

NHS Framework Agreement for the Supply Of Goods

The Authority	Operated by Supply Chain Coordination Ltd whose registered office is at Wellington House, 133-155 Waterloo Road, London SE1 8UG
The Supplier	
Date	
Framework Agreement Name	Surgical Gloves
Framework Agreement Number	Project_1102

This Framework Agreement is made on the date set out above subject to the terms set out in the schedules and appendix listed below ("**Schedules**"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Framework Agreement.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Framework Agreement.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Ordering Procedure, Award Criteria and Order Form
Schedule 8	Service Levels
Schedule 9	Modern Slavery or Human Trafficking Remedial Action Plan
Appendix A	Call-off Terms and Conditions for the Supply of Goods



Signed by the authorised representative of THE AUTHORITY

Name:		Signature:	
Position:			

Signed by the authorised representative of THE SUPPLIER

Name:		Signature	
Position:			



Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Framework Agreement.
- 1.2 The optional Key Provisions at Clauses 8 to 10 of this Schedule 1 shall only apply to this Framework Agreement where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Framework Agreement where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 The Term of this Framework Agreement shall be two (2) years from the Commencement Date and may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Framework Agreement shall be no longer than four (4) years in total.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Framework Agreement are:
 - 3.1.1 for the Authority:

Category Manager
 - 3.1.2 for the Supplier:

4 Names and addresses for notices

- 4.1 Notices served under this Framework Agreement are to be delivered to:
 - 4.1.1 for the Authority:

via post to: Director of Category Tower 2 - Sterile Intervention Equipment and Associated Consumables, Equinox House, City Link, Nottingham, NG2 4LA; via email to: Jane.Harrison@supplychain.nhs.uk
 - 4.1.2 for the Supplier:



5 Management levels for escalation and dispute resolution

5.1 The management levels at which a Dispute will be dealt with are as follows:

Level	Authority representative	Supplier representative
1	Contract Manager	
2	Senior Category Manager	
3	National Category Manager	
4	Category Tower Director	

6 Order of precedence

6.1 Subject always to Clause 33.10 of Schedule 4, should there be a conflict between any other parts of this Framework Agreement the order of priority for construction purposes shall be:

6.1.1 the provisions on the front page of this NHS Framework Agreement for the Supply of Goods;

6.1.2 Schedule 1: Key Provisions;

6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);

6.1.4 Schedule 2: General Terms and Conditions;

6.1.5 Schedule 6: Commercial Schedule;

6.1.6 Schedule 3: Information Governance Provisions;

6.1.7 Schedule 4: Definitions and Interpretations;

6.1.8 the order in which all subsequent schedules, if any, appear; and

6.1.9 any other documentation forming part of the Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.



7 Participating Authorities

7.1 The following Contracting Authorities are entitled to place Orders:

7.1.1 Supply Chain Coordination Limited (SCCL), which is a company Registered in England and Wales, with company number 10881715, Registered office address: Wellington House, 133-155 Waterloo Road, London SE1 8UG.

7.1.2 Listings of entities eligible to utilise any resulting agreement(s), subject to the approval of the Authority include any other NHS/Public Sector bodies located in England, Wales, Scotland, Northern Ireland, including any of the Crown Dependencies and NHS Collaborative Procurement Organisations: The NHS in England (National Health Service for the United Kingdom) including but not limited to Foundation Trusts, Acute (Hospital) Trusts, Ambulance Trusts, Mental Health Trusts, Care Trusts or their successors in title. Please note that wholly owned subsidiaries of organisations summarised above and detailed below will also have access to this Framework Agreement:

- (i) NHS Trusts
(<https://www.nhs.uk/servicedirectories/pages/nhstrustlisting.aspx>).
- (ii) Integrated Care Systems(ICS) and their individual constituent organisations <https://www.england.nhs.uk/integratedcare/what-is-integrated-care/>
- (iii) Area Teams:
<https://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx>
- (iv) Special Health Authorities:
<http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx>
- (v) Department of Health:
https://www.gov.uk/government/organisations/department-of-health
Arm's Length Bodies:
<https://www.gov.uk/government/publications/how-to-contact-department-of-health-arms-length-bodies/departments-of-health-agencies-and-partner-organisations>
- (vi) Sustainability and Transformation Partnerships (STPs) and their individual constituent organisations:
<https://www.england.nhs.uk/stps/view-stps/>
- (vii) NHS England: <https://www.england.nhs.uk/>



and other organisations involved in commissioning primary care services via Clinical Commissioning Groups supported by Commissioning Support Units which are responsible for commissioning most aspects of NHS care (or equivalent body established pursuant to legislation enacted as a result of, or in connection with, the White Paper, Equity and Excellence: Liberating the NHS published July 2010.

- 7.1.3 NHS Integrated Care Boards (ICB) (<https://www.nhs.uk/nhs-services/find-your-local-integrated-care-board/>)
- 7.1.4 CSU: <https://www.england.nhs.uk/commissioning>
- 7.1.5 The Clinical Commissioning Board, Area Teams: <https://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx> and other organisations involved in commissioning and/or overseeing General Practitioner services, GP consortia, GP Practices and any other provider of primary medical services:
- a) who are a party to any of the following contracts: - General Medical Services (GMS) - Personal Medical Services (PMