Recipient”

means any prisoner or other individual who provides a Sample for the purposes of a Test;

“Test Report”

means a report prepared by the Supplier in the form stipulated by the Authority detailing the Test, Test Result and any further information as may be reasonably requested by the Authority from time to time;

“Test Result”

means the result of the Test of a Sample to be set out in a Test Report;

“Test Result Failure”

means a failure of the Services or Goods during a validation exercise to identify a Drug in a Sample containing not less than the Cut-Off Level of such Drug, based on the processes, procedures and designs for such Test as set out in the Supplier Solution;

“Third Party Beneficiary”

has the meaning given in Clause 45.1 (*Third Party Rights*);

“Third Party IPRs”

means Intellectual Property Rights owned by a third party [but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software];

“Third Party Provisions”

has the meaning given in Clause 45.1 (*Third Party Rights*);

“Third Party Software”

means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (*Software*);

“Transferring Authority Employees”

has the meaning given in Schedule 9.1 (*Staff Transfer*);

“Transferring Former Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Retained Stock”	has the meaning given in Paragraph 7.3.2 of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transparency Information”	has the meaning given in Clause 23.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“UK”	means the United Kingdom;
“UK GDPR”	the UK General Data Protection Regulation;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Unacceptable KPI Failure”	means the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	means any third party with whom the Supplier enters into an Unconnected Sub-contract;

“Valid”	means, in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Value for Money”	<p>has the meaning given to it by the National Audit Office at the following link Assessing value for money- (nao.org.uk) (as updated or amended from time to time) namely:</p> <ul style="list-style-type: none"> • Economy – minimising the cost of resources used or required (inputs) i.e. spending less; • Efficiency – the relationship between the output from goods or services and the resources to produce them must be efficient i.e. spending well; and • Effectiveness – the relationship between the intended and actual results of public spending (outcomes) must be effective i.e. spending wisely; as well as • Equity – the extent to which services are available to and reach all people that they are intended to i.e. spending fairly.
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Volumes”	means the actual volumes of Goods and Services ordered by the Authority in any given Service Period during each Contract Year;
“Weekly Collection”	shall have the meaning given to it in Clause 5.16;
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 2.1

SPECIFICATION

SPECIFICATION OF REQUIREMENTS

Lot 1 - Drug Testing: Laboratory Analysis Goods, Services and Prevalence Testing

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Part 1 – Introduction

1 Definitions

All defined terms used in this Specification shall have the same meaning as set out in the Agreement or the ITT unless otherwise expressly stated.

Agreement	means the contract between the Authority and the Supplier for the provision of the Goods and Services
Analysis Method	means the method by which Samples are analysed to determine a positive or negative result indicating presence, or not, of an illicit substance
Approved Premises (APs)	means the establishments further described at: Probation Finder – GOV.UK (www.gov.uk) as updated from time to time
Approved User	means any person or body which the Authority authorises and notifies to the Supplier to place orders with and take the benefit of this Agreement, which at the date of the Agreement shall include any Privately Managed Prison
Authority	means the Ministry of Justice acting on behalf of His Majesty's Prison and Probation Service (HMPPS)
NDC Branston	means the Authority's warehouse facility as further described in Section 10 Logistics below
Complaint/Incident	means the communication of any issue, incident service failure or grievance by the Authority and/or an Approved User or their employees which the Authority and/or an Approved User or their employees come across as part of its receipt of the Goods and/or Services where the provision of such Goods

and/or Services deviates from the terms of the Agreement

Cut-off Level

means the level (measured in nanograms per ml (or such other unit as may be set out in the Supplier Solution) at or above a drug/metabolite of a drug is detected to determine a Test Result is positive, to the standard of proof required for the relevant testing scenario. Cut-off Levels are further defined in the European Guidelines for Workplace Drug Testing. The Cut-off Levels for each of the Drugs and testing methods shall be as set out in the Supplier Solution

Delivery Location

means any one of the nominated locations as set out on the Operational Commencement Date in the link at Section 10 of this Specification and as updated from time to time by the Authority and notified to the Supplier and which includes the Approved Premises

Drugs Panel

means the panel of Drugs listed within Annex A to this Specification, as the same may be updated from time to time in accordance with the Agreement

FRT

means the finance response template provided as part of the Tender Process and completed as part of such process by the Supplier

Goods

means any goods to be provided by the Supplier to the Authority meeting the requirements of the Specification (including without limitation any kit required for testing) together with any Documentation

HMPPS

His Majesty's Prison and Probation Service (HMPPS) is an executive agency, sponsored by the Ministry of Justice. HMPPS carry out sentences given by the courts, in custody and

	the community, and rehabilitate people in their care through education and employment
IAPs	Independent Approved Premises (IAPs) are APs operated by Private Suppliers, under contract to the Ministry of Justice
Mobilisation Milestones	means the milestones contained at Table A of Annex F to this Specification
Mobilisation Plan	means the plan to be produced by the Supplier in accordance with Section 29.1 of this Specification
Mobilisation Period	means the period during which the Supplier shall deliver the Mobilisation Services as described in further detail in the Agreement
Operator/User	means the HMPPS member of staff collecting the sample to be tested
Pilot	means the activity to be delivered pursuant to Annex F of this Specification
Prevalence Study	studies of drugs prevalence within Prison and Probation settings
Prison	means all establishments listed and updated here . Some elements of this Specification apply equally to both publicly and Privately Managed Prisons, without differentiation
Private Suppliers	a private sector Supplier, charity or other operating entity providing a service to the Authority under contract
Privately Managed Prisons	means Prisons which are operated by Private Suppliers, under contract to the Ministry of Justice

Probation Site	means a site used by the Probation Service that is not an AP or IAP
Public Sector Prisons	means Prisons which are operated by the Authority
Sample	means any urine or oral fluid sample provided by a Test Recipient for the purposes of conducting a Test
Services	means any and all of the services to be provided by the Supplier under the Agreement, including those set out in this Specification and for the avoidance of doubt
Specification	means this document setting out the detail of the Goods and Services
SOPs	standard operating procedures
Supplier	means the organisation who provides the Goods and Services under the Agreement
Supplier Solution	means the Supplier's proposed solution to delivering the Goods and Services as set out in its Tender Response
Tender Process	means the procurement procedure conducted by the Authority for the provision of the Goods and Services set out in this Specification
Tender Response	means a Bidder's response to the Tender Process
Test(s)	means a test of a Sample for the detection of a Drug(s) administered by the Supplier and Testing and Tested shall be construed accordingly and shall include without limitation any prevalence test or analysis test as further described in the Specification

Test Recipient means any offender or other individual who provides a Sample for the purposes of a Test

2 Scope of Specification

- 2.1 The scope of this Specification will cover testing for misuse of Drugs across custodial and community HMPPS settings as detailed in this Specification.
- 2.2 The Analysis Methods finalised throughout the Tender Process will also form the scope of the Goods and Services provided under the Agreement (the Scope).
- 2.3 The Scope is accurate at the time of publication of this Specification. However, the Authority reserves the right to change the Scope of the Agreement throughout the Term in accordance with the terms of the Agreement.
- 2.4 Any future amendments to the Scope must be undertaken in line with the Change Control Procedure. Examples of potential amendments include changes to the design of testing programmes, or the introduction of new testing programmes in response to government policy.
- 2.5 References to Testing Volumes for any element of the Services specified in this document, and any supporting documents contained in the invitation to tender (ITT) are speculative and subject to change throughout the life of the Agreement. This is due to the testing needs across HMPPS being a demand-led service driven by external factors and government policy, many of which sit outside the direct control of the Authority.
- 2.6 The Authority is committed to continually reviewing the evidence base for drug testing programmes across prison and probation settings. This work will continue during the lifespan of this Agreement. Reviewing the evidence base will seek to establish the extent to which drug testing supports the aims of ["From Harm to Hope"](#), the Government's 10-year drug strategy. As such, Testing Volumes will be monitored throughout the lifetime of the Agreement. Volume forecasts will be provided by the Authority on a quarterly basis to assist planning.

3 Introduction to His Majesty's Prison and Probation Service (HMPPS)

- 3.1 HMPPS works with partners to carry out the sentences given by the courts, either in custody or the community.
- 3.2 HMPPS reduces reoffending by rehabilitating the people in its care by working with them to address their offending related needs, developing their strengths and enhancing opportunities to access education and employment.
- 3.3 HMPPS delivers the Government's vision and investment to make Prisons, places of safety and reform and ensuring probation services support the rehabilitation of offenders while protecting the public.

4 Drug Testing

- 4.1** Drug Testing is a key strategic tool in tackling substance misuse in both custody and the community. The Testing of prisoners and people on probation for illicit use of substances are long standing instruments used to measure the prevalence of drug use within the criminal justice system and to help manage risk of harm and reoffending.
- 4.2** Drug Testing is currently carried out in a range of scenarios across both custodial and community settings. The legal basis for Drug Testing differs, depending on the context in which a Test is carried out, and the intended consequences of Testing for the individual concerned. The range of drugs that can be tested for varies across prison and probation settings and programmes, as detailed in Annex A of this Specification.
- 4.3** Whilst the expectation is that the Scope and volume of these requirements may evolve with changing legislation, policy and operational requirements during the term, the current necessary Drug Testing and analysis scenarios for this Agreement includes (without limitation):
- 4.3.1** Urine Testing and Laboratory Analysis – Public Sector Prisons, Privately Managed Prisons and Approved Premises.
 - 4.3.2** Oral Fluid Testing and Laboratory Analysis – Various Probation Service community settings.
 - 4.3.3** Prevalence Studies – Prisons and Probation Services.

Part 2 – Drug Testing in Prisons

5 Background and Introduction

5.1 As of April 2023, there are 122 Prisons in England and Wales; 107 Public Sector Prisons and 15 Privately Managed Prisons, with a total Prison population of around 84,000. The Authority intends to deliver 15,000 additional Prison places by 2027.

5.1.1 Substance misuse threatens the stability of Prisons, and results in greater incidence of violence, abuse and debt. The types of substances that are being misused within the offender population are changing rapidly. Drug Testing is a key tool for enabling the Authority to understand and respond to the changing nature of substance use within Prisons. For all forms of Drug Testing in Prisons, the Authority requires a service in place which delivers:

- (a)** The ability to carry out Testing, to a high degree of sensitivity (as demonstrated by Cut-Off Levels), for a wide range of controlled drugs, pharmacy and prescription medications, and psychoactive substances;
- (b)** The ability to demonstrate innovative methods and practices to enhance the efficiency of Drug Testing and future-proof services;
- (c)** The ability to provide a service that is highly flexible to both the operational needs of the Authority and changes in drug use trends and legislative requirements; and
- (d)** The ability to test for new and emerging substances, determined by substance misuse within Prisons.

5.2 The two key scenarios for Drug Testing in Prisons which are required by this Agreement are:

5.3 Mandatory Drug Testing (MDT) – Urine

There are five circumstances in which a prisoner can be required to provide a supervised urine sample to enable a mandatory drug test (MDT) to be carried out within all prisons in England and Wales:

- 5.3.1** After being selected for random mandatory testing (rMDT) (provided none of a set list of exemptions apply). rMDT is carried out on at least 5–10% (and no more than 15%) of prisoners each month.
- 5.3.2** Upon reception into a prison.
- 5.3.3** Where there is a reasonable suspicion that a prisoner has used drugs (sMDT).
- 5.3.4** As part of a frequent testing programme to assess compliance.

- 5.3.5** To manage risks associated with substance misuse within the prison environment.
- 5.4** MDTs can be used for evidential purposes in cases referred to the prisoner adjudications process.
- 5.5 MDT processes must be supported by chain of custody procedures that support the integrity of analysis.
- 5.6 The results of MDT testing provided to prisons by the Supplier must include advice relating to appropriate charges that can be laid under the [Prison Rules 1999](#). This must be provided using standard wording agreed with Authority.
- 5.7 Precise Volumes will fluctuate in line with the overall Prison population and required policy changes as per Sections 2.5 and 2.6.
- 5.8 The procedures for the conduct of MDT in prisons is set out in [PSO 3601: Mandatory Drug Testing](#). This policy document is currently undergoing review and will be updated to coincide with the award of this Agreement, updates are needed to reflect the winning Bidders processes etc. and any changes to the Drugs Panel.
- 5.9 Prevalence Studies which are covered in Part 5 of the Specification.

Part 3 – Drug Testing in Community Settings

6 Background and Introduction

- 6.1** As of April 2023, there were around 240,000 people under Probation Service supervision in England and Wales.
- 6.2** The current rate of community Testing will vary in line with local factors, however, a summary of expected screening and confirmatory Test Volumes for each Authority testing programme has been provided in Annex B. These figures are estimates and are subject to variation in line with factors beyond the Authority's control.
- 6.3** The key considerations for Drug Testing in community settings are as follows:
- 6.3.1** Community Testing processes must be supported by chain of custody procedures that support the integrity of analysis.
 - 6.3.2** Testing methods must be able to be used by existing probation staff within premises that do not have dedicated Drug Testing facilities.
- 6.4** The Goods and Services must be provided to meet the needs of the following Testing scenarios:
- 6.4.1** Drug Testing in Approved Premises (Urine) – APs are residential premises which provide intensive supervision for those who present a high or very high risk of serious harm. They are mostly used for people on licence, but they also accommodate small numbers of people on bail or community sentences. AP residents are Drug Tested when required by staff to monitor the Drug-free status of APs and to increase the take-up of treatment by those who need it.
 - 6.4.2** The Supplier must demonstrate how they could meet forecasted supply volumes in line with the Supply Stability Report (as set out in Annex B and Annex E). As noted in 2.5, these volumes may be subject to change.
 - 6.4.3** Drug Testing on Licence (Oral Fluid): Offenders released from Prison can be given licence conditions requiring them to consent to Drug Testing if they have a dependency upon or propensity to misuse Class A or B drugs as defined by the [Misuse of Drugs Act 1971](#), and that misuse is likely to be related to past or future offending. The decision to carry out Testing, and the frequency of Testing is at the discretion of HMPPS staff.
 - 6.4.4** The [Offender Rehabilitation Act 2014](#) restricts the substances that are in scope for testing of individuals on licence to: cocaine (including crack cocaine), opiates, cannabis and amphetamines.
 - 6.4.5** Legislation controlling the range of substances tested for in the community may change, and so the Authority will consider the full range

of testing capability to enable a rapid addition of new substances as permitted by law.

- 6.5** Drug Testing under a Drug Rehabilitation Requirement (DRR) (Oral Fluid): A DRR is given as a component of a community order or suspended sentence order and can be given when the court is satisfied that an offender is dependent on or misuses substances, and that treatment is likely to help and is available. Legislation permits the Authority to Test for any controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 as part of a DRR.
- 6.6** Testing as part of a DRR is currently restricted to lab-based oral fluid testing. DRR testing for criminal justice purposes was introduced in February 2023. As such, this is a recent addition to the Authority drug testing programmes, therefore Volume figures will require monitoring. The Volume of Testing required during the Term will be impacted by various external factors, eg the volume of DRRs awarded by the Courts, and the length of awards made. A summary of expected screening and confirmatory Test Volumes has been provided in Annex B. These figures are estimates and are subject to variation in line with factors beyond the Authority's control.
- 6.7** Drug testing as part of the Intensive Supervision Courts (ISCs) pilot. The pilot will divert offenders with complex needs away from short custodial sentences, providing wraparound support to address drug and alcohol use and other drivers of criminal behaviour.
- 6.8** Drug testing is a core component of the ISC model. Offenders will be tested on a frequent and random basis throughout the course of their order to give the Probation Service a comprehensive picture of their compliance, progress, and risk. Progress will be monitored by a single judge who will hold regular reviews with the offender throughout their order. The judge can issue privileges and sanctions in response to the individual's compliance and progress (eg by adjusting the frequency of drug testing).
- 6.9** The Police, Crime, Sentencing and Courts (PCSC) Act 2022 introduced a new power expanding drug testing beyond DRRs for the ISC pilots, enabling probation practitioners to conduct the same rigorous level of testing to ISC participants with a substance misuse need, whether or not the offender has a DRR as part of their order.
- 6.10** As with DRR testing, ISC testing is currently restricted to lab-based oral fluid testing. ISC testing was introduced in June 2023. As such, this is a recent addition to the Authority drug testing programmes, therefore volume figures will require monitoring. The Volume of Testing required during the Term will be impacted by various external factors. A summary of expected screening and confirmatory Test Volumes has been provided in Annex B. These figures are estimates and are subject to variation in line with factors beyond the Authority's control.
- 6.11** Prevalence Studies which are covered in Part 5 of the Specification.

Part 4 – General Product (Goods) and Service Requirements

7 Summary of Requirements

- 7.1 **Table 1** summarises the Goods required under this Agreement for urine testing.
- 7.2 **Table 2** summarises the Goods required under this Agreement for oral fluid testing.
- 7.3 **Table 3** summarises the Services required under this Agreement.
- 7.4 The Goods and Services supplied as part of this Agreement must identify all essential Drugs annotated in Annex A for each Testing scenario requirement noted in Section 5 and Section 6 of this Specification.
- 7.5 A summary of expected screening and confirmatory Test Volumes for each Authority testing programme has been provided in Annex B. These figures are estimates and are subject to variation in line with factors beyond the Authority's control. All volume data provided is for illustrative purposes only and should be treated as best estimates at the time of publication of this Specification. The volumes provided are not binding and the Authority is not obligated to purchase the stated volumes.

Table 1

Urine Testing	Public Sector Prisons	Privately Managed Prisons (PMPs)	Probation Service Approved Premises (and independent APs)	Other Probation Locations
Kit Contents	(a) Containers to allow the collection of two "split" Samples (clearly marked "A" and "B") for Prisons (and PMP's). (b) Containers to allow the collection of a single Sample for APs. (c) Packaging for transportation to the Supplier which must include the ability to track individual Samples from the point of collection from the Authority to the completion of lab analysis, including into storage. (d) Paperwork required to administer the Test should be packaged and delivered in			Not Required

Urine Testing	Public Sector Prisons	Privately Managed Prisons (PMPs)	Probation Service Approved Premises (and independent APs)	Other Probation Locations
	<p>a manner that enables paperwork to be easily linked to each Sample.</p> <p>(e) Tamper-proof seals must be provided with all Sample collection kits.</p> <p>(f) Chain of custody documentation/procedures and instructions for staff overseeing sample collection.</p> <p>(g) The Sample collection kits, and any packaging provided by the Supplier must be of suitable construction to prevent loss or contamination of sealed Samples both during collection and any required transportation and off-site handling.</p> <p>(h) The Sample collection kits must meet CE or equivalent standards as a minimum.</p>			
Ordering	Single purchase order (PO) set up centrally. Replenishment of Goods required by Supplier. Costs drawn off the standard PO.	Privately Managed Prisons will place orders from NDC Branston. There is no requirement for the Supplier to deliver direct to PMPs.	APs order via the catalogue on the Authority's electronic platform. IAPs order direct from Supplier.	Not Required
Goods Levels and Replenishment	Supplier is required to maintain a sufficient number of Goods in line with the Supplier's lead time to meet the Authority's needs.			Not Required

Urine Testing	Public Sector Prisons	Privately Managed Prisons (PMPs)	Probation Service Approved Premises (and independent APs)	Other Probation Locations
t Requirements	HMPPS central stock, ie stored at NDC Branston, level requirements will be set by HMPPS and monthly reports on Goods stock provided to Supplier for replenishment.		No central stock of Goods held for AP's. The Authority reserves the right to review and change the delivery location/s at any point throughout the contract Term.	
Volumes* *more detailed estimates are contained within the FRT.	Bulk orders to cover national requirement. Volume will vary depending on monthly stock reports from NDC Branston. Supplier required to re-stock Goods to agreed level. A summary of expected screening and confirmation Test Volumes is provided in Annex B.		Volumes will vary locally depending on need. A summary of expected screening and confirmation Test Volumes is provided in Annex B.	Not required
Delivery Location	Into central location (NDC Branston)		To individual AP's and IAPs	Not required
Delivery Frequency	Quarterly. Occasional ad-hoc requirements.		Quarterly.	Not required

Urine Testing	Public Sector Prisons	Privately Managed Prisons (PMPs)	Probation Service Approved Premises (and independent APs)	Other Probation Locations
			Occasional ad-hoc requirements. The Authority reserves the right to review and change the delivery location/s at any point throughout the contract Term.	

Table 2

Oral Fluid Testing	Public Sector Prisons	Privately Managed Prisons (PMP's)	Probation Service Approved Premises	Probation Sites
Kit Contents	Not Required			<p>(a) Sample collection kit</p> <p>(b) Packaging for transportation to the Supplier which must include the ability to track individual Samples from arrival at the Supplier site to storage and destruction following analysis.</p>

Oral Fluid Testing	Public Sector Prisons	Privately Managed Prisons (PMP's)	Probation Service Approved Premises	Probation Sites
				<p>(c) Paperwork required to administer the Test should be packaged and delivered within in a manner that enables paperwork to be easily linked to each Sample Tamper-proof seals must be provided with all Sample collection kits.</p> <p>(d) Chain of custody documentation/p rocedures and instructions for staff overseeing sample collection.</p> <p>(e) The Sample collection kits, and any packaging provided by the Supplier must be of suitable construction to prevent loss or contamination of sealed Samples both during collection and any required transportation and off-site handling.</p>

Oral Fluid Testing	Public Sector Prisons	Privately Managed Prisons (PMP's)	Probation Service Approved Premises	Probation Sites
				(f) The Sample collection kits must meet CE or equivalent standards as a minimum.
Ordering	Not Required			Orders placed by Probation sites or hubs overseeing several Probation sites.
Volumes* *more detailed estimates are contained within the FRT.	Not Required			Volumes will vary locally depending on need. A summary of expected screening and confirmation Test Volumes is provided in Annex B.
Delivery	Not Required			Individual Probation Sites or hubs. The Authority reserves the right to review and change the delivery location/s at any point throughout the contract Term.
Frequency	Not Required			Quarterly. Occasional ad-hoc requirements.

Table 3 – Services

Test Type	Location	Public Sector Prisons	Privately Managed Prisons	Approved Premises	Probation Offices
Urine and Oral Fluid	Collection Type	<p>The Supplier must provide a courier solution to transport Samples from Collection Points to the Supplier.</p> <p>Samples must be collected from a Collection Point during the Collection Window and in accordance with the Delivery Date specified as further detailed in Schedule 2.2 of the Agreement .</p> <p>Collections will likely be required from Prisons, PMPs and APs on average once weekly. This is an estimation and is subject to change.</p> <p>All transport costs must be priced as per the FRT.</p> <p>Expediated collections may occasionally be requested.</p>			<p>The Supplier must provide pre-paid packaging to enable the return of Samples via post.</p> <p>Due to the limited number of Samples per week and high number of Collection Points, it is not deemed viable for a courier solution at this time.</p> <p>The Authority reserves the right to request collections at points throughout the Term.</p>
	Ordering of analysis	Ordered via the Supplier Solution.			
	Invoicing	<p>Urine Tests</p> <p>All MDT kit and analysis Services for Prisons and AP's are funded centrally by HMPPS HQ.</p> <p>The Supplier will invoice HMPPS monthly for Services provided and submit the required data</p>			<p>Oral Fluid</p> <p>Individual sites will be invoiced for the Services ordered.</p>

Test Type	Location	Public Sector Prisons	Privately Managed Prisons	Approved Premises	Probation Offices
		detailed in this Specification to verify the invoiced amount.			
	Estimated volumes* *more detailed estimates are contained within the FRT.	A summary of expected volumes is provided in Annex B.			A summary of expected volumes is provided in Annex B.
	Frequency	As required according to Testing scenarios.			
	Analysis	<p>Must be completed, and Test Results shared within 72 hours of receipted arrival at the Supplier site (exclusive of weekends 00.00 Hrs Saturday to 23.59 Sunday and recognised Bank Holidays).</p> <p>For Samples sent by post, Analysis must be completed, and Test Results shared within 72 hours of receipted arrival at the Supplier site (exclusive of weekends 00.00 Hrs Saturday to 23.59 Sunday and recognised Bank Holidays).</p> <p>If, as part of the Supplier Solution, an additional confirmatory test is required, this must be completed, and Test Results shared within 96 hours of confirmation request (exclusive of weekends 00.00 Hrs Saturday to 23.59 Sunday and recognised Bank Holidays) of the additional request being made.</p> <p>Expediated sharing of Test Results may be required on an ad-hoc basis.</p>			

Test Type	Location	Public Sector Prisons	Privately Managed Prisons	Approved Premises	Probation Offices
	Recording Test Results	<p>Test Results arising from analysis must be provided and recorded in a way that is entirely traceable from the start of the test and any subsequent analysis completed.</p> <p>Test Results must be in a format that is simple to interpret by staff.</p> <p>Results must include advice relating to appropriate charges that can be laid under the Prison Rules 1999. This must be provided using standard wording agreed with Authority.</p>			<p>Test Results arising from analysis must be provided and recorded in a way that is entirely traceable from the start of the test and any subsequent analysis completed.</p> <p>Test Results must be in a format that is simple to interpret by staff and can be retained as a record of analysis.</p>
Prevalence Studies	Sampling and Scope	<p>Samples submitted for the Testing scenarios outlined in Part 2 and Part 3 of this Specification should be utilised to study prevalence.</p> <p>The Authority will also consider any alternative approaches to Prevalence Studies throughout the Term. The Supplier is expected to make the Authority aware of any innovation and/or alternatives for discussion.</p> <p>Any innovation and/or alternative methods proposed will be subject to the Change Control Procedure and as such must be agreed by the Authority.</p> <p>A minimum of 1000 Samples are required to be included in each Prevalence Study to make it representative.</p>			

Test Type	Location	Public Sector Prisons	Privately Managed Prisons	Approved Premises	Probation Offices
	Ordering	Requests to be discussed and agreed between Supplier and the Authority throughout the Term. It is anticipated that Prevalence Studies will be required on a quarterly basis. However, additional requests may be made by the Authority.			
	Invoicing	Pricing should be per Prevalence Study and invoiced centrally to HMPPS upon completion of each study. This must be priced as per the FRT.			

8 Constitution and Quality of Goods

- 8.1 The Goods must be safe for the Test Recipient (individual providing a Sample) and operator (HMPPS member of staff collecting the Sample).
- 8.2 All Goods must consist of material(s) sensitive to cultural and religious needs.
- 8.3 The Goods must be able to collect a sufficient measured volume of a permitted Sample in line with the requirements of **Table 1**, **Table 2** and **Table 3** for analysis to be carried out.
- 8.4 All Goods used must not change or influence the Test Result.
- 8.5 Any Goods maintenance must be made clear to the Authority and must be at no additional cost to the Authority.

9 Ordering

- 9.1 A process to enable Prisons and Approved Premises to order Goods, including instructions for use and Services must be made available by the Supplier. Processes must cover both bulk delivery to NDC Branston and direct to other Delivery Locations.
- 9.2 Orders for MDT kit will be placed centrally by the Authority for delivery to NDC Branston. Orders must be made via email and must be receipted by the supplier within two full Working Days of being placed.
- 9.3 Orders for AP drug testing kit and oral fluid testing kits will be placed by individual AP and probation sites. A solution that enables these products to be ordered via the Authority's procurement catalogue or via email is required. Orders must be receipted within two full Working Days of being placed.

- 9.4 Bidders shall not be entitled to set minimum order volumes for the Authority or any Approved Premises.
- 9.5 Orders for analysis will be deemed to have been placed upon receipt of the sample and associated testing form at the Supplier's laboratory. Any additional confirmation testing requested must be able to be ordered using the testing form, or at a later point by Authority staff via email. Any confirmation tests ordered must be receipted, and analysis must be completed within 96 hours of the request being made by the Authority.
- 9.6 The Supplier will ensure that the Authority and Approved Users are able to order any Goods and Services, as agreed between the Authority and Supplier as being part of the Agreement.
- 9.7 The Essential Drugs that must be Tested for in each of the required scenarios are listed in Annex A.
- 9.8 The ordering method in place must ensure that, for each Testing scenario identified in Part 2 and Part 3, only the Drugs identified for Testing pertinent to each scenario should (i) be available to order and (ii) processed through to Testing.
- 9.9 The Supplier must put measures in place to identify and stop analysis being ordered for the incorrect testing requirement ie, in line with the drugs panels in Annex A.
- 9.10 Upon becoming aware of any instances of incorrect order attempts, the Supplier must raise these immediately with the Authority or the relevant Approved User who placed the order, and the error plus rectification advice identified to them. Records of these instances must be maintained by the Supplier for audit trail and performance reporting purposes in accordance with the Agreement.

10 Logistics

- 10.1 When required, the Supplier must supply and deliver to Delivery Locations, all materials necessary for Drug Testing to take place, including but not limited to:
- 10.1.1 Testing kits (and associated paperwork).
 - 10.1.2 Guidance for using the Goods.
 - 10.1.3 Chain of custody procedures.
- 10.2 Bulk volumes of Goods will be required to be delivered centrally to a single HMPPS storage and distribution centre currently located at the following address:
- NDC Branston
Burton Road
Branston
Burton upon Trent
DE14 3EG

herein referred to as "NDC Branston".

- 10.3 All deliveries to NDC Branston must meet the requirements explained in Annex D.
- 10.4 Also required is Delivery directly to Delivery Locations (<https://www.gov.uk/government/collections/probation-finder> and <https://www.gov.uk/government/collections/prisons-in-england-and-wales>).
- 10.5 Goods must be supplied to Delivery Locations within five Working Days of an order being received.
- 10.6 Costs for direct and bulk Delivery must be included in the FRT, where requested. The Authority reserves the right to use a combination of both approaches throughout the Term.
- 10.7** There will be no additional Delivery charges for direct or bulk deliveries.
- 10.8** Any orders rejected by the Authority due to the Supplier not following the applicable processes for booking deliveries, the costs of storage and further Delivery attempts must be met by the Supplier.
- 10.9** For oral fluid testing The Supplier must provide secure and anonymised pre-paid packaging suitable for use by probation teams to enable the return of samples and testing forms via post. For urine testing, all collection of samples from prison and AP sites must take place using courier services that meet all relevant legislation for the transportation of urine samples. Collection of samples will be arranged by the Authority in line with demand for testing in each site. A schedule of deliveries will be shared to support this arrangement. The supplier must also make available a process for arranging ad-hoc collections of samples from all Authority sites carrying out urine testing. There must be no additional charge for ad-hoc collections.
- 10.10** The Authority reserves the right to alter the Delivery and collection and/or postage methods throughout the Term.

11 Stockholding and Storage

- 11.1** The Supplier must provide advice to the Authority and Approved Premises on the recommended storage conditions of all Goods required, for example but not limited to temperatures and use-by dates.
- 11.2** The Supplier must maintain stock levels based on those set by the Supply Stability Report (as set out in Annex E, which must be updated and provided to the Authority at least monthly. This will also be driven by forecast discussions had during routine contract management processes.

12 Goods and Service Guidance

- 12.1** The Goods and Services guidance library of reference and support documentation should be made accessible to the Authority and all Approved Users and kept up to date.

- 12.2** Technical support and advice must also be available to sites within working hours (9am–5pm), Monday to Friday, excluding Bank Holidays.
- 12.3** As a minimum the Supplier must provide the Authority with videos and written instructions demonstrating how to use the Goods to obtain accurate Test Results. These videos and written instructions (and any other ancillary services as may be required) must be available to the Authority within 28 days of the Effective Date and must be updated during the Term to reflect any changes to the Goods and Services.

13 Unique Identifiers

Any Goods that are required to be sent off-site for analysis must be able to be uniquely identified and linked to a single Test Recipient, without the use of personal details.

Part 5 – Specific Laboratory Analysis Service Requirements

14 Drugs Range

- 14.1** The Supplier must test for a range of Drugs for each of the relevant scenarios detailed in Annex A.
- 14.2** The Supplier must be able to add newly identified substances to any testing method used. Each Drug being Tested must be at a level that shows a positive Test Result beyond reasonable doubt, other than for the purposes of Prevalence Studies.
- 14.3** On a six-monthly basis the Supplier and the Authority are required to review the range of Drugs in Annex A.
- 14.4** The Authority will agree any required changes, including the addition or removal of drugs from testing panels, with the Supplier and follow the formal Change Control Procedure.
- 14.5** Once the Supplier obtains reference materials and pricing has been agreed with the Authority, the Supplier will be required to implement any changes to the panel in accordance with the Agreement or within such other timescale agreed with the Authority.

15 Analysis method

- 15.1** For all testing scenarios the Authority is legally required to demonstrate that a Drug Test shows that an individual has consumed a Drug, and the positive Test Result is beyond reasonable doubt.
- 15.2** The Supplier must ensure the Analysis Methods and the cut-offs used for both screening and confirmatory testing used satisfy the burden of proof legal requirement. Cut-off levels should be evidenced in relation to an external validation source, such as the European Workplace Drug Testing Guidelines.
- 15.3** The Supplier must ensure that passive inhalation or ingestion cannot provide mitigation for a positive Test Result.
- 15.4** If a two-stage screening and confirmation process is proposed, the cut-off levels used must, to the extent that is practicable, minimise instances in which a test is screened positive, only to be confirmed as negative.
- 15.5** For each drug tested for, the Supplier is required to demonstrate that they have undertaken research and validation testing to determine if there are any known interactions with medications, drugs or any other substances that can reasonably be consumed.
- 15.6** The Supplier is required to provide evidence in support of the levels of assurance claimed for each Testing method used at periods throughout the Term. The Supplier must ensure that analysis proves the exact substance(s) that were present when the

sample was collected, to a degree that is beyond reasonable doubt and to a standard that could be upheld in a court of law.

- 15.7 Analysis Methods used must be supported by robust chain of custody procedures that support the integrity of analysis.

16 Chain of Custody

- 16.1** The chain of custody procedures must provide the ability to track the journey a Sample takes from the point of collection through to the provision of Test Results.
- 16.2** Procedures must ensure that sample integrity is maintained and documented at all times, from the point at which the sample leaves the Authority's possession, and that no activity undertaken will impact upon the results of analysis.
- 16.3** Once a sample is received by the supplier, or third-party courier, electronic records must be produced to evidence all individuals and locations in which the sample has been handled or stored.
- 16.4** Any instance in which there has been a break in the chain of custody, or where the integrity of a sample is threatened, it is the responsibility of the supplier to inform the Authority upon discovery of the break.
- 16.5** For all breaks in the chain of custody, the supplier is expected to investigate the findings of which must be reported to the Authority within an agreed timescale. The supplier must put in place remedial actions and improvement to limit re-occurrence of breaks in future.
- 16.6** The Supplier must have a robust method in place to quickly identify, where possible, any instances in which a Sample may have been adulterated or contaminated or has been subject to a break in the chain of custody. Once identified, the Supplier must inform the Approved User requesting analysis within 72 hours of the sample being receipted at the laboratory.
- 16.7** As part of the chain of custody procedures, all Samples sent for laboratory analysis must contain an anonymised unique identifier.
- 16.8 Chain of custody procedures should be, at least in part, electronic or digitalised. For example, the process may involve barcode scanning. The Authority encourages affordable technology uses as part of the chain of custody procedures.

17 MDT Processes

- 17.1** The Supplier must ensure that Samples collected within prisons for the purposes of MDT are of sufficient volume to allow two identical split Samples, referred to as "A" and "B" Samples.
- 17.2** The Supplier must store all Samples in an identical manner prior to analysis.

- 17.3** The Supplier must analyse the "A" Sample in the first instance and retain the "B" Sample to enable supplementary analysis to be carried out by another party at the request of a prisoner, an Approved User or the Authority.
- 17.4** The Supplier must retain "B" Samples in line with relevant retention policies and guidance.
- 17.5** A "B" Sample can be requested at any time when in storage at the Supplier's premises.
- 17.6** When a "B" Sample is requested, Test Results of the initial analysis and the processes used must also be provided to the Authority.
- 17.7** For all positive "A" Samples, the Supplier must store the corresponding "B" Sample for nine months in a manner that limits the effects of degradation of Samples and allows for any necessary retests and/or for quality assurance activity.
- 17.8** The Supplier must maintain an up-to-date register of all Samples to include, as a minimum:
 - 17.8.1** Key identifiers.
 - 17.8.2** Due date for disposal.
 - 17.8.3** Actual disposal date,
 herein referred to as "Sample Retention Asset Register".
- 17.9** The safe and timely disposal of Samples is required throughout the Term.
- 18 Reporting Analysis Test Results Back to the Authority and Approved Users**
 - 18.1** The Supplier must communicate Test Results to the Authority and Approved Users in a manner which can be easily accessed by nominated individuals, whilst ensuring that data protection requirements are maintained.
 - 18.2** There must be an option for Test Results to be sent securely by email.
 - 18.3** In the circumstance of the Supplier having a web-based solution available to report Test Results, the requirements listed in Part 6 of this Specification must be met.
 - 18.4** The Supplier's reporting of Test Results must allow for a mitigation process against any positive Test Results. The Supplier must ensure that passive inhalation or ingestion cannot provide mitigation for a positive Test Result.
 - 18.5** Mitigation in this instance refers to positive Test Results that have a legitimate reason for being so. For example, but not limited to, legitimately prescribed medication.
 - 18.6** Analysis must be completed, and Test Results shared within 72 hours of receipted arrival at the Supplier site (exclusive of weekends 00.00 Hrs Saturday to 23.59 Sunday and recognised Bank Holidays).

- 18.7 If, as part of the Supplier Solution, an additional confirmatory test is required, this must be completed, and Test Results shared within 96 hours of confirmation request (exclusive of weekends 00.00 Hrs Saturday to 23.59 Sunday and recognised Bank Holidays).

19 Reporting Analysis Test Results Back to National Hub

- 19.1 The reporting of results is to be carried out in a format agreed between the Authority and Supplier prior to contract commencement. The Authority reserves the right to propose alternative or additional data reports, including changes to format and frequency, including using a digital format during the Contract Term.
- 19.2 Drug Testing data needs to be accessible to the HMPPS Data Assurance Team for reporting purposes. This will require the supplier, at a minimum, to provide a monthly Test Results data extract in the following format:
- 19.2.1 Monthly zip file containing all new, updated or amended data about custodial drug testing since the last data file was sent (up to the last calendar day of the previous month at a minimum). The unzipped files must contain either .csv or .xlsx files.
- 19.3 The files must be able to be uploaded to a web-based reporting platform.
- 19.4 Data should be reported at an individual Sample level and contain at a minimum all of the data captured and reported as a Test Result.
- 19.5 The file should be sent by email to a specified central mailbox(es) on or before the 5th calendar day of each month.
- 19.6 Data must be reported against the month that the Sample was collected by the establishment and be reported against that establishment.
- 19.7 Sample level data on the volumes and reasons for flaws, spoils and mitigations must also be included in the monthly report in addition to positive/negative Test Results.
- 19.8 A timely process must be implemented for investigating and resolving queries about the data identified by the Custody Data Assurance team/HMPPS Probation Performance Team.
- 19.9 A timely process for data corrections and amendments must be implemented for errors/anomalies identified by the Custody Data Team/HMPPS Probation Performance Team.
- 19.10 A process for the Custody Data Team/Probation Performance Team to authorise late confirmation Testing must also be implemented. This action should be completed within one Working Day (9am–5pm Monday to Friday) for a response to the request. Subsequent Testing should then be carried out according to the timescales agreed for any confirmation Testing and in accordance with the relevant key performance indicators (KPIs) set out in the Agreement.

- 19.11** There will be a need, on occasion, for drug Test Results to be mitigated in relation to legitimate use of prescribed medication. When this takes place, the Supplier will be informed that the Test Result has been mitigated. This data must be recorded and shared with the HMPPS Custody Data Assurance Team/HMPPS Probation Performance Team.
- 19.12** If required, the Supplier must explain to HMPPS any findings resulting from the screening and/or confirmatory Testing process upon request.
- 19.13** Whilst this Section 19 details the minimum requirement, the preferred option of the Authority is a daily data feed between the Supplier and the relevant HMPPS system.
- 19.14** Test Results must contain the following information in a format to be agreed between the Supplier and the Authority:
- 19.14.1** Approved Username;
 - 19.14.2** period that the Test covers (month);
 - 19.14.3** date and time of Test Result;
 - 19.14.4** the unique sample specific identifier
 - 19.14.5** the unique sample donor identifier ;
 - 19.14.6** result of the Test; and
 - 19.14.7** any further information that the Authority may reasonably request.
- 19.15** The Authority reserves the right to introduce a new HMPPS reporting system throughout the Term.
- 19.16** By adhering to the minimum requirements contained in this Section 19 and Annex C of this Specification, the Supplier commits to work with the Authority to ensure that any changes to the HMPPS reporting system do not impact the Services and cost in relation to this Specification.

20 Prevalence Studies

- 20.1** In order to design and deliver evidence-based strategies for tackling substance misuse, the Authority requires access to comprehensive information relating to the nature of drug use across custodial and community settings.
- 20.2** Prevalence studies must contribute to the continuous improvement of the services delivered by this Agreement.
- 20.3** The results of Prevalence studies must enable the Authority to make policy decisions relating to the range of drugs tested for, and volumes tested.
- 20.4** The key aim of Prevalence Studies is to provide timely, accurate and objective data on the scale, trends and patterns of drug misuse.

- 20.5** The approach to prevalence testing must consider findings from relevant research, professional networks and market knowledge, to ensure studies allow the identification of new and emerging drug types, that are not currently be tested for under other programmes.
- 20.6** Prevalence Studies should accurately reflect the results of analysis undertaken by the Supplier to detect the presence of as wide a range of drugs as possible (both licit and illicit), including and not restricted to those detailed in essential lists in Annex A.
- 20.7** The findings of Prevalence Studies will form an essential part of the rationale for changes to Annex A throughout the Contract Term.
- 20.8** The Prevalence sampling method must use existing samples, or other methodology that ensures no additional burden on operational staff or Test Recipients.
- 20.9** There must be an ability to scale the number of samples captured in Prevalence Studies to provide a as significant a representation of the prison or probation population, at a minimum, each Prevalence Study must include 1000 individual Samples as a minimum, regardless of the method of Testing.
- 20.10** The Supplier may propose alternative methods of undertaking Prevalence Studies for consideration at any point throughout the Term.
- 20.11** Each Prevalence Study must be able to report findings to the following levels as a minimum:
- 20.11.1** National;
 - 20.11.2** Prison;
 - 20.11.3** Probation site, including AP's.
- 20.12** Prevalence Studies must be reported on a quarterly basis as a minimum by the Supplier to the Authority, throughout the Contract Term.
- 20.13** Prior to the commencement of any Prevalence Study, the Supplier and Authority must agree the content and timescales for completion of the study.

21 Quality Assurance

- 21.1** The Supplier's complete process must provide safeguards to ensure cross-contamination does not occur.
- 21.2** The Supplier must have a robust method in place to quickly identify, where possible, any instances in which a Sample may have been adulterated or contaminated or has been subject to a break in the chain of custody.
- 21.3** Once an adulterated or contaminated Sample is identified, the Supplier must inform the Approved User requesting analysis as a matter of urgency.

- 21.4** The Supplier must provide details of the parameters for quantification and identification used in their Analysis Method as required throughout the Term.
- 21.5** The Supplier must submit, to the Authority, comprehensive SOPs for all Testing processes used to fulfil the Agreement on an annual basis or at any other time when requested to do so.
- 21.6** The Supplier must also be prepared to submit on an annual basis, all the validation data for the Testing method, accuracy and precision data and any scientific evidence that provides an evidence base in support of the Testing method used.
- 21.7** The Supplier must make available all documentation and data, as reasonably requested by the Authority, to allow an effective independent quality assurance process to take place.
- 21.8** This could include, but is not limited to, up-to-date SOPs, validation data for the Testing method, accuracy and precision data and any scientific evidence that provides an evidence base in support of the Testing method used.
- 21.9** Throughout the life of the Agreement , upon request, the Supplier must be able to demonstrate, by providing evidence, that the laboratory used to fulfil the Agreement is a participant in an appropriate external quality assessment scheme.
- 21.10** At its discretion, the Authority will undertake or commission quality assurance of the Supplier throughout the Term.
- 21.11** The Supplier must make samples available to any independent quality assurance provider appointed by the Authority, within 14 days of a request being made by the Authority.
- 21.12** In the interests of transparency, the Supplier agrees to make the Authority aware of any other public sector contracts of which they are party to during the Term. Thus, allowing the Authority to undertake adequate due diligence throughout the Term.
- 21.13** The Supplier must participate in external quality assurance schemes to monitor and validate the accuracy of drug testing procedures and methodologies.

22 Laboratory Standard and Accreditation Requirements

- 22.1** The relevant Supplier personnel must hold a Home Office Controlled Drug Licence unless exempt under the Misuse of Drugs Act 1971 or Misuse of Drugs Regulations 2001 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857614/Forensic_Analysis_Reference_Standards-FAQs_-_December_2019.pdf).
- 22.2** At the point of contract commencement United Kingdom Accreditation Service (UKAS) accreditation in relation to ISO 17025 must be in place for at least one Drug within the Drug Panel for each testing scenario set out in Annex B to support accurate and reliable results from laboratory testing, calibration, sampling and

measurement services in relation to toxicology testing for substances of abuse. The Supplier is required to obtain UKAS accreditation for all substances listed on the Drug Panel as soon as is reasonably possible, during the contract term, subject to the timescales determined UKAS business cycles.

22.3 The laboratory used to provide this service to the Authority must also work to:

22.3.1 the UK Workplace Drug Testing Guidelines; and

22.3.2 the European laboratory guidelines for defensible workplace drug testing (<http://www.ewdts.org/data/uploads/documents/ewdtsguidelines>.);

22.4 Laboratory practices must comply with all relevant legislation throughout the Term.

22.5 The Supplier must maintain all relevant accreditations and standards throughout the Term.

Part 6 – Other Requirements

23 Performance Management Reporting

- 23.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Operational Contract Manager which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Section 23.2 (the Performance Monitoring Report).

Performance Monitoring Report

- 23.2 The Performance Monitoring Report shall be in such format as agreed between the parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- 23.2.1 for each Key Performance Indicator, the actual performance achieved over the Service Period, the Quarter, and year to date, including comments relating to reported Performance Figures and underlying Management Information to evidence the reported Performance Figures.
- 23.2.2 a summary of all KPI Failures that occurred during the Service Period;
- 23.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- 23.2.4 which KPI Failures remain outstanding and progress in resolving them;
- 23.2.5 Authority spend on all Goods and Services and Pilot Goods and Services categorised by at least the Services Charges as well as any other expenditure paid by the Authority to the Supplier in connection with the Goods and Services and Pilot Goods and Services.
- 23.2.6 Supply Stability Report
- 23.2.7 for any Material KPI Failures or other Default occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 23.2.8 the status of any outstanding Rectification Plan processes, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Bidder's progress in implementing that Rectification Plan;
- 23.2.9 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 23.2.10 the number of Service Points awarded in respect of each KPI Failure;

- 23.2.11 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- 23.2.12 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- 23.2.13 relevant particulars of any aspects of the Bidder's performance which fail to meet the requirements of this Agreement;
- 23.2.14 such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- 23.2.15 a rolling total of the number of KPI Failures that have occurred over the past six Service Periods;
- 23.2.16 the amount of Service Credits that have been incurred by the Bidder over the past six Service Periods;
- 23.2.17 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and
- 23.2.18 Information in respect of the next Quarter.

[●DRAFTING NOTE FOR BIDDERS: This paragraph 23.2.18 shall only apply if the Supplier Solution includes significant IT delivery, and any Downtime is only applicable to IT maintenance.]

- 23.2.19 [●any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Bidder for the next Quarter.]

24 Customer Support, Issues and Complaints

- 24.1 Customer service support must be available to the Authority and all Approved Users at no additional cost within working hours (9am–5pm), Monday to Friday, excluding Bank Holidays.
- 24.2 The customer service support must be accessible to people with differing communication needs.
- 24.3 The Supplier shall ensure that it has a comprehensive and efficient Complaint Procedure that allows the Authority and all Approved Users to process Complaints in respect of the Goods and/or Services (Complaint Procedure).
- 24.4 The Complaints Procedure shall be clearly signposted to the Authority and all Approved Users to ensure that they are clear on how to process a Complaint and report an Incident.

- 24.5 For the avoidance of doubt, a "Complaint" as defined in the Agreement, shall mean communication of any issue, Incident service failure or grievance by the Authority and/or an Approved User or their employees which the Authority and/or an Approved User or their employees come across as part of its receipt of the Goods and/or Services where the provision of such Goods and/or Services deviates from the terms of the Agreement.
- 24.6 The Supplier shall notify the Authority of all Complaints promptly and within 24 hours and shall process and seek to resolve all Complaints and Incidents within 5 Working Days of becoming aware or being notified of such Complaint or Incident.
- 24.7 The Supplier shall report in full on all Complaints and Incidents that are discovered by or notified to it (whether they have been resolved or otherwise) during any Service as part of the Performance Management and Contract Review Meetings. Such reporting shall include, without limitation:
- 24.7.1 The details of the Complaints received, and Incidents identified;
- 24.7.2 The status of the Complaints received, and Incidents identified along with details of what the Supplier plans to do to rectify any unresolved Complaints or Incidents.
- 24.8 Where a Complaint remains unresolved for more than 10 Working Days, the Authority may require the Supplier to undergo the Rectification Plan Process (as set out in the Agreement).
- 24.9 Where necessary Complaints will be investigated by the Authority at a level and extent proportionate to their nature and perceived seriousness of impact. The Authority may require the Supplier to undergo the Rectification Plan Process should the outcome of any investigation require it.
- 24.10 If required by the Authority, the Supplier shall within 10 Working Days of request provide further detail on any Complaints or Incident(s) identified by the Authority, including if required by the preparation of an Incident Report.
- 24.11 On rare occasions the Supplier must, at no additional cost to the Authority, make available the services of expert technical witnesses who, will be required to attend legal challenges to provide technical defence of the Supplier's equipment, Testing methods and processes used to fulfil this Agreement.
- 24.12 The Supplier must provide access to technical and scientific advice via email and face to face/virtual meetings to explain drug testing methodologies and analysis results, in relation to the requirements of this specification, in plain English. There will be no additional charge for accessing this advice. This advice must extend to inputting into communications and guidance for the Authority.

25 IT Considerations

If using an IT system to interact with the Authority. For example, but not limited to reporting analysis Test Results or in relation to performance management reporting,

the Supplier must ensure that the system/s meet the minimum requirements outlined in Annex C.

26 Innovation, Efficiencies and Continuous Improvement

- 26.1** The Authority welcomes innovative approaches in relation to all forms of Testing contained within this Specification throughout the Term.
- 26.2** The Supplier must make the Authority team responsible for managing this Agreement aware of any innovative approaches, that could positively impact the Services provided within this Specification, at the earliest possible opportunity and, at a minimum, in line with contract management requirements set out in the Agreement.
- 26.3** The Supplier is required to ensure that any efficiencies and cost benefits obtained from (without limitation) emerging technologies (including automation) and/or Testing methods, during the Term, are reflected in pricing structures offered to the Authority.
- 26.4** During the length of the Agreement the Supplier is required to propose innovative solutions and detail any newly available technologies to meet emerging Drug trends.
- 26.5** The Supplier is required to provide an Innovations and Efficiencies Report to the Authority providing details and evidence relating to this Section of the Specification.
- 26.6** The Supplier must participate in expert level forums relevant to the Drug Testing and drug identification fields. The Supplier must also attend information sharing forums and strategic meetings at the request of the Authority including those with other drug testing providers, public agencies and government departments.

27 Social Value

- 27.1** With the introduction of PPN 06/20 the Government has mandated the application of its Social Value Model for all procurements above threshold. The Authority in compliance with the PPN have selected a theme and a policy outcome that are relevant and proportionate to this Tender Process. The Authority is looking for Bidders to review and respond to the evaluation question for social value in the ITT. Tender Responses should ensure they address the various elements of the evaluation question and provide a response detailing how they will deliver additional environmental benefits in the performance of the Agreement. Bidders must ensure that any benefit offered as social value in submissions is over and above the core deliverable/s of the Tender.
- 27.2** Therefore, the Supplier must consider how they can best offer and implement Social Value throughout the Term.
- 27.3** A KPI for social value will be developed with the successful Bidder based on a combination of the model award criteria and the reporting metric(s).

- 27.4 The Authority will review and may amend the social value performance indicator throughout the Term.
- 27.5 Initially, the Authority will adopt the Policy Outcome: Fighting Climate Change (Theme 3). The selected Model Award Criteria (MAC) is MAC 4.1: "Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions".
- 27.6 This is a priority because Benefits that can be driven through social value are an important tool in fighting climate change.
- 27.7 The Government's 25 Year Environment Plan sets out goals for improving the environment within a generation and details how it will work with communities and businesses to do this. To meet the goals and targets it has set, government has identified key six areas in the plan through which it will focus action.
- 27.8 Activities in support of additional environmental improvements form the Model Award Criteria for this policy outcome in the model. The Reporting Metrics are based around the reduction of three of the target areas in the Greening Government Commitments: greenhouse gases, waste and water. In addition, there are Reporting Metrics relating to protecting and improving the environment, and creating green spaces.
- 27.9 United Nations Sustainable Development Goals this policy supports:
- 27.9.1 Goal 1: No poverty,
 - 27.9.2 Goal 2: Zero hunger,
 - 27.9.3 Goal 3: Good health and wellbeing,
 - 27.9.4 Goal 6: Clean water and sanitation,
 - 27.9.5 Goal 7: Affordable and clean energy,
 - 27.9.6 Goal 9: Industry, innovation and infrastructure,
 - 27.9.7 Goal 10: Reduced inequalities,
 - 27.9.8 Goal 11: Sustainable cities and communities,
 - 27.9.9 Goal 12: Responsible consumption and production,
 - 27.9.10 Goal 13: Climate action,
 - 27.9.11 Goal 14: Life below water,
 - 27.9.12 Goal 15: Life on land.
- 27.10 The Reporting Metrics for MAC4.1 are:
- 27.10.1 "Number of people-hours spent protecting and improving the environment under the contract, by UK region";

- 27.10.2 "Number of green spaces created under the contract, by UK region";
- 27.10.3 "Annual:
 - (a) Reduction in emissions of greenhouse gases arising from the performance of the contract, measured in metric tonnes carbon dioxide equivalents (MTCDE);
 - (b) Reduction in water use arising from the performance of the contract, measured in litres;
 - (c) Waste reduction in packaging;
 - (d) Reduction in incineration emissions of clinical waste;
 - (e) Increase in use of recycled product packaging".
- 27.11 Suppliers are asked to select the relevant reporting metric(s) that apply to the social value being offered and identify a quantifiable commitment.
- 27.12 The Authority reserves the right to change the Social Value theme.

28 Environmental Sustainability

- 28.1 The Authority is committed to putting environmental sustainability at the heart of their operations and decision-making by embedding sustainability principles into everything they do.
- 28.2 Therefore, all Goods and Services encompassed within this Specification must consider any detrimental environmental impact and the Supplier must minimise the impact where possible.
- 28.3 The Supplier must also have a Carbon Reduction Plan in place.
- 28.4 The Carbon Reduction Plan should be updated at least annually and published and clearly signposted on the Supplier's UK website. It should be approved by a director (or equivalent senior leadership) within the Supplier's organisation to demonstrate a clear commitment to emissions reduction at the highest level. Suppliers may wish to adopt the key objectives of the Carbon Reduction Plan within their strategic plans.
- 28.5 For guidance on producing a Carbon Reduction Plan please see the guidance published here: [Procurement Policy Note 06/21: Taking account of Carbon Reduction Plans in the procurement of major government contracts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/procurement-policy-note-0621-taking-account-of-carbon-reduction-plans-in-the-procurement-of-major-government-contracts)

29 Mobilisation and Exit Planning

- 29.1 The Supplier must produce a robust Mobilisation Plan and work in conjunction with the Authority to ensure that mobilisation is successfully completed.

- 29.2** The Mobilisation Plan must address the following criteria, along with all other requirements set out in Annex F:
- 29.2.1** During the Pilot Period, the Supplier is required to deliver the Pilot, as further detailed in Annex F.
 - 29.2.2** The Supplier must produce an Exit Plan in line with Agreement.
 - 29.2.3** The Exit Plan must include how Samples will be maintained in storage, be accessible to the Authority and be in line with any associated costs applied within the FRT.

ANNEX A

Drugs Panel – Laboratory Analysis Goods, Services, and Prevalence Testing

Laboratory analysis must be provided to cover the following Testing scenarios:

1. MDT (urine testing) and Drug Testing in APs (urine testing), detailed in Table A.
2. Drug Testing on Licence (oral fluid testing), detailed in Table B.
3. Drug Testing under a DRR (oral fluid testing), detailed in Table C.
4. Prevalence Testing.

Table A	
These are the Drugs to be detected, however the drug target residue can be the parent Drug or any appropriate metabolite	
1. MDT (urine testing) and Drug Testing in APs (urine testing)	
Essential	Desirable
Amphetamines	Barbiturates
Amphetamine	LSD
Methylamphetamine	Ethanol/Ethyl glucuronide (EtG)
MDA (3,4-Methylenedioxyamphetamine)	Etizolam
MDMA (3,4-Methylenedioxymethamphetamine)	Alprazolam
MDEA (3,4-Methylenedioxyethylamphetamine)	Flualprazolam
Benzodiazepines	XLR 11
Diazepam	UR-144
Nordiazepam	AM2201
Temazepam	MAM 2201

Table A

These are the Drugs to be detected, however the drug target residue can be the parent Drug or any appropriate metabolite

1. MDT (urine testing) and Drug Testing in APs (urine testing)

Oxazepam	PB22 and 5F-PB22
Lorazepam	Any other Novel Psychoactive Substances/SCRAs (as they arise)
Opiates	Steroids (controlled)
Morphine	Fentanyl
Codeine	Nitizenes
Dihydrocodeine	Synthetic Opioids
Heroin and/or its metabolite 6-Monoacetylmorphine (6-MAM)	
Tramadol	
Methadone	
Buprenorphine	
Cannabis related controlled cannabinoids (e.g., Δ^9-tetrahydrocannabinol and/or one of its metabolites)	
Cocaine and/or its metabolite benzoylecgonine	
Gabapentinoids	
Pregabalin	
Gabapentin	

Table A

These are the Drugs to be detected, however the drug target residue can be the parent Drug or any appropriate metabolite

1. MDT (urine testing) and Drug Testing in APs (urine testing)

Ketamine

Synthetic Cannabinoid Receptor Agonists (SCRAs)/Novel Psychoactive Substances (NPS)

MDMB 4EN PINACA
4F-MDMB Butinaca
5F-MDMB PICA
4F-MDMB BICA
AMB-FUBINACA
5F-MDMB PINACA
MDMB CHMICA
AB FUBINACA
APICA-N-4 Hydroxypentyl
5F-APICA-N-4 Hydroxypentyl
APINACA-N-4 Hydroxypentyl
5F-APINACA-N-4 Hydroxypentyl
PB22 3 Carboxyindole
5FPB22 3 Carboxyindole
XLR-11 N-4 Hydroxypentyl
UR-144 N-4 Hydroxypentyl
AM2201 N-4 Hydroxypentyl

Table A	
<p>*These are the Drugs to be detected, however the drug target residue can be the parent Drug or any appropriate metabolite*</p> <p>1. MDT (urine testing) and Drug Testing in APs (urine testing)</p>	
AB PINACA APINACA carboxypentyl AM2201 5 hydroxyindole 5F ADB desmethyl MAM2201 4 hydroxypentyl MDMB-BUTINACA MDMB BINACA 4F BUTICA	

Table B	
2. Drug Testing of individuals on Licence (oral fluid testing)	
Essential – current legislation only permits testing for these substances.	
Cocaine and/or its metabolites	
Cannabis related controlled cannabinoids (eg, Δ^9 -tetrahydrocannabinol and/or one of its metabolites)	
Amphetamines	
Opiates (to include heroin (diacetylmorphine))	

Table C	
3. Drug Testing of individuals under a DRR (oral fluid testing)	
Essential	Desirable
Cocaine	Benzodiazepines
Cannabis related controlled cannabinoids (eg, Δ^9 -tetrahydrocannabinol and/or one of its metabolites)	Barbiturates
Amphetamines	Buprenorphine
Opiates (to include heroin (diacetylmorphine))	LSD
	Psychoactive Substances/SCRAs
	Tramadol
	Pregabalin
	Gabapentin
	Ketamine
	Steroids (controlled)
	Methadone
	Morphine

Table D	
4. Drug Testing of individuals under the Intensive Supervision Courts (ISC) pilot (oral fluid testing)	
Essential	Desirable

Table D	
4. Drug Testing of individuals under the Intensive Supervision Courts (ISC) pilot (oral fluid testing)	
Cocaine	Benzodiazepines
Cannabis related controlled cannabinoids (e.g., Δ^9 -tetrahydrocannabinol and/or one of its metabolites)	Barbiturates
Amphetamines	Buprenorphine
Opiates (to include heroin (diacetylmorphine))	LSD
	Psychoactive Substances/SCRAs
	Tramadol
	Pregabalin
	Gabapentin
	Ketamine
	Steroids (controlled)
	Methadone
	Morphine

The Authority needs to access prevalence testing for as broad a range of substances (both licit and illicit) as possible, including and not restricted to those detailed in the "Essential" sections of Table A to D above.

The findings of these studies will directly influence any requests to change "Essential" Drugs listed under Table A to D above.

ANNEX B

Estimated screening and confirmation test volumes

All volume data provided is for illustrative purposes only and should be treated as best estimates at the time of publication of this Specification. The volumes presented at tender stage provided are not binding and the Authority is not obligated to purchase the stated volumes.

Given the uncertainty around Volume requirements, the following scenarios are set out, to enable completion of the FRT. The Volume estimates corresponding to these bandings are set out in the FRT, along with the weighting applied to each testing scenario.

		Minimum	Maximum
High	"High" Volume estimates reflect a scenario in which staffing levels and operational constraints result in Testing levels reaching a level greater than 75% of the expected maximum Volumes required to meet current policy objectives across prison and probation settings in full, to the expected timescales.	>75%	100% (+)
Medium	"Medium" Volume estimates reflects a scenario in which staffing levels and operational constraints result in testing levels reaching a level greater than 25%, but lower than 75% of the of the maximum "High" volume figures	>25%	<75%
Low	"Low" Volume estimates reflect a scenario in which staffing levels and operational constraints result in testing levels only reaching up to 25% of the maximum "High" volume figures.	0%	<25%

Confirmation Test Volumes have been estimated based on the current proportion of screening tests requiring additional analysis. Actual volumes will vary in line with the testing methodologies proposed, and factors beyond the Authority's control.

Year 1 (18 Feb 2025 – 31 March 2026)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	17,403	17,404	52,210	52,211	69,613
1	Prisons	No	Urine	MDT Confirmation	0	3,550	3,550	10,651	10,651	14,446
1	Approved Premises	Yes	Urine	AP Screening	0	5,429	5,430	16,286	16,287	21,715
1	Approved Premises	No	Urine	AP Confirmation	0	210	210	630	630	840
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	16,831	16,832	50,494	50,495	67,325
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	1,870	1,870	5,610	5,610	7,516
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	14,298	14,299	42,893	42,894	57,191
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	1,430	1,430	4,289	4,289	5,719

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	1,923	1,924	5,769	5,770	7,692
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	192	192	577	577	769
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 2 (1 April 2026 - 31 March 2027)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	25,455	25,456	76,366	76,367	101,821
1	Prisons	No	Urine	MDT Confirmation	0	5,193	5,193	15,579	15,579	20,771
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	19,777	19,778	59,330	59,331	79,107
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,197	2,197	6,592	6,592	8,789
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	23,201	23,202	69,604	69,605	92,805
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	2,320	2,320	6,960	6,960	9,281

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	586	587	1,758	1,759	2,344
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	59	59	176	176	234
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 3 (1 April 2027 - 31 March 2028)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	26,169	26,170	78,507	78,508	104,676
1	Prisons	No	Urine	MDT Confirmation	0	5,338	5,339	16,015	16,016	21,354
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	20,096	20,097	60,289	60,290	80,386
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,233	2,233	6,698	6,698	8,931
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	26,217	26,218	78,651	78,652	104,868
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	2,622	2,622	7,865	7,865	10,487

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 4 (1 April 2028 - 31 March 2029)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	26,169	26,170	78,507	78,508	104,676
1	Prisons	No	Urine	MDT Confirmation	0	5,338	5,339	16,015	16,016	21,354
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	20,484	20,485	61,451	61,452	81,934
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,276	2,276	6,827	6,827	9,103
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	29,625	29,626	88,876	88,877	118,501
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	2,963	2,963	8,888	8,888	11,850

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 5 (1 April 2029 - 31 March 2030)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	26,169	26,170	78,507	78,508	104,676
1	Prisons	No	Urine	MDT Confirmation	0	5,338	5,339	16,015	16,016	21,354
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	20,652	20,653	61,956	61,957	82,608
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,294	2,295	6,883	6,883	9,178
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	33,477	33,478	100,430	100,431	133,906
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	3,348	3,348	10,043	10,043	13,391

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 6 (1 April 2030 – 31 March 2031)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	26,169	26,170	78,507	78,508	104,676
1	Prisons	No	Urine	MDT Confirmation	0	5,338	5,339	16,015	16,016	21,354
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	24,266	24,267	72,798	72,799	97,064
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,696	2,696	8,088	8,088	10,784
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	33,477	33,478	100,430	100,431	133,906
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	3,348	3,348	10,043	10,043	13,391

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 7 (1 April 2031 - 31 March 2032)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	26,169	26,170	78,507	78,508	104,676
1	Prisons	No	Urine	MDT Confirmation	0	5,338	5,339	16,015	16,016	21,354
1	Approved Premises	Yes	Urine	AP Screening	0	7,664	7,665	22,992	22,993	30,656
1	Approved Premises	No	Urine	AP Confirmation	0	297	297	890	890	1,186
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	24,658	24,659	73,975	73,976	98,634
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	2,740	2,740	8,219	8,219	10,958
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	33,477	33,478	100,430	100,431	133,906
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	3,348	3,348	10,043	10,043	13,391

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	1,000	1,001	3,000	3,001	4,000

Year 8 (1 Apr 2032 – 30 June 2032)

Lot	Sites	Kit Required	Sample Type	Testing Type	Low Minimum	Low Maximum	Medium Minimum	Medium Maximum	High Minimum	High Maximum
1	Prisons	Yes	Urine	MDT Screening	0	6,542	6,543	19,627	19,628	26,169
1	Prisons	No	Urine	MDT Confirmation	0	1,335	1,335	4,004	4,004	5,338
1	Approved Premises	Yes	Urine	AP Screening	0	1,916	1,917	5,748	5,749	7,664
1	Approved Premises	No	Urine	AP Confirmation	0	74	74	222	222	297
1	Probation Sites	Yes	Oral Fluid	On Licence Screening	0	6,165	6,166	18,494	18,495	24,658
1	Probation Sites	No	Oral Fluid	On Licence Confirmation	0	685	685	2,055	2,055	2,740
1	Probation Sites	Yes	Oral Fluid	Drug Rehabilitation Requirement Screening	0	8,369	8,370	25,107	25,108	33,477
1	Probation Sites	No	Oral Fluid	Drug Rehabilitation Requirement Confirmation	0	837	837	2,511	2,511	3,348

1	Probation Sites	Yes	Oral Fluid	Intensive Supervision Courts Screening	0	0	0	0	0	0
1	Probation Sites	No	Oral Fluid	Intensive Supervision Courts Confirmation	0	0	0	0	0	0
1	All Sites	No	Urine and Oral Fluid	Prevalence Studies (Sample Size)	0	0	0	0	0	1,000

ANNEX C

IT System Considerations

IT System Considerations

Where the Supplier uses an IT based system for the communication of Test Results and to generate management information, the following requirements apply:

1. Integration with third-party applications or services must take place over open standards such as TCP/IP, HTTP, JSON/JSONP or XML.
2. Interfaces with internal and external parties must comply with HM Government standards including Security Policy Framework guidelines.
3. The Supplier must ensure that the Supplier Solution adheres to relevant legislation.
4. The Supplier Solution must adhere to the Equality Act 2010 and be able to support Assistive Technology Users.
5. The Supplier Solution must adhere to applicable Data Protection legislation.
6. The Supplier Solution must be able to support the Volumes of Testing required by the Authority.
7. The Supplier Solution must have an availability level at the data centre of at least 95% per Contract Year (planned outages excepted).
8. The Supplier must define, document and agree with the Authority the roles and responsibilities of its staff and sub-contractors who are responsible for administering and operating the proposed IT solution.
9. The Supplier must ensure that all of the Supplier's users and relevant employees have their IT access rights revoked on termination of employment.
10. The Supplier must ensure that all information and assets and supporting utilities are provided appropriate physical protection from internal, external and environmental threats.
11. The Supplier must ensure supporting utilities (hardware, firmware and software, including hosting) are maintained and patched up-to-date, preventing loss or interruption of the Services.
12. The Supplier must define, document, agree with the Authority and regularly maintain (at least annually) SOPs for system administration and maintenance, in line with the support and accreditation requirements.
13. The Supplier must provide protective monitoring to support the detection of malicious activity. This should include:
 - 13.1 Network enterprise event monitoring;

- 13.2 Application management;
- 13.3 Hosting enterprise event monitoring.
- 14. The Supplier Solution must include controls that prevent log information from being modified.
- 15. The Supplier must ensure that its staff who are system users have their access rights periodically reviewed and when a user role changes.
- 16. The Supplier Solution must ensure that the system suspends or shuts down its sessions after a pre-defined period of inactivity.
- 17. The Supplier must ensure that the system is appropriately isolated from its other customer environments.
- 18. The software and firmware components must have full vendor support arrangements (security and general fixes).
- 19. Software and firmware components within the live, DR and NLE/Test environments must be patched up-to-date, in line with the patch management policy to prevent consumers from exploiting technical vulnerabilities.
- 20. The proposed system must have any technical vulnerabilities identified from a penetration test treated (reduced, avoided, transferred or accepted) at intervals of not more than 12 calendar months since the last successful tests before any major change to infrastructure goes live, including but not limited to modifications to functional capability, implementation, or hosting any issues identified during penetration tests or IT health check as a result of service changes must be mitigated or accepted before the service changes go live.
- 21. The Supplier must respond to incidents and report on incidents as soon as they occur.
- 22. The Supplier must document, implement and regularly test and review business continuity arrangements for their facilities, utilities, and systems that support the system proposed.
- 23. The Supplier should ensure that IMA protectively marked information or personal information is not processed on development and test environments.
- 24. The Supplier must have an information security policy that reflects the control objectives as specified within the ISO27001 control set.
- 25. The Supplier must ensure that their development and test environments are appropriately separated from the live environment.
- 26. The Authority requires Cyber Essentials Plus (commonly "CE+") certification to be in place at the time of entering into the Agreement. If the tool chosen is cloud based, the Authority would also be looking for alignment with NCSC Cloud Security Principles <https://www.ncsc.gov.uk/collection/cloud-security>.

27. The Supplier Solution must enforce multi-factor authentication (MFA) access controls.
28. All data must be encrypted at rest and in transit.
29. The Supplier must provide a high-level and low-level design documenting the proposed system. This should include:
 - 29.1 Data dictionary;
 - 29.2 Reference to API schemer;
 - 29.3 Security policy;
 - 29.4 Service level agreements;
 - 29.5 Training guides;
 - 29.6 Evidence of accreditation.
30. The Supplier is required to provide any project management function and resources for the delivery of the proposed IT system. The Supplier's delivery project manager must work with Authority and report against agreed delivery milestones aligning with the overall project delivery plan and business change implementation plan. These milestones will be agreed within the mobilisation period.
31. At the request of the Authority, the Supplier must provide training and training courseware and system administrator guidance notes to users in training workshops, which can then be re-used by HMPPS under a "train the trainer" model.
32. Data reporting must not affect performance of the production service.
33. The Supplier must provide monthly performance reports providing information on:
 - 33.1 Business transaction volumes;
 - 33.2 Computational transaction volumes;
 - 33.3 User concurrency;
 - 33.4 End-to-end transaction times;
 - 33.5 Data centre boundary transaction times;
 - 33.6 Application availability;
 - 33.7 Breakdown of server availability;
 - 33.8 Capacity.
34. The Supplier Solution must not have a single point of failure within the data centre. All application components within that data centre should be duplicated or have some form of failover.

35. In the event of an application component failover, the application must still be capable of supporting the defined peak load.
36. The application's disaster recovery facility must be equal to the application's live facility both in terms of access to the data and capacity.
37. The application backup must be tested at least once a year through a full backup restoration exercise. Details of the Test and Test Results to evidence success should be agreed with the Authority.
38. In the event of the loss of a single data centre:
 - 38.1 The application should be online within 8 working hours (9-5).
 - 38.2 Data loss must be restricted to the last 30 minutes of transactional activity.
39. Log files must not be allowed to grow to the extent that they affect system performance.
40. In the event of an error, the application log file should provide enough information for support teams to isolate the point and possible cause of failure.
41. The proposed system must provide a non-live environment which can be used for development and testing.
42. The non-live environment must be updated and be an accurate representation of the live system in terms of patching and security processes.
43. The Supplier must provide and execute full testing.
44. The Supplier must provide and execute security tests that prove users can only access authorised data and functionality.
45. The supplier must support User Acceptance Testing.
46. The Supplier must document all testing for audit and customer acceptance.
47. The Supplier Solution must be accompanied by a support plan that describes the technical and managerial processes necessary to support the system once operational. The support plan must include a description of the support personnel and their roles, as well as the processes to resolve problems arising within the system boundaries, and escalation policies.
48. The support plan must include service support hours and response times to calls. The support plan must include details of third-party maintenance service levels and agreements including any OWA's.
49. As far as possible, the Supplier must provide upfront costs of exit at the conclusion of the Agreement.
50. The Supplier must provide a documented method for data extraction at the conclusion of the Agreement and data deletion using an NCSC approved standard.

ANNEX D

Deliveries into NDC Branston

**DELIVERY ADDRESS – MoJ NDC Branston Burton Road Branston Burton Upon Trent
Staffordshire DE14 3EG United Kingdom (“NDC Branston”)**

1. Booking and pre-delivery
 - 1.1 The booking line number at NDC Branston is 01283 496004.
 - 1.2 All deliveries to NDC Branston must be booked at least three full Working Days ahead of the Delivery Date, using the booking line noted above.
 - 1.3 Suppliers should quote the purchase order (PO) number when booking in. The PO number is available from the person who placed the order with the Supplier.
 - 1.4 Provided there is a valid PO on the WMS (warehouse management system) then the caller will be given an advance shipping notice (ASN) number which must be quoted on all Delivery notes; a date and time for Delivery will also be given.
 - 1.5 If there is no valid PO, NDC Branston cannot accept the booking. In these circumstances the Supplier should contact the individual placing the order to obtain the PO number.
 - 1.6 Where Goods are to be delivered in sealed shipping containers originating from outside the UK, a packing list and shipping progress note must be supplied (attached to an e-mail) to Branston within one week of the Goods leaving the country of origin. As a minimum, the container number, seal number, supplier name, expected date of arrival, PO number, item numbers and quantities must be quoted. This information will be used to make a pre-booking and allow necessary checks to be carried out in advance of Delivery. On arrival in the UK, the shipping agents must contact NDC Branston, by e-mail, quoting the container number and the latest date by which the container must be received to avoid demurrage charges, in order to arrange a date and time for the container to be received. NDC Branston receipts team will respond with the booking details. Details of the relevant NDC Branston staff's e-mail addresses will be supplied upon request.
2. Pallets/stillages
 - 2.1 All deliveries to NDC Branston must be made on/in non-returnable pallets or stillages.
 - 2.2 No loose loads will be accepted. NDC Branston will not accept goods delivered on Chep or other returnable pallets.
 - 2.3 Wooden pallets should be sound and of good quality. Pallets must be four-way entry and not exceed 1420mm x 1050mm in size.
 - 2.4 The maximum overall height including the pallet is 1240mm.

- 2.5** The pallet must be suitable for use with pallet trucks, not just forklift trucks, i.e., the bottom stringers must be chamfered and the gap between top and bottom stringers must be sufficient to facilitate pallet truck entry.
- 2.6** The overall weight of each pallet must not exceed 600kgs (inc. pallet). Cartons/rolls, etc. should be securely banded or stretch wrapped to the pallet.
- 2.7** The top of each pallet when loaded shall be flat and level to enable safe stacking.
- 3.** Labelling
 - 3.1** All cartons shall be labelled with the below details.
 - 3.2** Labels must be legible (preferably not handwritten), properly fixed, and easily accessible.
 - 3.3** Cartons should be labelled on four sides (top and bottom excluded), Rolls of textiles etc, should be labelled at both ends. (See below):
 - 3.3.1 Full supplier details
 - 3.3.2 Prison Service product number
 - 3.3.3 Prison Service product description.
 - 3.3.4 Product size
 - 3.3.5 Total carton or roll quantity or length
 - 3.3.6 Total carton or roll weight
 - 3.3.7 Batch number
 - 3.3.8 Date manufactured
 - 3.3.9 Prison service purchase order number and contract number
 - 3.3.10 Number and quantity of internal packs
 - 3.3.11 Full details of any special storage instructions
- 4.** Internal packs and single goods
 - 4.1** The Tender Response shall include packaging specifications that include details of units of issue and prison service unit pack quantities.
 - 4.2** All individual products (unless included in a sealed pack) and all unit packs shall be labelled with the following information:
 - 4.2.1 Full supplier details
 - 4.2.2 Prison Service product number (Human readable bar code)
 - 4.2.3 Total quantity per pack (Human readable bar code)

- 4.2.4 Prison Service product description.
- 4.2.5 Product size
- 4.2.6 Batch number
- 4.2.7 Date manufactured
- 4.2.8 Prison service purchase order number and contract number.
- 5. Packaging – goods packed in cardboard cartons
 - 5.1 The Authority uses three sizes of carton, which are standard to its operation.
 - 5.2 Suppliers must seek Authority approval to use any other carton size.
 - 5.3 Suppliers shall pack Goods according to Authority packing specifications.
 - 5.4 Cardboard carton sizes are shown at Appendix 1.
 - 5.5 The overall weight of cartons must not exceed 15Kg.
- 6. Delivery to NDC Branston
 - 6.1 All vehicles must be booked in.
 - 6.2 Vehicles must arrive no more than 30 minutes before or after the time allocated.
 - 6.3 Vehicles that arrive before the scheduled "window" may be asked to wait until they are called to a loading bay. Industry standard loading docks are in use, delivery vehicles must be appropriately sized and have flooring suitable for this type of operation.
 - 6.4 Delivery drivers will be expected to follow site health and safety procedures. There must be no persons under the age of 18 years accompanying drivers in the vehicle. Drivers shall wear hi-visibility clothing and are expected to surrender their vehicle keys once parked on a loading dock.
 - 6.5 Staff at NDC Branston will not sign for an exact quantity on Delivery, only for a number of cartons, rolls, pallets, etc.
 - 6.6 Any discrepancies or damage found at the initial checking stage will be noted on the delivery paperwork/drivers copy.
 - 6.7 Any discrepancies found following a more thorough check will be notified to the procurement authority.
 - 6.8 Failed deliveries and shortages must be re-booked; a new autonomous system number (ASN) will be given.
 - 6.9 When querying bookings/collections suppliers must quote the ASN. NDC Branston is unable to deal with queries without this number.
 - 6.10 Approach map is attached at Appendix 2.

- 7. Delivery paperwork
 - 7.1 All deliveries to NDC Branston shall be accompanied by the appropriate paperwork.
 - 7.2 Supplier paperwork shall include detail of PO number, ASN or SOC number, consignment quantity and Supplier contact details.
- 8. Refused deliveries and rejected loads
 - 8.1 Deliveries will be refused and/or rejected if:
 - 8.1.1 Staff at NDC Branston feel that the load is poorly stacked or unsafe;
 - 8.1.2 Loads are loose and not palletised;
 - 8.1.3 Delivery pallets are unsuitable and/or damaged;
 - 8.1.4 Pallet dimensions are exceeded;
 - 8.1.5 Documentation is incorrect or insufficient including Certificate of Conformity not supplied where required;
 - 8.1.6 Goods are not booked or are in excess of the quantity expected;
 - 8.1.7 Carton size or pack quantities are incorrect and do not meet the Authority's packaging specification;
 - 8.1.8 Goods are incorrectly labelled or do not detail the required information;
 - 8.1.9 Pallets weigh in excess of 600kgs;
 - 8.1.10 Vehicle is not booked in, or arrives after appointed time (allowing for the 30 minute Delivery "window").
- 9. Exceptions
 - 9.1 Under certain circumstances the above rules may be amended to suit particular products and/or suppliers.
 - 9.2 All amendments must be agreed with NDC Branston in advance; they cannot be amended to suit consignments already en-route.
 - 9.3 Proposed amendments must be submitted to NDC Branston with full details of the required changes, along with explanations as to why the standard rules cannot be applied.
 - 9.4 Only goods where amendments have been agreed by NDC Branston in writing will be accepted.

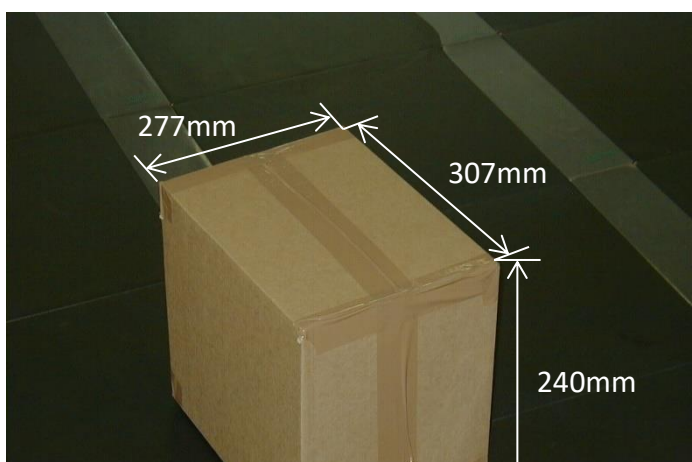
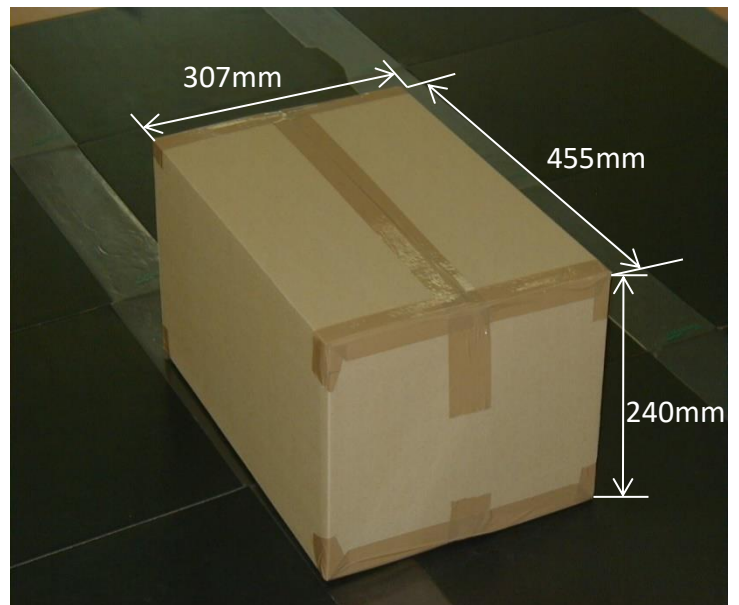
NDC Branston Appendix 1



All measurements are internal measurements, and board thickness is 3mm

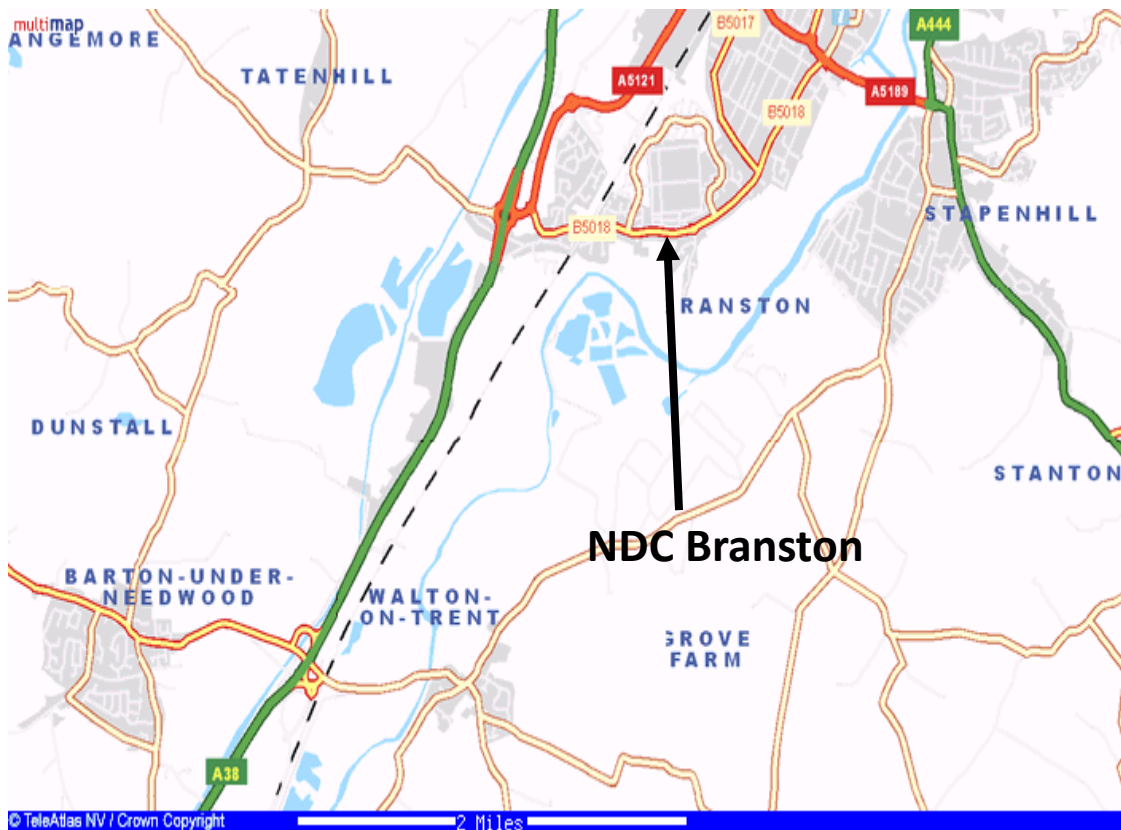
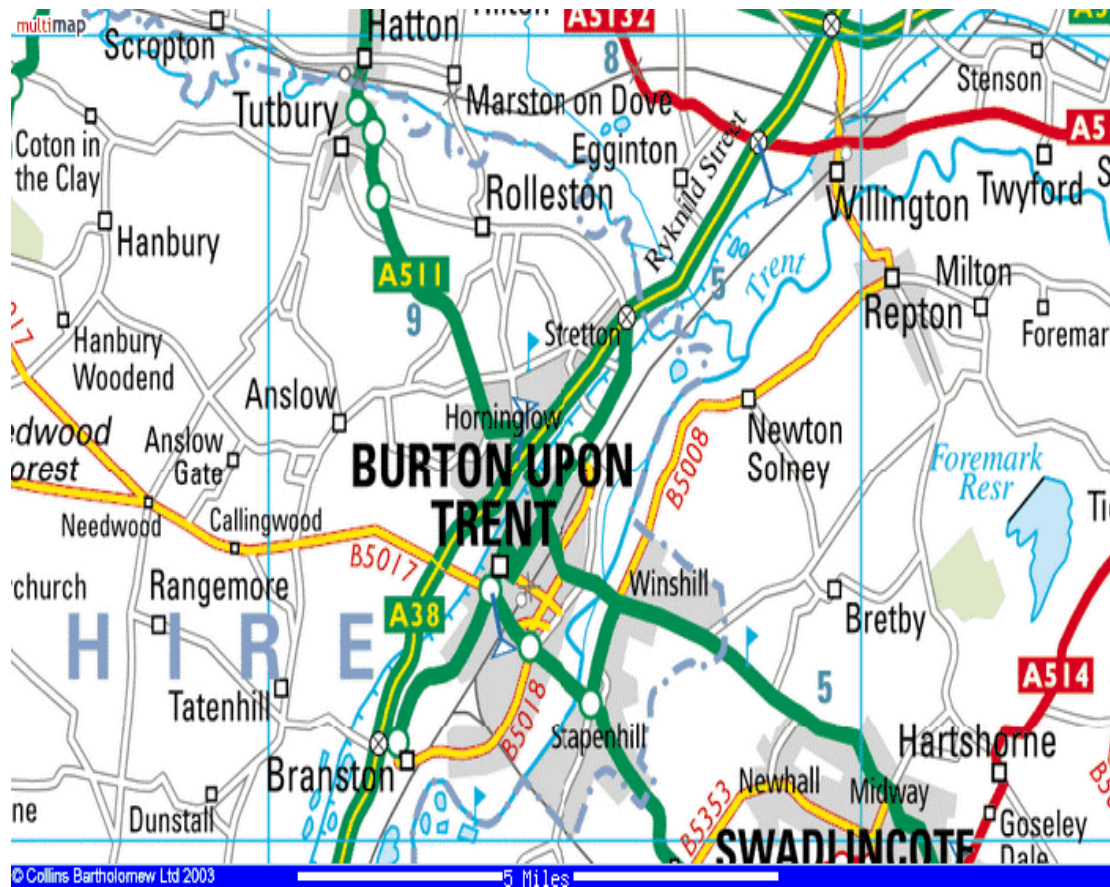
LARGE BOX

MEDIUM BOX



SMALL BOX

NDC Branston Appendix 2



ANNEX E

Supply Stability Report

The Supply Stability Report may change throughout the Term.

DRAFT - FOR ILLUSTRATIVE PURPOSES ONLY															
KPI: Supply Stability Report 2023-24				Lab Analysis Urine and Oral Testing Kit Stock level for reporting month											
Quarter	Month	Product Item Code	Product Description	In stock	Order confirmed and Awaiting Delivery	Total	6 month HMPPS usage	Average 1 month usage	Lead time for stock (in months)	Required level of stock = average month x Lead time	Difference between total stock and required lev	Monthly Performance Against Obligation	Quarterly Performance Against Obligation Urine Testing Kits	Quarterly Performance Against Obligation Oral Fluid Testing Ki	Supplier Comments on Performance
Q1 2023/24	Apr-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q1 2023/24	Apr-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q1 2023/24	May-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q1 2023/24	May-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q1 2023/24	Jun-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q1 2023/24	Jun-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q2 2023/24	Jul-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q2 2023/24	Jul-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q2 2023/24	Aug-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q2 2023/24	Aug-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q2 2023/24	Sep-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q2 2023/24	Sep-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q3 2023/24	Oct-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q3 2023/24	Oct-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q3 2023/24	Nov-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q3 2023/24	Nov-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q3 2023/24	Dec-23		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q3 2023/24	Dec-23		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q4 2023/24	Jan-24		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q4 2023/24	Jan-24		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q4 2023/24	Feb-24		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%	0.00%	0.00%	
Q4 2023/24	Feb-24		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			
Q4 2023/24	Mar-24		Urine testing kit	0	0	0	1	0	3	1	-1	0.00%			
Q4 2023/24	Mar-24		Oral Fluid testing kit	0	0	0	1	0	2	0	0	0.00%			

ANNEX F

DTSP Mobilisation Plan Outputs and Milestones

Mobilisation

Bidders should describe their approach to mobilisation and provide an Outline Mobilisation Plan detailing their proposed Mobilisation Services between the Effective Date and the date upon which the Pilot commences. The Outline Mobilisation Plan will be reviewed and finalised as an Agreed Mobilisation Plan between the Authority and the Supplier in accordance with Schedule 6.1 (*Mobilisation Plan*) following the award of the Agreement.

Mobilisation Period

Following the award of the Agreement there will be a Mobilisation Period and Pilot Period to allow the Supplier to effectively demonstrate that they are able to provide the Goods and Services. Satisfactory completion of the Pilot will be required to allow Operational Commencement to go ahead. If the Pilot is not completed to the satisfaction of the Authority, the Operational Commencement Date may be delayed whilst issues are rectified in accordance with the Agreement. The current Mobilisation Period and Pilot Period is intended to be: 29 January 2025 – 15 July 2025.

The Outline Mobilisation Plan should outline (detailing specific actions and Milestones) how the Bidder intends to achieve such Milestones by Operational Commencement Date.

Pilot

A hybrid approach has been agreed whereby the Supplier will deliver the Services to Pilot Establishments for a three-month period (estimated between April and June 2025) and the existing supplier will continue to deliver the current services to all other Approved Premises. The current drug testing contract ends on 15 July 2025 at which point the Supplier will deliver all Goods and Services (ie, Operational Commencement Date).

Pilot Establishments

The Pilot Establishments include:

(a) Mandatory Drug Testing across the Women's Estate in 7 women's prisons:

- HMP/YOI Bronzefield, Surrey
- HMP/YOI Peterborough, Cambridgeshire
- HMP/YOI Eastwood Park, Gloucestershire
- HMP/YOI Low Newton, County Durham

- HMP/YOI Foston Hall, Derbyshire
- HMP/YOI New Hall, West Yorkshire
- HMP/YOI Styal, Cheshire

(b) Drug Testing on Licence in Wales across 25 Probation sites

Table A below outlines the key dates that the Supplier will need to meet to deliver the Goods and Services by the Operational Commencement Date.

Table A: Milestones

No	Milestone	Estimated Dates
1.	Award of Agreement and Mobilisation	Jan - Feb 25
2.	Pilot readiness assessment/Gateway approval	By mid-March 25
3.	Delivery of Pilot to Pilot Establishments	Start April 25 – End June 25
4.	Go-live readiness assessment/Gateway approval	By mid-June 25
5.	Go-live	Mid-July 25

Table B below outlines a list of the outputs that the Bidder will be expected to deliver during the Mobilisation Period and the Pilot Period. The Outline Mobilisation Plan should set out (but is not limited to) how the Bidder intends to deliver these outputs including duration of tasks and resources required to ensure success.

Table B: Output requirements

No	Output area	Output	Specification reference
1.	Stock distribution	Demonstrate that the forecasted goods and supply volumes can be met.	Lot 1: Sections 2, 5, 6, 7, 11, 17 Annex B

	and order fulfilment	Demonstrate that Test Device content, packaging, documentation and procedure requirements can be met.	Lot 1: Section 12, 13, 15, 17
		Demonstrate that ordering, collection and delivery requirements for Goods and Services can be met.	Lot 1: Section 9, 10, Annex D.
		Demonstrate that a smooth transition for the transfer of responsibilities from the existing supplier can be achieved to ensure continuity of service to End Users.	
2.	Supply Chain	Demonstrate that subcontractors can meet the stock distribution and order fulfilment requirements within the specified Milestone timescales and that contingencies are in place to ensure service continuity.	
3.	Testing and analysis	Demonstrate that analysis, testing, recording and reporting capability requirements can be met.	Lot 1: Section 14, 15, 17, 18, 19, 26, Annex A
4.	Prevalence Studies	Outline the prevalence study approach including scope, sampling, frequency and reporting requirements.	Lot 1: Section 20, Annex A
5.	Quality Assurance	Confirm supplier accreditation and standards and plans to obtain further accreditation.	Lot 1: Section 21, 22.
6.	Performance Management Reporting	Demonstrate the KPI performance reporting approach.	Lot 1: Section 23.
7.	IT integration and set up	Demonstrate that IT systems meet specification requirements.	Lot 1: Section 25, Annex C
8.	Roles, Responsibilities and Resource	Demonstrate leadership, accountability, resource capacity and capability of the	

		mobilisation team and outline respective roles and responsibilities during mobilisation.	
9.	Risk Management	Outline risk management plan to identify, monitor, mitigate and report risks and issues.	
10.	Knowledge and Documentation Transfer	Outline information/knowledge required from the existing supplier and timescales.	
11.	Training	Outline training approach, standards and proposed timescales for pilot and all sites during mobilisation.	
13.	Contingency plans	Outline approach to business continuity and exit planning to guarantee continuity of service.	
14.	Stakeholder Communication and Engagement	Outline stakeholder engagement and communication plan for End Users, partners and other services including contact points ensuring continuity of service during transition from the existing supplier.	Lot 1: Section 24.
15.	Lessons Learned	Demonstrate approach to capturing and responding to lessons learned and dealing with challenges during pilot phase.	
16.	Readiness for service delivery	Demonstrate readiness for delivery in the pilot sites and all sites ensuring continuity of service for service users.	

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 2.2

PERFORMANCE LEVELS

Performance Levels

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Performance Monitoring Report”	has the meaning given in Paragraph 23.1 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Service Availability”	has the meaning given in Appendix B;
“Service Downtime”	any period of time during which any of the Services are not available in accordance with Appendix B, Service Availability; and
“Supply Stability Report”	means a report evidencing to the Authority that the Supplier maintains stock-levels of Retained Goods, in accordance with the requirements of Clause 5.10 and 5.11.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.2 Appendix A sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the delivery of the Goods and Services by the Supplier.
- 1.3 The Supplier shall monitor its performance against each Key Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.4 Service Points, and therefore Service Credits, shall accrue for any KPI Failure against a Key Performance Indicator which is indicated in Appendix A to attract Service Credits and shall be calculated in accordance with Paragraphs 2, 3 and 4.

2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, subject to Paragraph 2.4 below, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Appendix A depending on whether the KPI Failure is a Minor KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.
- 2.4 Service Points shall not accrue for KPI1 and KPI2 (as defined in the table in Appendix A of this Schedule) in respect of Orders placed by the Authority in any Service Period, for Goods which are in excess of the Forecast Threshold (as defined in Schedule 1).

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Service Periods, the second and any subsequent such KPI Failure shall be a **“Repeat KPI Failure”**.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Appendix A depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

4 SERVICE CREDITS

- 4.1 Subject to Clause 9.3A, Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 4.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.
- 4.3 In the event that Volume requirement of the Authority decreases significantly during the Term, the Authority may, at its absolute discretion revise the severity levels of the KPIs set out in Appendix A and/or revise the delivery timescales (in relation to KPI 1 and KPI 2) applicable to such KPIs as it deems necessary to reflect a fair adjustment, proportionate to the decrease in volumes.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Operational Contract Manager which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 23.2 (the “**Performance Monitoring Report**”).

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator, the actual performance achieved over the Service Period, the Quarter, and year to date, including comments relating to reported Performance Figures and underlying Management Information to evidence the reported Performance Figures;
- (b) a summary of all KPI Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each KPI Failure which occurred during the Service Period fell below the KPI Service Threshold;
- (d) which KPI Failures remain outstanding and progress in resolving them;
- (e) Authority spend on all Goods and Services and Pilot Goods and Services categorised by at least the Services Charges as well as any other expenditure paid by the Authority to the Supplier in connection with the Goods and Services and Pilot Goods and Services;
- (f) Supply Stability Report;
- (g) for any Material KPI Failures or other Default occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (h) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;

- (i) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (j) the number of Service Points awarded in respect of each KPI Failure;
- (k) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (l) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- (m) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (n) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- (o) a rolling total of the number of KPI Failures that have occurred over the past six Service Periods;
- (p) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- (q) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan[; and]

Information in respect of the next Quarter

[DRAFTING NOTE FOR BIDDERS: This paragraph (r) shall only apply if the Supplier Solution includes significant IT delivery, and any Downtime is only applicable to IT maintenance.]

- (r) [any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter].

2 PERFORMANCE RECORDS

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Goods and Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to

the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

- 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after the commencement of each Contract Year and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, (as well as historic Performance Monitoring Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

- 3.1 The Authority reserves the right to verify the availability of the Services and the Supplier's performance under this Agreement against the Key Performance Indicators including by conducting random site visits at the Supplier's premises in accordance with Clause 12 of this Agreement.

Appendix A: Key Performance Indicators

PART A: KEY PERFORMANCE INDICATORS TABLES

The Key Performance Indicators that shall apply to the Services are set out below:

Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Calculation	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information	Do Service Credits accrue?
KPI1	Delivery: Test Delivery	All Tests to be delivered within 5 Working Days of the Supplier's receipt of an Order (direct to the applicable Delivery Location) unless a longer delivery date is requested or otherwise agreed by the Authority.	(Number of Tests delivered within 5 Working Days of Order in Measurement Period / Number of Tests Ordered in Measurement Period) x 100	By Service Period	Target Performance Level: 99% Minor KPI Failure: 97.0% - 98.9% Severe KPI Failure:	0 1 2	YES	YES subject to Paragraph 4.3.

					96.0% - 96.9%			
					KPI Service Threshold: below 96%	3		
KPI2	Delivery: Test bulk stock replenishment	All Goods required to replenish Retained Stock held at the Delivery Site is supplied in full and by the date stipulated by the Authority.	(Number of Tests delivered by delivery due date specified/Number of Tests Ordered in Measurement Period) x 100	By Service Period	Target Performance Level: 100%	0	YES	YES where subject to Paragraph 4.3.
					Minor KPI Failure: 98.0 to 99.9%	1		
					Severe KPI Failure: 97.0 to 97.9%	2		
					KPI Service Threshold: below 97%	3		

KPI3	Sample collection: Urine MDT and testing in Approved Premises.	All Samples must be collected in full from all Prisons, Private Prisons, Probation Offices and Approved Premises during the Collection Window further to a request from the Authority.	Collections achieved in the relevant Collection Windows in Measurement Period) / (Samples made available in the relevant Collection Windows in any Measurement Period	By Service Period	Target Performance Level: 100%	0	YES	YES
					Minor KPI Failure: 980-99.9%	1		
					Severe KPI Failure: 97.0 – 97.9%	2		
					KPI Service Threshold: below 97%	3		
KPI4	Sample Analysis: Urine Testing and Oral Fluid Testing	All urine sample Tests must be completed and the results shared within 72 hours** of relevant collection.	Test Results shared within 72 hours** of relevant collection during Measurement Period*) / (Samples made available at relevant Collection	By Service Period	Target Performance Level: 100%	0	YES	YES
					Minor KPI Failure: 98.0-99.9%	1		

		**excluding weekend and bank holiday hours.	Window during Measurement Period *provided that Samples collected in the final three days of each Period shall be included in the measurement of the following Period for the purpose of this KPI		Severe KPI Failure: 97.0 to 97.9%	2		
					KPI Service Threshold: below 97%	3		
KPI5	Sample Analysis: Confirmatory Testing	All confirmatory Tests must be completed and the results shared within 96 hours** of the request being made by the Authority. **excluding weekend and bank holiday hours.	Number of Test Results shared within 96 hours** of request within the Measurement Period*) / (Number of requests for Confirmatory Testing made within the Measurement Period	By Service Period	Target Performance Level: 100%	0	YES	YES
					Minor KPI Failure: 98.0%-99.9%	1		
					Severe KPI Failure:	2		

			*provided that Samples collected in the final three days of each Period shall be included in the measurement of the following Period for the purpose of this KPI		97.0%-97.9% KPI Service Threshold: below 97%	3		
KPI6	MI Data – Test Results to the Authority’s performance hub	Consolidated test result data from urine and oral Tests analysed in any Service Period must be provided by the Supplier to the Authority by the 5 th calendar day of the following month.	Number of days of delay in the provision of MI Data.	By Service Period	Target Performance Level: 0 days Minor KPI Failure: 1 day Severe KPI Failure: 2-3 days KPI Service Threshold: over 3 days	0 1 2 3	YES	YES

[KPI17]	[Service Availability] <i>[Drafting Note to Bidders: Only to be retained where the Supplier Solution is IT delivered]</i>	[The availability of the Services may be measured as a KPI where the Supplier Solution includes an IT system.]	Measured in accordance with Appendix B	By Service Period	Target Performance Level: [100%] Minor KPI Failure: [X%] Severe KPI Failure: [X%] KPI Service Threshold: below [X%]	[TBC]	[YES]	[NO]
KPI 8	Social Value <i>[Drafting Note to Bidders: Targets to reflect Supplier responses]</i>	Fighting Climate Change	[To align to Supplier Response]	By [Contract Year]	[To align to Supplier Response]	[TBC]	[YES/NO]	NO

Appendix B: Definitions

1 [SERVICE AVAILABILITY

[Drafting Note to Bidders: Only to be retained where the Supplier Solution is IT delivered]

- 1.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding any maintenance period which has been agreed in advance with the Authority ("Permitted Maintenance"), within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

- 1.2 When calculating Service Availability in accordance with this Paragraph 1.2:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier shall be subtracted from the total number of hours in the relevant Service Period; and
- (b) Service Points shall accrue if:
 - (i) any Service Downtime occurs as a result of emergency maintenance undertaken by the Supplier; or
 - (ii) where maintenance undertaken by the Supplier exceeds the hours of Permitted Maintenance in any Service Period.]

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 2.3

STANDARDS

Standards

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Home Office Controlled Drug License” means a licence issued by the Home Office for the handling of controlled substances under the misuse of drugs legislation in the UK;

2 GENERAL

2.1 Throughout the Term, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Goods and/or Services. Any changes to the Standards reasonably required by the Authority, including the adoption of any such new or emergent standard, shall be at no additional cost to the Authority adopted as soon as reasonably practicable by the Supplier provided that Clause 14 (*Change*) of the Agreement shall apply to the extent that such change is a Change in Law.

2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

3.1 The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4 OPEN DATA STANDARDS

4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats.

4.2 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or

Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5 ENVIRONMENTAL REQUIREMENTS

- 5.1 The Supplier shall comply with the environmental requirements set out in the Annex to this Schedule.

6 HARDWARE SAFETY STANDARDS

- 6.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following (without limitation) or their equivalents, amendments or replacements from time to time:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
 - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements;
 - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements; and
 - (e) any laboratory equipment required in the delivery of the Services shall conform with the relevant safety standard as applicable in Law or Good Industry Practice from time to time.
- 6.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

7 ACCREDITATION REQUIREMENTS

- 7.1 Unless exempt under the Misuse of Drugs Act 1971 or Misuse of Drugs Regulations 2001, the relevant Supplier Personnel must hold a Home Office Controlled Drug License.

- 7.2 The laboratory used by the Supplier to provide the Services to the Authority must:
- 7.2.1 be accredited by United Kingdom Accreditation Service (**UKAS**) to standard ISO/IEC 17025 and certified to ISO 9002 to support accurate and reliable results from laboratory testing, calibration, sampling and measurement services in relation to toxicology testing for substances of abuse;
 - 7.2.2 work to the European laboratory guidelines for legally defensible workplace drug testing (<http://www.ewdts.org/data/uploads/documents/ewdtsguidelines.>);
 - 7.2.3 work to the UK Workplace Drug Testing Guidelines; and
 - 7.2.4 be a participant in an appropriate external quality assessment scheme and the Supplier must submit evidence of its participation at least annually and when requested by the Authority;
- for the duration of the Term.
- 7.3 Laboratory practices must comply with all relevant legislation for the duration of the Term.

ANNEX 1: ENVIRONMENTAL REQUIREMENTS

2 DEFINITIONS

7.4 In this Annex, the following definitions shall apply:

“Permitted Item”	means those items which are permissible under this Agreement to the extent set out in Table B of this Annex
“Prohibited Items”	means those items which are not permissible under this Agreement as set out at Table A of this Annex
“Waste Hierarchy”	<p>means prioritisation of waste management in the following order of preference:</p> <ul style="list-style-type: none">(aaa) Prevention – by using less material in design and manufacture. Keeping products for longer;(bbb) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;(ccc) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;(ddd) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and(eee) Disposal - Landfill and incineration without energy recovery.

3 ENVIRONMENTAL REQUIREMENTS

- 7.5 The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to the Agreement.
- 7.6 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
- 7.7 In performing its obligations under the Agreement, the Supplier shall to the reasonable satisfaction of the Authority:

- 7.7.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
 - 7.7.2 prioritise waste management in accordance with the Waste Hierarchy;
 - 7.7.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - 7.7.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
 - 7.7.5 inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
 - 7.7.6 minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
 - 7.7.7 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 7.8 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Agreement. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
- 7.9 The Supplier shall not provide to the Authority Goods which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 7.10 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Agreement unless:
- 7.10.1 it is a Permitted Item; or
 - 7.10.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.

- 7.11 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.

TABLE A – Prohibited Items

The following items will be prohibited where reasonably avoidable and having regard to the nature of the Services and the need to ensure appropriate standards of hygiene and to avoid cross-contamination.

The following consumer single use plastics are Prohibited Items:	Catering <ul style="list-style-type: none">a. Single use sachets e.g., coffee pods, sauce sachets, milk sachetsb. Take away cutleryc. Take away boxes and platesd. Cups made wholly or partially of plastice. Strawsf. Stirrersg. Water bottles
	Facilities <ul style="list-style-type: none">a. Single use containers e.g., hand soap, cleaning productsb. Wipes containing plastic
	Office Supplies <ul style="list-style-type: none">a. Plastic envelopesb. Plastic wrapping for brochuresc. Paper or card which is bleached with chlorine
	Packaging <ul style="list-style-type: none">a. Single use plastic packaging from deliveries where avoidable e.g., shrink wrapped packaging from office supplier or facilities products.b. Single use carrier bags

TABLE B – Permitted Items

Permitted Items	Any laboratory equipment or hardware equipment which is required for the delivery of the Services.
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CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 2.5

INSURANCE REQUIREMENTS

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 2 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
 - (b) appropriately regulated; and
 - (c) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Agreement, the Supplier shall:
- (d) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - (e) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - (f) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

- 7.12 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 7.13 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

8 EVIDENCE OF INSURANCES

- 8.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

9 CANCELLATION

- 9.1 Subject to Paragraph 10.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 9.2 Without prejudice to the Supplier's obligations under Paragraph 8, Paragraph 10.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

10 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

- 10.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 10.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 10.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 10.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 2: REQUIRED INSURANCES

PART B: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of **£50,000** relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

PART C: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

1.1 The Supplier

2 Interest

2.1 To indemnify the Insured (as specified in paragraph 1) in respect of all sums which the Insured (as specified in paragraph 1) shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to property;

happening during the period of insurance (as specified in paragraph 5) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Agreement.

3 Limit of indemnity

3.1 Not less than **£10,000,000** in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but **£10,000,000** in the aggregate per annum in respect of products or pollution liability (to the extent insured by the relevant policy).

4 Territorial limits

United Kingdom

5 Period of insurance

5.1 From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

6.1 Indemnity to principals clause.

6.2 Legal defence costs in addition to the limit of indemnity.

6.3 Data protection legislation clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

8.1 Not to exceed **REDACTED** for each and every third party property damage claim (personal injury claims to be paid in full).

PART D: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

1.1 The Supplier

2 Interest

2.1 To indemnify the Insured (as specified in paragraph 1) for all sums which the Insured (as specified in paragraph 1) shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured (as specified in paragraph 1) during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Goods or Services and the conduct and execution of any professional advice, services and/or duties in connection with this Agreement.

3 Limit of indemnity

3.1 Not less than £5,000,000 in respect of any one claim and in the aggregate per annum.

4 Territorial limits

4.1 United Kingdom

5 Period of insurance

5.1 From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of 6 years thereafter.

6 Cover features and extensions

6.1 Retroactive cover to apply to any “claims made policy wording” in respect of this Agreement or retroactive date to be no later than the Effective Date.

6.2 Loss of documents/compute records extension.

6.3 Legal defence costs.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8 Maximum deductible threshold

8.1 Not to exceed **REDACTED** for each and every claim.

PART E: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

Authority Responsibilities

1 INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Specification*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

1 GENERAL OBLIGATIONS

- 1.1 The Authority shall:
- (a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (*Specification*) and Schedule 4.1 (*Supplier Solution*));
 - (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
 - (c) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
 - (d) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

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SCHEDULE 4.1 – **REDACTED**

SUPPLIER SOLUTION

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SCHEDULE 4.2 - *REDACTED*

COMMERCIALLY SENSITIVE INFORMATION

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

Notified Key Sub-Contractors

- 1 In accordance with Clause 16.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
N/A					[Level 1]

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 6.1

MOBILISATION PLAN

MOBILISATION PLAN

1 INTRODUCTION

1.1 This Schedule:

- 1.1.1 defines the process, during the Mobilisation Period, for the preparation and transition of the Outline Mobilisation Plan and the Agreed Mobilisation Plan; and
- 1.1.2 identifies the Milestones.

2 OUTLINE MOBILISATION PLAN

- 2.1 The Outline Mobilisation Plan is set out in Schedule 4.1 (Supplier Solution) and reflects the requirements as detailed in Section 28 and Annex F of the Specification.
- 2.2 All changes to the Outline Mobilisation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (Authority Cause)).

3 APPROVAL OF THE AGREED MOBILISATION PLAN

- 3.1 The Supplier shall submit an updated Outline Mobilisation Plan to the Authority for approval within 10 Working Days of the Effective Date.
- 3.2 The Supplier shall ensure that the updated Outline Mobilisation Plan:
 - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Mobilisation Plan;
 - 3.2.2 includes the details of how the Supplier will deliver the Pilot;
 - 3.2.3 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (a) the completion of any Testing to be undertaken; and
 - (b) training and roll-out activities;
 - 3.2.4 clearly outlines all the steps required to implement the Milestones to be Achieved, together with a high-level plan for the rest of the programme, in conformity with the Authority Requirements;
 - 3.2.5 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements with proposed engagement timelines;
 - 3.2.6 clearly outlines the proposed Mobilisation Costs; and

- 3.2.7 is produced using a software tool as specified or agreed by the Authority.
- 3.3 Prior to the submission of the updated Outline Mobilisation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
- 3.3.1 to review any documentation produced by the Supplier in relation to the development of the updated Outline Mobilisation Plan, including:
- (a) details of the Supplier's intended approach to the updated Outline Mobilisation Plan and its development;
 - (b) copies of any drafts of the updated Outline Mobilisation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Outline Mobilisation Plan;
 - (d) to request complete and accurate financial and non-financial information in relation to the proposed Mobilisation Costs to enable the Authority to verify the Mobilisation Costs, including details and all assumptions relating to:
 - (i) the Supplier's costs against each line in the Outline Mobilisation Plan, including total actual costs;
 - (ii) operating expenditure relating to the provision of the Mobilisation Services, including resources, personnel, unit costs and overheads;
 - (iii) the actual cost profile for each Service Period; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the updated Outline Mobilisation Plan.
- 3.4 Following receipt of the updated Outline Mobilisation Plan from the Supplier, the Authority shall:
- 3.4.1 review and comment on the updated Outline Mobilisation Plan as soon as reasonably practicable; and
- 3.4.2 notify the Supplier in writing that it Approves or rejects the updated Outline Mobilisation Plan no later than 10 Working Days after the date on which the updated Outline Mobilisation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the updated Outline Mobilisation Plan:
- 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- 3.5.2 the Supplier shall then revise the updated Outline Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised updated Outline Mobilisation Plan to the Authority for

the Authority's Approval within 5 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted updated Outline Mobilisation Plan until such time that Approval is provided by the Authority.

3.5.3 Where the Parties cannot agree any submitted Outline Mobilisation Plan, and in any event where paragraphs 3.4 and 3.5 have been repeated three times, the matter may be referred for resolution by the Dispute Resolution Procedure at any time.

3.6 If the Authority Approves the updates to the Outline Mobilisation Plan, it will become the Agreed Mobilisation Plan and replace the Outline Mobilisation Plan from the date of the Authority's notice of Approval.

4 MOBILISATION COSTS

4.1 The Supplier shall include its expected Mobilisation Costs within the Outline Mobilisation Plan for Approval by the Authority.

4.2 The Authority shall only permit Mobilisation Costs which form actual spend wholly and reasonably incurred by the Supplier for delivering the Mobilisation Services and do not include Excluded Costs as set out in Schedule 7.1 (Charges).

4.3 As part of the Approval process set out at Paragraph 3 above, the Authority may request evidence and such further information as the Authority may reasonably request for, and test the proposed Mobilisation Costs, and where the Authority is not satisfied that the Mobilisation Costs represent actual anticipated spend, or a reasonable sum for the Mobilisation Services, the Authority may reject the Mobilisation Costs by rejecting the Outline Mobilisation Plan as set out above.

4.4 All evidence and information requested by the Authority in respect of Paragraph 4.3 above shall be provided promptly by the Supplier.

5 UPDATES TO AND MAINTENANCE OF THE AGREED MOBILISATION PLAN

5.1 Following the Approval of the Agreed Mobilisation Plan by the Authority:

5.1.1 the Supplier shall submit any revisions to the Agreed Mobilisation Plan to the Authority from the Effective Date and when any changes are made to the Agreed Mobilisation Plan or at such a frequency as requested by the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

5.1.2 any revised Agreed Mobilisation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for Approval in accordance with the procedure set out in Paragraph 3; and

- 5.1.3 the Supplier's performance against the Agreed Mobilisation Plan shall be monitored at meetings of the Project Board (as defined in Schedule 8.1 (Governance)). In preparation for such meetings, the current Agreed Mobilisation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Project Board.
- 5.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Agreed Transition Management Plan shall be subject to Schedule 8.2 (Change Control Procedure) provided that:
 - 5.2.1 any amendments to elements of the Agreed Mobilisation Plan which are based on the contents of the Outline Mobilisation Plan shall be deemed to be material amendments; and
 - 5.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).
- 5.3 Notwithstanding Paragraph 5.2 above, any proposed amendments to the Agreed Mobilisation Plan shall not come into force until they have been Approved in writing by the Authority.

6 GOVERNMENT REVIEWS

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall provide such reasonable assistance as may be required for this purpose at its own cost.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“European Standard”	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 6 of Part H;
“Supplier Profit Margin”	means the profit margin (expressed as a percentage) applied by the Supplier to the provision of the Services/Goods as set out in the Financial Model in the Supplier Solution;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses, and other sums due from the Authority detailed in the information are properly payable;

PART F: PRICING

1 APPLICABLE PRICING MECHANISM

1.2 The Charges for the Goods and Services are constructed of two (2) key components:

1.2.1 Mobilisation Costs

The Mobilisation Costs include all Approved cost elements of the provision of the Mobilisation Services and implementation of the Agreed Mobilisation Plan (including without limitation the transitioning of the Services from the incumbent supplier to the Supplier in readiness for the Services to commence).

1.2.2 Service Charges

The charges for the Goods and Services and the Pilot Goods and Services (excluding any Mobilisation Costs) shall be fixed and calculated on the basis of the price per unit (in accordance with the applicable Volumes) set out in Annex 3 of this Schedule 7.1 and in accordance with the process set out in paragraph 3 of Part B (Charging Mechanism).

1.3 Any changes to the Charges shall be in accordance with paragraph 6 below.

1.4 The Charges include all packaging, labelling, transport, travel, accommodation, subsistence and other expenses incurred in connection with the provision of the Goods and/or Services (including without limitation, any courier expenses).

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

PART G: CHARGING MECHANISMS

2 MOBILISATION COSTS

- 2.1 The Mobilisation Costs shall comprise the actual costs to the Supplier of delivering any Mobilisation Services to the extent that:
- 2.1.1 they are directly, properly, and wholly incurred for the provision of delivery of the Agreed Mobilisation Plan;
 - 2.1.2 they do not include any Excluded Cost;
 - 2.1.3 such costs are Approved and set out in the Agreed Mobilisation Plan, or are otherwise Approved by the Authority;
 - 2.1.4 such costs are evidenced to the Authority's reasonable satisfaction.
- 2.2 The Supplier shall be entitled to invoice the Authority for the Mobilisation Costs each Service Period in arrears or as otherwise Approved by the Authority in agreeing the Agreed Mobilisation Plan.
- 2.3 For the avoidance of doubt, where the actual Mobilisation Costs are lower than the Mobilisation Costs set out in the Agreed Mobilisation Plan, the Supplier may only invoice for the actual Mobilisation Costs. Mobilisation Costs which are in excess of those set out in the Agreed Mobilisation Plan shall not be payable by the Authority unless they have been Approved.

3 SERVICE CHARGES

- 3.1 The Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part I.
- 3.2 Subject to Clause 9.3A, any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.
- 3.3 When calculating the Charges for each Service Period, the Supplier shall apply the Rates applicable to the Low Volumes (as set out in Annex 1 to this Schedule 7.1).
- 3.4 At the end of each Contract Year, the Supplier shall calculate any Rebate payable to the Authority to reflect any overpayment by the Authority of Charges throughout the Contract Year based on actual Volumes, which shall be calculated as follows:

Pre-Reconciled Charges – Volume Reconciled Charges = Rebate

(the **Rebate Calculation**)

Where:

Pre-Reconciled Charges shall be a sum equal to the Charges calculated for the immediately preceding Contract Year, in accordance with paragraph 3.3 (applying the Rate applicable to the Low Volumes), prior to the application of any Service Credits or any other deductions.

Volume Reconciled Charges shall be a sum equal to the Charges calculated for the immediately preceding Contract Year by applying the relevant Rates (as set out in Annex 1 to this Schedule 7.1) to the Volumes for the relevant Contract Year.

- 3.5 The Supplier shall issue a Credit Note for a sum equal to the Rebate which will be applied to the final invoice of the relevant Contract Year and for the avoidance of doubt, where a Credit Note exceeds the sum of the invoice for the final Service Period in the relevant Contract Year, the Credit Note will continue to be deducted from the invoices for each subsequent Service Period until such time that the Credit Note has been fully redeemed. For the purposes of illustration of how the Rebate and Credit Note will work during the Term, please see the worked example set out in Annex 4 to this Schedule 7.1.
- 3.6 In respect of the invoices for the final three (3) Service Periods of this Contract, the Supplier shall, in accordance with Schedule 8.4, notify the Authority at the Contract Review Meeting falling three (3) months prior to the expiry or early termination of this Contract, of the anticipated Volumes to be incurred over the final three (3) months, and it shall be determined between the Parties how any Rebate and Credit Note shall be dealt with in order to avoid the Authority having to recover sums after the expiry or early termination of the Contract. If any Rebate is outstanding on expiry or termination of this Agreement, the Supplier shall pay any such remaining Rebate to the Authority within thirty (30) days of the date of such expiry or termination.
- 3.7 The Charges applicable to the Pilot shall be calculated on the basis of the Rates applicable to the Low Volumes and invoiced at the end of each Service Period during the Pilot Period. For the avoidance of doubt, the Volumes incurred during the Pilot Period shall count towards the overall Volumes for the first Contract Year and shall be included in the calculation of the Rebate to be applied at the end of the first Contract Year.

4 EXCLUDED COSTS

- 4.1 The Supplier shall not be entitled to include within the Mobilisation Costs any of the following (which together shall be referred to as “**Excluded Costs**”):
- 4.1.1 any part of any cost which exceeds what would be incurred by the Supplier on an arm's length commercial basis; or
 - 4.1.2 any part of those sums which exceeds what is fair and reasonable; or
 - 4.1.3 any sums described above which are not supported by appropriate evidence; or
 - 4.1.4 any sums that are not considered as Value for Money for the Authority; or

- 4.1.5 any sums that have already been recovered by the Supplier from the Authority under any other Charge or payment under this Agreement; or
- 4.1.6 any sums incurred by the Supplier as a result of:
- (a) any failure of the Supplier or its Sub-Contractors to comply with the terms of this Agreement;
 - (b) any failure of the Supplier or its Sub-Contractors to maintain any equipment or software in accordance with the terms of this Agreement;
 - (c) any negligent or irresponsible action of the Supplier or its Sub-Contractors;
 - (d) any sums incurred in the implementation of any Rectification Plan.

PART H: ADJUSTMENTS TO THE CHARGES

5 SERVICE CREDITS

5.1 Subject to Clause 9.3A, Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

5.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 1% deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times x \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is 1%; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

5.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 26.4.3 (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

5.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

5.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

6 CHANGES TO CHARGES

6.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall be no greater than that applying to

Charges using the same pricing mechanism as at the Effective Date (as set out in the Financial Model set out in the Supplier Tender).

- 6.2 The Charges shall remain fixed from the Effective Date to the commencement of the second Contract Year (approximately 14 months) as set out in the Financial Model set out in the Supplier Tender.
- 6.3 Any changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and shall only be permitted in line with Indexation as set out in paragraph 6.5 and 6.6 below.
- 6.4 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

Indexation

- 6.5 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 4 to reflect the effects of inflation.
- 6.6 Where Indexation applies, the relevant adjustment shall be:
 - (a) calculated at the first day of the Authority Financial Year but in the first year shall not take effect until after the first anniversary of the Effective Date and shall be applied on the first day of the Authority Financial Year in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 6.7 Except as set out in Paragraph 4, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

PART I: INVOICING AND PAYMENT TERMS

7 SUPPLIER INVOICES

- 7.1 The Authority shall accept for processing, any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 7.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall:
- (a) comply with the requirements of the Authority's e-invoicing system;
 - (b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 7.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 7.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates.(Purchase Order (PO) numbers are mandatory on all invoices and supplier must have one on all invoices. The Authority may decline to pay without a recognised PO number);
 - (f) the dates between which the Goods and/or Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Goods and/or Services;
 - (h) the applicable Volumes for that Service Period;
 - (i) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, the amount of any Rebate to be afforded to the Authority by way of Credit

Note, and, separately, any VAT or other sales tax payable in respect of each of the same;

- (j) details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
- (k) reference to any reports required by the Authority in respect of the Goods and/or Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Goods and/or Services);
- (l) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (m) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (n) where the Goods and/or Services have been structured into separate service lines, the information at (a) to (m) of this paragraph 7.3 shall be broken down in each invoice per service line.

7.4 The Supplier shall invoice the Authority in respect of Goods and/or Services in accordance with the requirements of Part G. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

7.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

The Supplier shall submit all invoices and Supporting Documents via email to:

REDACTED

which can then be viewed on the Authority's electronic system SOP, with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

7.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

7.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part I. Where any invoice does not conform to the Authority's requirements set out in this Part I, the Authority shall promptly return the disputed invoice to the

Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

- 7.8 If the Authority fails to consider and dispute an invoice in accordance with paragraphs 7.4 and 7.7 within 10 Working Days, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 8.1.

8 PAYMENT TERMS

- 8.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 8.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 3: PRICING MECHANISM

REDACTED

ANNEX 4: REBATE WORKED EXAMPLE

1. ***The below worked example shows how the Authority will calculate the Rebate and apply the Credit Note. The figures used in the below example are for illustrative purposes only.***

Contract Year April 2025 – March 2026

Forecasted Volumes	Volume Bandings
MDT Screening: High	2,000 to 3,000
MDT Screening: Medium	1,000 to 1,999
Volumes	Unit Price
MDT Screening: High	£6
MDT Screening: Medium	£8
MDT Screening: Low	£10

Service Period	Volumes deliver per Service Period	Cumulative Volumes delivered (2025/26)	Rates applicable to Low Volumes – Pre-Reconciled Charges (£10 per unit)	Rates applicable to High Volumes – Volume Reconciled Charges (£6 per unit)
MDT Screening: April	87	87	£870	£522
MDT Screening: May	127	214	£1,270	£762
MDT Screening: June	218	432	£2,180	£1,308
MDT Screening: July	179	611	£1,790	£1,074
MDT Screening: August	321	932	£3,210	£1,926
MDT Screening: September	244	1,176	£2,440	£1,464
MDT Screening: October	136	1,312	£1,360	£816
MDT Screening: November	202	1,514	£2,020	£1,212

MDT Screening: December	237	1,751	£2,370	£1,422
MDT Screening: January	151	1,902	£1,510	£906
MDT Screening: February	350	2,252	£3,500	£2,100
MDT Screening: March	424	2,676	£4,240	£2,544
Total Paid			£26,760	£16,056

2. The Rates applicable to the Low Volumes are invoiced each month from April 2025 to March 2026 (the Pre-Reconciled Charges).
3. The Volumes hit Medium Volumes in September and High Volumes in February. As such, in calculating the Rebate for this Contract Year, the Authority will apply the Rate applicable to High Volumes, retrospectively to the Volumes for the entire Contract Year and calculate the difference in the Service Charges it has paid each Service Period throughout the Contract Year, and the Rates that apply to the Volumes actually incurred.
4. Therefore, in preparing the invoice for April 2026, the Supplier must carry out the Rebate Calculation, being *Pre-Reconciled Charges – Volume Reconciled Charges = Rebate*. For the above figures, this would be £26,760 - £16,056 = **£10,704**. As such, £10,704 would be the Rebate amount to be included in the Credit Note and deducted from the invoice for April 2026 (and such future invoices as applicable until the Credit Note has been fully redeemed).
5. The above calculation must be carried out by the Supplier and provided to the Authority for Approval before it is applied to the April 2026 invoice.
6. In the event that the value of the Credit Note exceeds the value of the April 2026 invoice paragraph 3.5 shall apply.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 7.4

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Financial Indicators”	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
“Annual Revenue”	Revenue shown on the face of the Supplier’s Income Statement in a standard set of financial statements for each accounting year. It should exclude the entity’s share of the revenue of associates, joint ventures and any other group entities which are not fully consolidated;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
“Credit Rating Level”	a credit rating level as specified in Annex 5 of this Schedule;
“Credit Rating Threshold”	the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 6 of this Schedule;
“Expected Annual Contract Value”	the annual monetary value of the Agreement, which shall be as set out in the Financial Model submitted with the Supplier Tender in the first Contract Year and thereafter shall be the total contract value incurred in the immediately preceding 12 months for each subsequent Contract Year;
“FDE Group”	means the Supplier, relevant Parent Company, Guarantor, and Key Sub-contractors;
“Financial Distress Event”	shall bear the meaning as set out in Schedule 1 (Definitions);
“Financial Distress Remediation Plan”	shall bear the meaning as set out in Schedule 1 (Definitions);

“Financial Indicators”	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
“Financial Target Thresholds”	means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;
“Monitored Suppliers”	means those entities specified at paragraph 5.2 of this Schedule;
“Rating Agencies”	the rating agencies listed in Annex 5 of this Schedule.

2 WARRANTIES AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
- (a) the long-term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 6 of this Schedule; and
 - (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 The Supplier shall:
- (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
 - (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 5 Working Days of the date on which the Supplier first becomes aware of

the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:

- (a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
- (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 6 of this Schedule ceases to hold a Credit Rating for that entity.

2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:

- (a) be a single report with separate sections for each of the FDE Group entities;
- (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;

- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £1m or obligations under a service contract with a total contract value greater than £3m;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
 - (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and
- (g) any - one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
 - (a) rectify such late or non-payment; or
 - (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
 - (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
- 4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.
- 4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

- 4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
 - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.
- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;

- (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

- 5.1 Subject to the calculation methodology set out at Annex 7 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Table 1 Financial Indicators

Financial Indicator	Calculation ¹	Financial Target Threshold	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 2.3(b)]
<p>1</p> <p>Operating Margin or The higher of (a) the Operating Margin for the most recent 12-month period and (b) the average Operating Margin for the last two 12-month periods]</p>	<p>[Operating Margin = Operating Profit / Revenue]</p>	<p>> (10%)</p>	<p>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.</p>
<p>2</p> <p>(Net Debt to EBITDA Ratio)</p>	<p>(Net Debt to EBITDA ratio = Net Debt / EBITDA)</p>	<p>< (2.5x) times</p>	<p>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon Net Debt and EBITDA, for the</p>

			12 months ending on the relevant accounting reference date.
3 Acid Ratio	Acid Ratio = (Current Assets – inventories) / Current Liabilities	> (1.0x) times	Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date.

4 Gearing	Long Term Liabilities / Capital Employed (%) Or (Debt / Equity)	< (X) %	Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.
5			

Turnover Ratio	Turnover Ratio = Annual Revenue / Expected Annual Contract Value	> (2 times)	Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.
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Key: ¹ – See Annex 7 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Guarantor (Parent Company)	<p>Abbott Laboratories a company incorporated under the laws of the United States of America registered in the United States of America with number SEK CIK # 0000001800 in the state of Illinois whose principal office is at 100 Park Road, Abbott Park, Illinois, 60064-6400</p> <p>All Financial Indicators identified in the table at Paragraph 5.1</p>
Key Sub-Contractor (s)	<p>See Schedule 4.3 - Notified Key Sub-contractors</p> <p>All Financial Indicators identified in the table at Paragraph 5.1</p>

6 TERMINATION RIGHTS

- 6.1 The Authority shall be entitled to terminate this Agreement under Clause 34.2.2 (*Termination by the Authority*) if:
- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
 - (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
 - (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7 PRIMACY OF CREDIT RATINGS

- 7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 6 of this Schedule, then:
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
 - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

- 8.1 If this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of Part B of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 8 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant

Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

- 8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 5: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

[Note to Bidders: Note that this Schedule is based on long-term credit ratings issued by credit ratings agencies such as Standard and Poors, Moodys, etc. These are different to and should not be substituted for credit scores issued by credit scoring agencies such as Dun and Bradstreet, Company Watch, etc.

(The following is an example of standard ratings used by these rating agencies).]

- Rating Agency 1 (e.g Standard and Poors)

- Credit Rating Level 1 = AAA
- Credit Rating Level 2 = AA+
- Credit Rating Level 3 = AA
- Credit Rating Level 4 = AA-
- Credit Rating Level 5 = A+
- Credit Rating Level 6 = A
- Credit Rating Level 7 = A-
- Credit Rating Level 8 = BBB+
- Credit Rating Level 9 = BBB
- Credit Rating Level 10 = BBB-
- Etc.

- Rating Agency 2 (e.g Moodys)

- Credit Rating Level 1 = Aaa
- Credit Rating Level 2 = Aa1
- Credit Rating Level 3 = Aa2
- Credit Rating Level 4 = Aa3
- Credit Rating Level 5 = A1
- Credit Rating Level 6 = A2
- Credit Rating Level 7 = A3
- Credit Rating Level 8 = Baa1
- Credit Rating Level 9 = Baa2
- Credit Rating Level 10 = Baa3
- Etc.

- Rating Agency 3 (Equifax)
 - Credit Rating Level 1 = A+, A, A- Excellent Risk
 - Credit Rating Level 2 = B+, B, B- Very Good
 - Credit Rating Level 3 = C+, C, C- Above Average
 - Credit Rating Level 4 = D+, D, D- Average Risk
 - Credit Rating Level 5 = E+, E, E- Below Risk
 - Credit Rating Level 6 = F+, F, F- Very High Risk
 - Credit Rating Level 9 = G- Gazette Data Filed
 - Credit Rating Level 10 = I- Insolvent Code
 - Credit Rating Level 11 = O- Out of Date Accounts
 - Credit Rating Level 12 = N/A- No Accounts have been filed
- Rating Agency 4 (Dun & Bradstreet). The following tables summarises financials strength and risks based of tangible net worth and assessment of failure.

Financial Strength Indicator	Tangible Net Worth (in £)	
Net Worth	From	To
5A	35,000,000	And Above
4A	15,000,000	34,999,999
3A	7,000,000	14,999,999
2A	1,500,000	6,999,999
1A	700,000	1,499,999
A	350,000	699,999
B	200,000	349,999
C	100,000	199,999
D	70,000	99,999
E	35,000	69,999
F	20,000	34,999

G	8,000	19,999
H	0	7999

Alternate Symbols Used

N Negative net worth (negative balance of equity after deduction of intangibles)

O Net worth undetermined (accounts unavailable or older than 2 years)

NB New Business (less than 12 months old)

NQ Out of Business: Business has ceased to trade

Risk Indicator (Dun & Bradstreet Indicator)

To generate the Risk Indicator the D&B Failure Score is combined with expert rules such as:

Minimum Data - To identify trading activity and provide substance for the score

High Risk Parent - High Risk of a parent cascades down through the corporate family tree so that subsidiaries are also marked as High Risk

Detrimental Legal Events - In addition to failure events (for example; meeting of creditors, administrator appointed, bankruptcy, etc) Detrimental Auditors Reports will also automatically mark the subject organisation as High Risk

Possible Fraudulent Activity - Our team of Severe Risk Specialists identify potential and actual fraudulent businesses and individuals. Customers are then warned and Scores / Risk Indicators are removed or shown as High Risk

Manual Overrides - Scores and Risk Indicators can be adjusted by authorised experts to reflect non statistical / catastrophic events

The following table shows the relationship between the Risk Indicator and level of risk, and provides a guide to interpretation:

D&B Risk Indicator

<u>Indicator</u>	<u>Meaning</u>	<u>Probability of Failure</u>
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1	Minimal Risk	Proceed with transaction. Offer extended terms if required
2	Low Risk	Proceed with transaction
3	Slightly greater than average risk	Proceed with transaction but monitor closely
4	Significant level of risk	Take suitable assurances before extending credit - e.g. personal guarantees

- Insufficient information to assign a risk indicator.

ANNEX 6: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

[Note to Bidders: The table below has been constructed using Equifax if this is to change to an agreed Credit Rating and Credit Rating Thresholds then the Credit rating and Threshold has to be agreed before contract signature.]

Entity	Credit Rating (long term) (insert credit rating issued for the entity at the Effective Date)	Credit Rating Threshold (insert the actual rating (e.g AA-) or the Credit Rating Level (e.g Credit Rating Level 3))
Supplier	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 -C and above
Relevant Parent Company	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above
Guarantor (if different from Relevant Parent Company)	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above
Key Sub-contractors	Rating Agency 3 – Credit Rating 3 -C and above	Rating Agency 3 – Credit Rating 3 -C and above

ANNEX 7: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

[Note to Bidders: This Annex may be amended to reflect the calculation methodology for those Financial Indicators that are selected for inclusion in Paragraph 5.1 of this Schedule]

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. Terminology: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate (Bank of England Spot rate) in force at the relevant date for which the Financial Indicator is being calculated.
4. Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 Operating Margin	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (that is,</p>

	where the operating profit is negative), Operating Profit should be taken to be zero.
2 Net Debt to EBITDA Ratio	<p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <ul style="list-style-type: none"> • <u>Net Debt:</u> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met. • <u>EBITDA:</u> Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met). <p>"Net Debt" = Bank overdrafts + Loans and</p>

	<p>borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p>“EBITDA” = Operating profit + Depreciation charge + Amortisation charge</p>
3 (Acid Ratio)	All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.
4 Gearing % Also known as “leverage”	<p>Gearing focuses on the capital structure of the business – that means the proportion of finance that is provided by debt relative to the finance provided by equity (or shareholders). Its focuses on the long-term financial stability of a business.</p> <p>All elements that are used to calculate Gearing % are available on the face of the Balance Sheet in a standard set of financial statements.</p> <p>Gearing % = (long term liabilities/Capital employed) * 100</p> <p>Long-term liabilities include loans due more than one year + preference shares + mortgages</p> <p>Capital employed = Share capital + retained earnings + long-term liabilities</p> <p>Or,</p> <p>Total Debt / Total Equity * 100%</p>
5 Turnover Ratio	<p>Turnover Ratio = Annual Revenue / Expected Annual Contract Value</p> <p>The Turnover Ratio is used to understand how large the contract is compared to the annual revenue of a bidder for the contract.</p>

ANNEX 8: BOARD CONFIRMATION

Supplier Name: Abbott Toxicology

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 7.4 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (c) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- (d) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part K;
“Audit Agents”	<p>(fff) the Authority’s internal and external auditors;</p> <p>(ggg) the Authority’s statutory or regulatory auditors;</p> <p>(hhh) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>(iii) HM Treasury or the Cabinet Office;</p> <p>(jjj) any Authority Quality Assurance Provider;</p> <p>(kkk) any party formally appointed by the Authority to carry out audit or similar review functions; and</p> <p>(lll) successors or assigns of any of the above;</p>
“Authority Financial Year”	the period running from 1 April to 31 March in each year;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part K;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:</p> <p>(mmm) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:</p> <p>(i) base salary paid to the Supplier Personnel;</p> <p>(ii) employer’s national insurance contributions;</p> <p>(iii) employer pension contributions;</p> <p>(iv) car allowances;</p> <p>(v) any other contractual employment benefits;</p> <p>(vi) staff training;</p>

- (vii) work place accommodation; and
- (viii) reasonable recruitment costs, as agreed with the Authority;
- (nnn) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (ooo) operational costs which are not included within (mmm) or (nnn) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;

non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Final Reconciliation Report”

the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part K;

“Financial Model”

the financial response template submitted by the Supplier as part of the Supplier Tender (and known as the financial response template) and as updated from time to time through the Change Control Process or otherwise by agreement between the Parties;

“Financial Reports”

the Financial Model and the reports listed in the table in Paragraph 3.2 of Part K;

“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data, Charges and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 2 of Part J;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (ppp) the Supplier’s Costs broken down against each Service and/or Goods, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; (qqq) operating expenditure relating to the provision of the Services and Goods including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Open Book Profit Margin; and (iv) Reimbursable Expenses; (rrr) Overheads; (sss) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; (ttt) the Supplier Profit achieved over the Term and on an annual basis; (uuu) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;

(vvv) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and

(www) the actual Costs profile for each Service Period.

“Open Book Profit Margin” in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period;

“Overhead” means those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;

“Reimbursable Expenses” reasonable out of pocket expenses that are not covered by the Charges, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time and agreed in advance;

“Supplier Profit” for the purposes of this Schedule 7.5, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

“Supplier Profit Margin” for the purposes of this Schedule 7.5, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

PART J: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

2 FINANCIAL TRANSPARENCY OBJECTIVES

2.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

- (a) **Understanding the Charges**
 - (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Charges, Financial Reports and Supplier Profit Margin and the Open Book Data;
 - (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (b) **Agreeing the impact of Change**
 - (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
 - (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (c) **Continuous improvement**
 - (i) for the Parties to challenge each other with ideas for efficiency and improvements;
 - (ii) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices; and
 - (iii) for the Parties to identify cost efficiencies in the event that forecasted volumes of Goods required by the Authority increase.

(together the "**Financial Transparency Objectives**").

3 OPEN BOOK DATA

3.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and

- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

PART K: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

3.2 The Supplier shall provide

- (a) the Financial Model provided with the Supplier's Tender on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	An updated Financial Model updated in accordance with the Change Control Procedure and agreement between the Parties in the course of agreeing a Change (other than an Operational Change)
Monthly Financial Report	Monthly reports – Invoice produced with relevant backing document/statement supporting invoice. Within the last 5 days of the end of the previous month.
Quarterly Financial Report	<ul style="list-style-type: none">• reconciliation report• ad hoc change request reports Within 5 days of the end of the previous Quarter.
Annual Financial reconciliation Report	Within 1 month after the end of the Term
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates

Final Reconciliation Report	Within 6 months after the end of the Term
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- 3.3 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 3.4 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 3.5 Each Financial Report shall:
- (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Agreement;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges exclusive of VAT and based on current prices.
- 3.6 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 3.7.
- 3.7 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Financial Model;
 - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;

- (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 3.8 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports, Open Book Data and the Charges.
- 3.9 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
 - (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - (b) any other part of the Financial Model,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 3.9 shall not have the effect of amending any provisions of this Agreement.

4 FINANCIAL MODEL

- 4.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
 - (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the immediately preceding Financial Model (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
 - (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 4.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report

and/or supporting information, approve or reject such Financial Report; or

(ii) the Authority has approved the relevant Financial Report.

4.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 4.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

4.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3](*Dispute Resolution Procedure*).

5 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

5.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

5.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

6 KEY SUB CONTRACTORS

6.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

6.2 Without prejudice to Paragraph 6.3 of Part L, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART L: AUDIT RIGHTS

1 AUDIT RIGHTS

- 6.3 Without prejudice to the rights under the Agreement at clause 8 (*Continuous Improvement and Validation*), the Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Open Book Data; to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) to enable the National Audit Office to carry out an 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;
 - (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

- (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (n) to review the accuracy and completeness of the Registers;
- (o) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (p) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (q) to review the Supplier's compliance with the Standards;
- (r) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (s) to review the integrity, confidentiality and security of the Authority Data.

6.4 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

6.5 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

7 CONDUCT OF AUDITS

7.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

7.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:

- (a) all information requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

- (c) access to the Supplier System; and
- (d) access to Supplier Personnel.

7.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

7.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

7.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 7, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

8 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

8.1 As an alternative to the Authority's right pursuant to Paragraph 6.3 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 6.3.

8.2 Following the receipt of a request from the Authority under Paragraph 8.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and
- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

9 RESPONSE TO AUDITS

9.1 If an audit undertaken pursuant to Paragraphs 1 or 8 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;

- (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
- (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.1

GOVERNANCE

Governance

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority’s Commercial Contracts Manager”	the individual appointed as such by the Authority to perform such role from time to time;
“Authority’s Drug Strategy Representative”	the individual appointed as such by the Authority to perform such role from time to time;
“Authority’s Senior Contract Manager”	the individual appointed as such by the Authority to perform such role from time to time;
“Contract Review Meeting”	means the Meeting as described in Paragraph 5 to this Schedule;
“Drug Panel Review Meeting”	means the Meeting as described in Paragraph 6 to this Schedule;
“Meetings”	the Performance Review Meeting, Contract Review Meeting and Drug Panel Review Meeting and “Meeting” shall mean any of them;
“Meeting Member”	the initial persons appointed by the Authority and Supplier to the Meetings as set out in Annex 9 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Performance Management Meeting”	means the Meeting as described in Paragraph 4 to this Schedule.
“Senior Supplier Contract Manager”	means the individual appointed as such by the Supplier, which at the Effective Date shall be as named in Annex 1;
“Stakeholder Relationship Surveys”	means the surveys set out in Schedule 2.2 (<i>Performance Levels</i>);

2 MANAGEMENT OF THE GOODS AND SERVICES

2.1 The Supplier and the Authority shall each appoint an Operational Contract Manager for the purposes of this Agreement through whom the Goods and Services shall be managed at a day-to-day level.

- 2.2 The Supplier shall appoint a suitably qualified Supplier Contract Liaison in accordance with Clause 12.5 (*Representatives*) who will act as a technical interface between the Supplier and the Authority and be capable and qualified to provide technical expertise in relation to the Goods, Services and Test Results.
- 2.3 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives, and specific provisions of this Agreement can be fully realised.

3 MEETINGS

Establishment and structure of the Meetings

- 3.1 The Meetings shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Meeting, the:
- (a) Authority Meeting Members;
 - (b) Supplier Meeting Members;
 - (c) frequency that the Meeting shall meet (unless otherwise agreed between the Parties);
 - (d) location; and
 - (e) planned start date by which the Meeting shall be established,
- shall be as set out in Annex 9.
- 3.3 In the event that either Party wishes to replace any of its appointed Meeting Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Meeting Member has at all times a counterpart Supplier Meeting Member of equivalent seniority and expertise.

Meetings

- 3.4 Each Party shall (at their own cost) ensure that its Meeting Members shall make all reasonable efforts to attend Meetings at which that Meeting Member's attendance is required. If any Meeting Member is not able to attend a Meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Meeting as identified in Annex 9. The chairperson shall be responsible for:

- (a) scheduling Meetings;
 - (b) setting the agenda for Meetings and circulating to all attendees in advance of such Meeting;
 - (c) chairing the Meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Meetings;
 - (e) ensuring that minutes for Meetings are recorded and disseminated electronically to the appropriate persons and to all Meeting participants within ten Working Days after the Meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Meeting is given effect in the appropriate manner.
- 3.6 Meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 Meetings shall be conducted in person (at a reasonable venue nominated by the Authority), or at the Authority's option, using a virtual meeting platform nominated by the Authority.
- 3.8 The Parties shall ensure, as far as reasonably practicable, that all Meetings shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Meeting Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 PERFORMANCE MANAGEMENT MEETING

- 4.1 The chairperson for the Performance Management Meeting will be the Authority's Operational Contract Manager.
- 4.2 The purpose of the Performance Management Meeting is to:
- 4.2.1 review the performance of this Agreement from an operational and commercial perspective;
 - 4.2.2 review how the commitments and obligations of the Supplier under this Agreement are being delivered;
 - 4.2.3 review opportunities to improve the delivery of the Services;
 - 4.2.4 escalate key issues to the Contract Review Meeting.
- 4.3 The objectives of the Performance Management Meeting are to:
- 4.3.1 review provision of the Services to ensure that they are being supplied in accordance with the terms of this Agreement and that the fulfilment rate is sufficient or, if not sufficient, that actions are in place to improve it;

- 4.3.2 ensure delivery of the Services is of good quality, occurs in a timely manner and is appropriately priced;
 - 4.3.3 review performance against KPIs and monitor key risks and issues;
 - 4.3.4 review commitments and obligations under this Agreement and rectification activity;
 - 4.3.5 review the way in which the Agreement meets any evolving business needs; and
 - 4.3.6 provide an open forum of discussion and idea sharing around best practice.
- 4.4 The Performance Management Meeting shall be held monthly (or at such other frequency as the Authority may determine) during the Term.
- 4.5 The Performance Management Meeting agenda shall include, but is not limited to, the following:
- 4.5.1 reviewing performance, which shall include:
 - (a) Supplier delivery against KPIs and reported Service Credits;
 - (b) incidents;
 - (c) prevalence studies; and
 - (d) social responsibility requirements;
 - 4.5.2 reviewing delivery against contractual obligations
 - 4.5.3 reviewing the contractual risks, issues and opportunities and opportunities for improvement; and
 - 4.5.4 reviewing payment performance;
 - 4.5.5 reviewing Authority stakeholder feedback, including:
 - (a) customer satisfaction;
 - (b) complaints; and
 - (c) lessons learned;
 - 4.5.6 any required commercial interventions, including:
 - (a) changes; and
 - (b) performance remedies (including but not limited to reviewing the performance of Rectification Plans; and

- 4.5.7 agreeing on necessity for escalations and their subsequent outcomes once concluded.

5 CONTRACT REVIEW MEETING

- 5.1 This meeting brings together key stakeholders from the Parties who are responsible for the successful performance of the Agreement.
- 5.2 All Meeting Members to the Contract Review Meeting must assume a collective responsibility for ensuring a successful outcome to the Meeting.
- 5.3 The Contract Review Meeting shall be held quarterly (or at such other frequency as the Authority may determine) during the Term.
- 5.4 The chairperson of the Contract Review Meeting shall be the Authority's Senior Contract Manager.
- 5.5 The purpose of the Contract Review Meeting is to:
 - 5.5.1 review performance and obligations under the Agreement;
 - 5.5.2 consider risks, issues and opportunities;
 - 5.5.3 review payment performance;
 - 5.5.4 discuss stakeholder feedback;
 - 5.5.5 agree escalations;
 - 5.5.6 agree forecasting; and
 - 5.5.7 agree any commercial interventions required, including any Contract Change or rectification.
- 5.6 Where a Contract Review Meeting has been organised to take place in a month, a Performance Management Meeting will not take place during the same month.
- 5.7 Any documents submitted by the Supplier relating to the annual reporting requirements detailed Schedule 8.4 (*Records and Reporting*) will be discussed and reviewed under the agenda item detailed in Paragraph 5.8.2 during the next Contract Review Meeting following the report's due date for submission.
- 5.8 The Contract Review Meeting agenda shall include, but is not limited to, the following:
 - 5.8.1 reviewing performance, which shall include:
 - (a) Supplier delivery against KPIs and reported Service Credits;
 - (b) incidents;
 - (c) prevalence studies; and

- (d) social responsibility requirements;
- 5.8.2 reviewing delivery against contractual obligations
- 5.8.3 reviewing the contractual risks, issues and opportunities for improvement; and
- 5.8.4 reviewing payment performance;
- 5.8.5 reviewing Authority stakeholder feedback, including:
 - (a) customer satisfaction and Stakeholder Relationship Surveys;
 - (b) complaints; and
 - (c) lessons learned;
- 5.8.6 any required commercial interventions, including:
 - (a) changes; and
 - (b) performance remedies (including but not limited to reviewing the performance of Rectification Plans); and
- 5.8.7 agreeing escalations.
- 5.9 Where risks and issues cannot be resolved at the Contract Review Meeting level, the chairperson will ensure actions are created for escalation to the appropriate governance body or individual within their organisation.

6 DRUG PANEL REVIEW MEETING

- 6.1 The Drug Panel Review Meeting shall be held once every six (6) Months during the Term, unless a higher frequency is otherwise specified by the Authority.
- 6.2 The chairperson of the Drug Panel Review Meeting shall be the Authority's Operational Contract Manager.
- 6.3 The Drug Panel Review Meeting is an opportunity for the Authority and the Supplier to work collaboratively to ensure the evolving drug identification needs of the Authority are met by:
 - 6.3.1 reviewing the suitability of the Drug Panel by utilising:
 - (a) information arising from market developments, Guidance and Good Industry Practice (including that notified by the Supplier to the Authority in accordance with Clause 8 (*Continuous Improvement and Validation*)); and
 - (b) any information, materials or other data developed or obtained by the Supplier in connection with its continuous improvement and validation obligations at Clause 8 (*Continuous Improvement and Validation*); and

- 6.3.2 agreeing and recording requirements for necessary amendments to the Drug Panel and process, including any required actions and completion dates.
- 6.4 The Supplier must ensure that all information required to evidence any proposed amendments to the Drug Panel is provided to the required Authority representative at least two (2) weeks before the Drug Panel Review Meeting.
- 6.5 Any decisions reached in the Drug Panel Review Meeting shall be escalated to the Contract Review Meeting for sign off.
- 6.6 Any Drug Change is subject to Paragraph 10 of Schedule 8.2 (*Change Control Procedure*).

7 CONTRACT MANAGEMENT MECHANISMS

- 7.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 7.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

8 GOVERNANCE AND ESCALATION

- 8.1 Where risks and issues cannot be resolved at Meeting level, the Authority's Operational Contract Manager and Authority's Commercial Contracts Manager are responsible for escalation to the appropriate governance body or individual within the Authority.
- 8.2 In the event of escalation in line with Paragraph 8.1 above, the Authority's Operational Contract Manager will also refer to the manner in which the current relevant policy defines the need and process for commissioning detailed performance review, quality assessments and/or root cause analysis in the event of:
 - 8.2.1 any performance issues identified;
 - 8.2.2 any improvement activity required; and
 - 8.2.3 analysis of best practice.

ANNEX 9: REPRESENTATION AND STRUCTURE OF MEETINGS

Performance Management Meeting

Authority members of Performance Management Meeting	Chairperson - Authority's Operational Contract Manager Authority's Commercial Contracts Manager
Supplier members of Performance Management Meeting	TBC [Supplier Operational Contract Manager]
Start date for Performance Management Meetings	TBC during mobilisation
Frequency of Performance Management Meetings	Monthly
Location of Performance Management Meetings	Virtually via Microsoft Teams or, if essential, in person

Contract Review Meeting

Authority Members of Contract Review Meeting	Chairperson - Authority's Senior Contract Manager Authority's Operational Contract Manager Authority's Commercial Contracts Manager
Supplier Members of Contract Review Meeting	TBC [Supplier Senior Contract Manager] [Supplier Operational Contract Manager]
Start Date for Contract Review Meetings	TBC during mobilisation
Frequency of Contract Review Meetings	Quarterly

Location of Contract Review Meetings	Virtually via Microsoft Teams or, if essential, in person
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Drug Panel Review Meeting

Authority Members of Drug Panel Review Meeting	Chairperson - Authority's Operational Contract Manager Authority's Commercial Contracts Manager Authority's Drug Strategy Representative
Supplier Members of Drug Panel Review Meeting	TBC [Supplier Senior Contract Manager] [Supplier Contract Liaison] [Supplier Operational Contract Manager]
Start Date for Drug Panel Review Meetings	TBC during mobilisation
Frequency of Drug Panel Review Meetings	Once every six (6) months
Location of Drug Panel Review Meetings	Virtually via Microsoft Teams or, if essential, in person

Supplier Initial Appointments

Supplier Operational Contracts Manager	REDACTED
Supplier Contract Liaison	REDACTED
Supplier Senior Contract Manager	REDACTED

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

Change Control Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Operational Contract Manager;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 10;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Desirable Drug”	means a drug listed in Annex A to the Specification or as otherwise listed in the Supplier Solution or agreed between the Parties;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Operational Contract Manager.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9 and Drug Changes shall be processed in accordance with Paragraph 10. If either Party is in doubt about whether a change falls within the definition of an Operational Change or Drug Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow, where appropriate, the Change Authorisation Note relating to such a Contract Change which shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.6 The Supplier shall:

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and

- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may request from time to time.

3 COSTS

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Supplier (unless agreed otherwise).

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges or charge any cost of any Contract Change only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources (to be Approved by the Authority) and, in any event, any charge for any Contract Change or any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 10 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) The nature of the request for clarification; and
- (b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- (a) details of the proposed Contract Change including the reason for the Contract Change; and
 - (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
 - (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Specification, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Specification;
 - (iii) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
 - (d) details of the cost of implementing the proposed Contract Change;
 - (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 24 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this

fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:

- (a) be based on the Financial Model;
- (b) facilitate the Financial Transparency Objectives;
- (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
- (d) include full disclosure of any assumptions underlying such Impact Assessment;
- (e) include evidence of the cost of any assets required for the Change; and
- (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 The Authority may where it deems reasonably necessary seek independent advice in its consideration and evaluation of any Impact Assessment from the Supplier. Any Change Request issued by the Supplier shall be in clear, comprehensive English with any technical language explained. Where the Authority reasonably believes that the Supplier has failed in doing this and therefore deems it reasonably necessary to seek independent advice in accordance with this paragraph 6.2, then the Supplier shall pay the reasonable costs incurred by the Authority in obtaining such independent advice.
- 6.3 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.4 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT TO REJECT

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Specification state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 5.

8 FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed 10% of the annual Charges and the proposed Contract Change is not significant (as determined by the Authority acting reasonably); or
- (c) if the Change relates to a relevant Drug Change further described in paragraph 10.4,

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9 OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Operational Contract Manager.

9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC and shall promptly notify the Authority when the Operational Change is completed.

10 DRUG CHANGE PROCEDURE

10.1 The Authority may request a Drug Change by submitting a written request for Drug Change (“**RFDC**”) to the Supplier’s Operational Contract Manager.

10.2 The RFDC shall include the following details:

- (a) the proposed Drug Change; and
- (b) the time-scale for completion of the Drug Change.

10.3 Where the proposed Drug Change is to incorporate a Desirable Drug:

- 10.3.1 the Parties agree that the Supplier may not reject such RFDC;
- 10.3.2 any change to the Charges shall reflect the charges (if any) set out for the Desirable Drug in the Financial Model; and
- 10.3.3 the parties shall document such change in accordance with the Fast Track Change Procedure above.

10.4 Where the proposed RFDC is to incorporate a new drug which is not a Desirable Drug, the Supplier shall, within 5 Working Days inform the Authority if:

- 10.4.1 the existing processes and procedures for the Services are capable of identifying the new proposed drug;
- 10.4.2 the existing process for collection of Samples and Sample type are capable of identifying the new proposed drug; and
- 10.4.3 where the Supplier confirms that the new proposed Drug can be incorporated without the need for any material change to the processes and procedures or a change in the Sample type then the parties’ shall document such change in accordance with the Fast Track Change Procedure above.

10.5 In the event that the RFDC is to incorporate a new drug which is not a Desirable Drug and either the processes, Services or Sample type would require material amendment in order to identify the proposed drug, the Supplier shall within 5 Working Days of receiving the RFDC provide details of any impact on the Services or Charges that may arise from the proposed Drug Change and the Drug Change shall be made in accordance with the Change Control Procedure set out in paragraphs 4, 5, 6 and 7 above.

11 COMMUNICATIONS

- 11.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 46 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 10: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 11: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (xxx) another contract with the Authority or the Supplier which is relevant to this Agreement; or (yyy) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Operational Contract Manager and the Supplier Operational Contract Manager shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority, it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - (b) if it is served by the Supplier, it shall be treated as a Supplier Request,
- and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 48 (*Governing Law and Jurisdiction*)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's

Senior Contract Manager and/or Senior Business Owner (in place from time to time) and the Supplier's Senior Contract Manager.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and Services or otherwise relates to a technical matter of an IT, manufacturing, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - (b) if the Dispute relates to a matter of a financial technical nature relating to the design or manufacture of the Goods, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
 - (e) the process shall be conducted in private and shall be confidential; and
 - (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
- (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 12 (once approved, the “**Transparency Reports**”).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 12.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

- 2.1 The Authority may require any or all of the following reports:
 - (a) reports relating to Testing and tests carried out under Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
 - (b) reports which the Supplier is required to supply as part of the Management Information;
 - (c) annual reports on the Insurances;
 - (d) security reports; and
 - (e) Force Majeure Event reports.
- 2.2 Annual Report
 - 2.2.1 The Supplier shall prepare and submit to the Authority by no later than 31st May in each Contract Year a report summarising the Supplier’s performance over the immediately preceding Contract Year, which should include (without limitation):
 - (a) Summary of accuracy of Test Results;
 - (b) Summary of suitability of Cut-Off Levels;

- (c) 'Testing Products and Method of Efficacy Assurance Report', which shall comprise the following (without limitation):
- (i) demonstration of suitability and adequacy of the Goods and any other equipment used in the delivery of the Services:
 - (A) for safe and effective use by Test Recipient and any individual administering a Test;
 - (B) for the purposes of collecting and maintaining Samples without adverse impact on accuracy of Test Results;
 - (C) to meet any cultural and religious needs of Test Recipients and any individual administering a Test; and
 - (D) to prevent any change or influence in Test Results.
 - (ii) review and confirmation of safeguards preventing cross contamination within Samples and review of storage condition requirements to demonstrate that they are fit for purpose;
 - (iii) confirmation that the Supplier and where applicable any Supplier Premises (including any laboratory) used in the delivery of the Services:
 - (A) holds any necessary accreditations as required by Law, Good Industry Practice or this Agreement (including without limitation UKAS accreditation, or any replacement accreditation in place from time to time);
 - (B) is fully compliant with any Applicable Law in the delivery of the Services;
 - (C) evidence of continued participation in an external quality assessment scheme which is fit for purposes in accordance with Good Industry Practice;
 - (iv) review of operating procedures including validation data for each Testing method, proposed accuracy and precision data and any published scientific papers to support the methods of Testing and storage and transportation of Samples;
- (d) an 'Innovations and Efficiencies Report' (the format and detail of which shall be agreed between the Parties from time to time, but which shall include as a minimum: proposals for new testing solutions that would (i) reduce staff resourcing requirements (ii) increase the speed of obtaining drug test results (iii) provide a more reliable measure of substance misuse within prison and probation populations);

- (e) reports relating to Testing and Tests carried out under Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (f) summary of review of the Exit Plan prepared in accordance with Schedule 8.5 (*Exit Management*), along with any proposed amendments to such Exit Plan;
- (g) summary of review and updates to Carbon Reduction Plan as further described in the Specification;
- (h) payment performance to Sub-Contractors in accordance with Clause 16.14 of the Agreement;
- (i) Report on the Supplier's performance on delivering Social Value including in accordance with KPI 8 as set out in Schedule 2.2 (Performance Levels);

3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1, Annex 12 and Annex 13 (together "**Records**"):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:

- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 3.6.2 The Supplier shall maintain and provide any additional ad hoc information, as required by the Authority in relation to any part of the operation of the Services including but not limited to:
- (a) Product and Services Guidance (As referred to in the Specification)
 - (b) Sample Retention Asset Register (As referred to in the Specification)

4 Contract information to be maintained by the Supplier

4.1 The Supplier shall, at no cost to the Authority maintain and update the information listed at Annex 3 from the date of initial upload (updated in accordance with the requirements at Annex 3):

- 4.1.1 in a central database, in format which is accessible to the Authority (in accordance with any format requirements set out in Annex 3);
- 4.1.2 and in accordance with any applicable legislation governing the use or processing of personal data;
- 4.1.3 securely and backed up in accordance with Good Industry Practice

and make such information available to the Authority in accordance with the terms of this Agreement and in any case promptly upon request by the Authority. The Supplier warrants that any information so maintained is complete and accurate at the time it is created and updated.

5 Risk Register

5.1 The Supplier shall prepare and maintain a register of risks and contingencies applicable to the delivery of the Goods and Services and shall provide a copy of such

risk register as updated from time to time to the Authority not less than once per year, or when updated.

ANNEX 12: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>KPI Performance</i>	Percentage performance feedback against KPIs and explanatory commentary	To be determined by the Authority	As required by Schedule 2.2
<i>Any Test Reports</i>	As required by the Specification	As required by the Specification	To meet KPIs
<i>The Terms and Conditions</i>	As set out in these Terms and Conditions	Reasonably redacted by the Authority	At contract signature
<i>Supplier's Carbon Reduction Plan</i>	As further described in the Specification	As further described in the Specification	Annual

ANNEX 13: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Operational Contract Manager and Supplier Contract Liaison.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Operational Contract Manager in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

ANNEX 14: CONTRACT INFORMATION TO BE MAINTAINED BY THE SUPPLIER

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Cl.6	Documentation	As appropriate and agreed by the Authority under the Agreed Mobilisation Plan	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-
Sch 2.2, Part B Para 2.3	Performance Monitoring Report	Sch 2.2, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within fifteen (15) days after policy renewal or replacement
Cl 22	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information
Cl 15.7	Notified Key Sub-contractors	Sch 4.3	Effective Date	On replacement of key subcontractor
Cl 15.5	Third Party Contracts	Sch 4.4	Effective Date	On appointment of subcontract
Cl 15.6	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
CI 15.23	Supply chain Transparency Information Reports	Sch 8.4,	thirty days prior to the of the end of each financial year	Every twelve (12) months
Sch 7, Part E, Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4
Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed	-
Sch 7.5, para 1.1	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter	-
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 7.5 Part B, para 1.2	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term	-
Sch 8, Para 3.3	Representation and Structure of boards	Sch 8 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-
Sch 8, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson	-
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.2 Part 5.4
Sch 8.2, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 12	Within 3 months of the Effective Date	Frequency specified in Sch8.4, Annex 12
Sch 8.4 Para 2.1	Annual Report	As appropriate	When first served	Annually
Sch 8.4 Para 5.1	Risk Register	As appropriate	Within 3 months of the Effective Date	Any variation and at least Annually
Sch 8.5, Para 2.1(a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	In the first month of each

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
				<p>Contract Year; and</p> <p>Within 14 days if requested by the Authority following a Financial Distress Event</p> <p>Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement</p>
Sch 8.5, Para 6.7(b)	Authority Data (hand back)	Sch 8.5, Para 2.2 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-
Sch 8.5, Annex 1, Para .1, Para .3, & Para .4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
			Service Continuity Plan.	
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part B Para 11.2	Sch 8.6, Para 11.8
Sch 7.4 Para 8	Board Confirmation	As set out at Annex 4 of Sch 7.4	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)
Sch 9, Part E, Para .2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees
Sch 9, Annex E1	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change
Sch 11, 0 Para .1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority
Specification	Sample Retention Asset Register	As appropriate and agreed by the Authority	As agreed with the Authority	As agreed with the Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Specification	Product and Services Guidance	As appropriate and agreed by the Authority	As agreed with the Authority	As agreed with the Authority

ANNEX 15: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.5

EXIT MANAGEMENT

Exit Management

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 17;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.2 for managing the Parties' respective obligations under this Schedule;
“Transferable Contracts”	the Sub-contracts or other agreements which are required for the performance of the Services and are identified as Transferable Contracts in the Exit Plan; and
“Transferring Contracts	has the meaning given in Paragraph 7.4.
“Transferring Retained Stock”	shall be as further described in Paragraph 7
“Register(s)”	shall have the meaning given to it in Paragraph 2.1 below.

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all sub-contracts in place with any Key Sub-contractor and any key manufacturer in relation to the Goods;
- (b) create and maintain a list of Retained Stock maintained by the Supplier;
- (c) create and maintain a list of all Samples, Tests, Test Reports and Test Results; and
- (d) create and maintain any other registers as the Parties may agree to be provided as part of the Exit Plan.

together the **“Registers”**

2.2 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that

its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- (a) details of the Service(s);
- (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- (c) an inventory of Authority Data in the Supplier's possession or control;
- (d) details of any key terms of any third-party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
- (g) such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer

and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6-month period.

3.5 The Exit Information shall be accurate and complete in all material respects.

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5 EXIT PLAN

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier

of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;

- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- (d) proposals, timetables, and procedures for the handling, transfer or destruction of any Samples held by the Supplier at the date of Termination or expiry.
- (e) proposals for the transfer of Retained Stock to either the Authority or a Replacement Supplier.
- (f) proposals for the reduction in Retained Stock in the period of three (3) months (or such other period as the parties' may agree) up to the end of the term of this Agreement;
- (g) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (h) the management structure to be employed during the Termination Assistance Period;
- (i) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (j) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 16 as are applicable);
- (k) a timetable and critical issues for providing the Termination Services;
- (l) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (m) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (n) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
- (o) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that

there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.6 The Supplier shall ensure that Samples collected by it from the Authority or any Approved User are maintained in appropriate storage and are accessible to the Authority and/or an Approved User during an exit or transition period in accordance with the terms of this Agreement. For the avoidance of doubt, the cost of complying with this Paragraph 5.6 will be in line with the Charges set out in this Agreement.

Finalisation of the Exit Plan

- 5.7 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.8 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination**

Assistance Notice”) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.

6.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and

- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
 - (a) cease to use the Authority Data;
 - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment or Operating Environment and any other equipment which belongs to the Authority; and

- (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) recover any Goods which have been paid for by the Authority (or any Retained Stock to be transferred to the Authority in accordance with Paragraph 7.6.
- 6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 6.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 SUB-CONTRACTS AND RETAINED STOCK

- 7.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- 7.2 Within 7 days of a Termination Notice (or if later no less than three (3) months prior to the end of the term), the Supplier shall provide a report (the “**Retained Stock Report**”) to the Authority detailing:
- 7.2.1 the amounts of Retained Stock in its control at the date of such report;
 - 7.2.2 its proposals for the gradual reduction of the Retained Stock during the period up to the date of termination or expiry (or if later the end of any Termination Assistance Period);

- 7.2.3 how much Retained Stock will be in its control at the date of termination or expiry (or if later the end of any Termination Assistance Period) and proposals for the sale or re-use of such Retained Stock to third parties.
- 7.3 Within 20 Working Days of receipt of the Retained Stock Report, the parties shall meet and work in good faith to agree:
- 7.3.1 how Retained Stock should be handled by the Supplier in the period up to the termination or expiry (or if later the end of any Termination Assistance Period); and
- 7.3.2 how much Retained Stock shall be purchased by the Authority at the termination or expiry (or if later the end of any Termination Assistance Period) (the “**Transferring Retained Stock**”); and
- 7.3.3 the Charges payable in respect of the Transferring Retained Stock (which shall be no greater than the applicable Charges at the date of the Retained Stock Report).
- 7.4 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “**Transferring Contracts**”).
- 7.5 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Retained Stock to the Authority and/or its nominated Replacement Supplier for the price agreed in accordance with Paragraph 7.2. a consideration equal to their Net Book Value, except where:
- 7.6 Risk and title in the Transferring Retained Stock shall pass to the Authority or the Replacement Supplier (as appropriate) upon delivery and the terms of this Agreement shall apply to any such sale.
- 7.7 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.8 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.7 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of

the Supplier's failure to comply with Clauses 17 (*Intellectual Property Rights*) and/or Clause 18 (*Transfer and Licences Granted by the Supplier*).

8 POSITIVE SAMPLES

- 8.1 In respect of the Register of Samples, Tests, Test Results and Test Reports, the Supplier shall provide an up to date copy of this Register to the Authority on request during the transition period on termination or expiry of this Agreement.
- 8.2 The Supplier shall maintain those Samples, Test Results and Test Reports with a positive Test Result (the **Transition Samples and Test Results**) for a period of 9 months following termination or expiry of this Agreement.
- 8.3 The Supplier shall, on reasonable notice from the Authority, either:
- 8.3.1 provide such Transition Samples and Test Results to the Authority, Approved User or Replacement Supplier; or
 - 8.3.2 destroy or return such Transition Samples and Test Results and provide evidence of any such destruction.
- 8.4 For the avoidance of doubt the terms of this Agreement shall apply to the Supplier's retention of the Transition Samples and Test Results, in particular but without limitation, Clauses 5.4.3 to 5.4.6.
- 8.5 For the avoidance of doubt, the cost of complying with this Paragraph 8 will be in line with the Charges set out in this Agreement.

9 SUPPLIER PERSONNEL

- 9.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1(*Staff Transfer*) shall apply.
- 9.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 9.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 9.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 9.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose

employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

10 CHARGES

- 10.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in Schedule 7.1 (Charging and Invoicing) (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 10.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
- (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 10.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 10.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

11 APPORTIONMENTS

- 11.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case

may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 11.1 as soon as reasonably practicable.

ANNEX 16: SCOPE OF THE TERMINATION SERVICES

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (b) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - (c) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - (d) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - (e) providing the Authority with any problem logs which have not previously been provided to the Authority;
 - (f) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - (g) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - (h) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
 - (i) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
 - (j) assisting in establishing naming conventions for any new production site;

- (k) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (l) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (m) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (n) assisting with the loading, testing and implementation of the production databases;
- (o) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (p) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (q) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (r) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (s) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
 - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (t) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible

for internal training in connection with the provision of the Services;

- (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(k), providing skills and expertise of a suitable standard; and
- (b) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(p), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(r) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and

(g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

(a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 11.5 shall:

(i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

(ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and

(b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 17: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) [INSERT NAME OF AUTHORITY] (the "Authority") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "Counterparty").

BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Authority and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the

Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“ITT Response” means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

“Other Affiliate” any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Authority and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital (B) to this Agreement;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act,

the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.

- 1.10 The words "include" and "including" are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2. ETHICAL WALLS

2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are 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 Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or

- (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in

clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- (a) the Counterparty or any Affiliate or Representative; or
 - (b) any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
 - (b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

3. SOLE RESPONSIBILITY

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or

arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

4. WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5. ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7. TRANSPARENCY

- 7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT

Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8. NOTICES

8.1 Any notices sent under this Agreement must be in writing.

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

	Counterparty	Authority

Contact		
Address		
Email		

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9. WAIVER AND CUMULATIVE REMEDIES

9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10. TERM

10.1 Each party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date.

11. GOVERNING LAW AND JURISDICTION

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART M: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Department”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(zzz) Government Department; or</p> <p>(aaaa) Non-Ministerial Department.</p>
“Disaster”	<p>the occurrence of one or more events which, either separately or cumulatively, mean that:</p> <p>(a) the Goods, or a material part of the Goods will be unavailable for a period of 7 calendar in respect of Goods used for the Testing of oral fluids or which is reasonably anticipated will mean that such Goods or material part of the Goods will unavailable for that period; or</p> <p>(b) the Goods, or a material part of the Goods will be unavailable for a period of 14 calendar days in respect of Goods used for the Testing of urine or which is reasonably anticipated will mean that such Goods or a material part of the Goods will be unavailable for that period; or</p> <p>(c) the Services, or a material part of the Services will be unavailable for a period of 14 calendar days or which is reasonably anticipated will mean that the Services or a material part</p>

of the Services will be unavailable for that period;

“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Recovery Services”	the goods and/or services embodied in the processes and procedures for restoring the Goods and/or Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2(a)(iv).
“Related Service Provider”	any person who provides goods and/or services to the Authority in relation to this Agreement from time to time;
“Review Report”	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
“Service Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Goods and/or Services following any failure or disruption of any element of the Goods and/or Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Goods and/or Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;

- (ii) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
 - (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the “**Insolvency Continuity Plan**”); and
 - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft Service Continuity Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Goods and/or Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to

issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Goods and/or Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and

- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

- (a) the Goods and/or Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods and/or Services, to the business processes facilitated by and the business operations supported by the Goods and/or Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Goods and/or Services remain supported and to ensure continuity of the business operations supported by the Goods and/or Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Goods and/or Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Goods and/or Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Goods and/or Services;
- (b) set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods and/or Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Goods and/or Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Goods and/or Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - (a) the technical design and build specification of the Disaster Recovery System;
 - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) alternative locations of stock for the ongoing provision of Goods and/or Services;
 - (iv) alternative laboratory facilities (such alternative laboratory facilities must comply with any accreditation or other requirements as set out in the Specification);

- (v) steps to be taken in the event of failure of power supply, failure of testing equipment, shortages of reagents or other materials required in the provision of the Goods and/or Services and any transport disruption;
 - (vi) alternative manufacturers of goods and/or component parts;
 - (vii) identification of all potential disaster scenarios;
 - (viii) risk analysis;
 - (ix) documentation of processes and procedures;
 - (x) hardware configuration details;
 - (xi) network planning including details of all relevant data networks and communication links;
 - (xii) Service recovery procedures; and
 - (xiii) steps to be taken upon resumption of the Goods and/or Services to address any prevailing effect of the failure or disruption of the Goods and/or Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Goods and/or Services during any period of invocation of the Disaster Recovery Plan;
 - (d) details of how the Supplier shall ensure compliance with Standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked; and
 - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Goods and/or Services through continued provision of the Goods and/or Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - (a) communication strategies which are designed to minimise the potential disruption to the provision of the Goods and/or Services, including key contact details in respect of the supply chain and key contact details for

operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Goods and/or Services;
- (c) plans to manage and mitigate identified risks;
- (d) alternative manufacturers of goods and/or component parts;
- (e) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Goods and/or Services;
- (f) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- (g) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 12 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan

and shall assess their suitability having regard to any change to the Goods and/or Services or any underlying business processes and operations facilitated by or supported by the Goods and/or Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a “**Review Report**”) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Goods and/or Services; and
- (c) the Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier’s Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier’s Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier’s Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier’s Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier’s Proposals,

provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods and/or Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Goods and/or Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.

- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Goods and/or Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the provision or manufacture of the Goods and/or provision of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Goods and/or Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

PART N: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

- 10.1 This Agreement is a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

- 11.1 Paragraphs 11 to 13 of this Part N shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part N or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part N:
 - (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part N, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part N:
 - (a) is full, comprehensive, accurate and up to date;
 - (b) is split into two parts:
 - (i) Group Structure Information and Resolution Commentary;
 - (ii) UK Public Service / CNI Contract Informationand is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
 - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;

- (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
 - (e) complies with the requirements set out at Annex 18 (Group Structure Information and Resolution Commentary) and Annex 19 (UK Public Sector / CNI Contract Information) respectively.
- 11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part N, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
 - (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part N shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part N if:
 - (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it

was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and

- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.

11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part N its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part N) unless the Supplier is relieved of the consequences of the Financial Distress Event under Schedule 7.4 (*Financial Distress*)
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part N, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be

notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (a) Aa3 or better from Moody's;
- (b) AA- or better from Standard and Poors;
- (c) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 3 of Schedule 7.4 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

12 Termination Rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 34.2.2 (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part N and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

13 Confidentiality and usage of CRP Information

13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

- 13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part N and Clause 22 (*Confidentiality*).
- 13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part N subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part N, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
 - (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (i) summarising the information;
 - (ii) grouping the information;
 - (iii) anonymising the information; and
 - (iv) presenting the information in general terms
- 13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 18: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY

- 12. The Supplier shall:
 - 12.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 19 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 12.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 12.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 19 and the dependencies between each.

ANNEX 19: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION

- 13. The Supplier shall:
 - 13.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 13.1(a) of this Annex 19 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - (c) involve or could reasonably be considered to involve CNI;
 - 13.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per Contract Year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 8.7

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice

from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a **"Sensitive Claim"**), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 9.1

STAFF TRANSFER

Staff Transfer

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including:</p> <p>(bbbb) any amendments to that document immediately prior to the Relevant Transfer Date;</p> <p>(cccc) any similar pension protection in accordance with Annex R1 to this Schedule as notified to the Supplier by the Authority;</p>
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”</i> issued in June 2004;
“Replacement Supplier”	The Authority or a Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date.
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a

	Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annex, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Commencement Date;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex S2 (<i>Table of Staffing Information</i>) in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex S2 from time to time.
“Statutory Scheme”	means the CSPS, as defined in the Annex BI to this Schedule;
“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the

Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring Supplier Employees”

those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

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

PART O: NOT USED

PART P: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

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

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

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour

- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

- 2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
 - 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
 - 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
 - 2.7.1 shall not apply to:

- (a) any claim for:
- (b) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (c) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- (d) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (e) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

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

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

3 **SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- 3.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any

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

- 3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in

relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and

- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.
- 4 **INFORMATION**
 - 4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
 - 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.1.2 Old Fair Deal; and/or

5.1.3 the New Fair Deal.

5.2 Any changes necessary to this Contract as a result of changes embodied to, or any replacement of any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

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

7 PENSIONS

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

7.1.2 Part D to this Schedule.

PART Q: NOT USED

PART R: PENSIONS

1 DEFINITIONS

1.1 In this Part D the following words have the following meanings and they shall supplement Schedule 9.1: Definitions, and shall be deemed to include the definitions set out in the Annex to this Part D:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	the CSPA Admission Agreement (as defined in Annex R1: CSPA) as the context requires;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(ddddd) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(eeeee) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex R1 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPA Eligible Employees, (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 12 of this D);
"Fair Deal Employees"	any of:

(ffff) employees to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.5 of Part A;

(gggg) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)

(hhhh) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme as notified by the Authority;

3 PARTICIPATION

3.1 In respect of all or any Fair Deal Employees each of Annex R1: CSPA, shall apply, as appropriate.

3.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

3.3 The Supplier undertakes:

(a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required;

3.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Commencement Date, this Part D and its Annex shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.

4 PROVISION OF INFORMATION

4.1 The Supplier undertakes to the Authority:

- (a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
- (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed); and
- (c) retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Agreement.

5 INDEMNITIES

5.1 The Supplier shall indemnify and keep indemnified the Authority, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement;
- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraph 12 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement;
 - (ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Agreement.

5.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Agreement; and

- (b) shall not be affected by the caps on liability contained in Clause 26 (*Limitations on Liability*).

6 DISPUTES

- 6.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:
 - (a) who will act as an expert and not as an arbitrator;
 - (b) whose decision will be final and binding on the Authority and/or the Supplier; and
 - (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.
- 6.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

7 THIRD PARTY RIGHTS

- 7.1 The Parties agree Clause 45 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 7.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

8 BREACH

- 8.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Agreement for material Default in the event that the Supplier:
 - (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
 - (b) commits a breach of any provision or obligation it has under this Part Q D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.

9 TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS

9.1 Save on expiry or termination of this Agreement, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:

- (a) notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
- (c) procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

10 PENSION ISSUES ON EXPIRY OR TERMINATION

10.1 The provisions of Part S: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Agreement.

10.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or CSPA and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

11 NOT USED

12 BROADLY COMPARABLE PENSION SCHEME

12.1 If the terms of paragraph 1.2 of Annex R1: CSPA applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of

participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

12.2 Such Broadly Comparable pension scheme must be:

- (a) established by the date of cessation of participation in the Statutory Scheme;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);
- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

12.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 12, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- (c) where required to do so by the Authority, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess

of the bulk transfer payment received by the Broadly Comparable pension scheme; and

- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 12 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

12.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 12, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Agreement allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this paragraph.

13 RIGHT OF SET-OFF

13.1 The Authority shall have a right to set off against any payments due to the Supplier under this Agreement an amount equal to:

- (a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from

the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

- 13.2 The Authority shall also have a right to set off against any payments due to the Supplier under this Agreement all reasonable costs and expenses incurred by the Authority as result of Paragraphs 13.1 above.

ANNEX R1: CSPA

1. DEFINITIONS

- 1.1 In this Annex R1: CSPA to Part D (Pensions), the following words have the following meanings:

"CSPA Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
"CSPA Eligible Employee"	any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Agreement;
"CSPA Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal;
"CSPA"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2. FUTURE SERVICE BENEFITS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPA Fair Deal Employees continue to accrue

benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Agreement in accordance with paragraph 12.1 but the CSPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of paragraph 12 of Part D.

PART 5: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

2.3 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

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

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

2.5 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 12.3 and 12.4 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

2.6 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 12.3 and 12.4 shall be true and accurate in all material respects at the time of providing the information.

2.7 From the date of the earliest event referred to in Paragraph 2.3(a), 2.3(b) and 2.3(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of

equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

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

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 9 (*Staff Transfer*)(as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

- 2.9 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.

EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.10 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.11 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service

Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.12 Subject to Paragraph 12.13, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so

as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.13 The indemnities in Paragraph 12.12 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.14 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier

and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.15 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.16 If after the 15 Working Day period specified in Paragraph 2.14(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

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

2.17 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 12.14 to 12.16, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 12.16 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.18 The indemnity in Paragraph 12.17:

- (a) shall not apply to:
 - (i) any claim for:
discrimination, including on the grounds of sex, race, disability,
age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

(b) shall apply only where the notification referred to in Paragraph 2.14(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.19 If any such person as is described in Paragraph 12.14 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 12.14 to 12.16, such person shall be treated as a Transferring Supplier Employee.

2.20 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Supplier and/or any Sub-contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-contractor.

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

- 2.22 Subject to Paragraph 12.23, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.23 The indemnities in Paragraph 12.22 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX S1: LIST OF NOTIFIED SUB-CONTRACTORS

ANNEX S2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

3. *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
4. *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
5. *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life insurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						

Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						

Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 10 – *REDACTED*

PARENT COMPANY GUARANTEE

CONTRACT FOR DRUG TESTING SERVICE PROVISION

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

NOTE TO BIDDERS: We anticipate that this Schedule would be completed by the Authority and the Supplier following contract award. We expect that the Schedule will set out details of Personal Data processing activities in respect of which the Supplier acts as a processor on behalf of the Authority or Approved User as a controller.

- 1.1 The contact details of the Authority's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 1.3 The Supplier shall comply with any further written instructions with respect to processing by the Relevant Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Categories of Personal Data	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority or the Approved User is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> [Insert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the Authority]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.]</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>

Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

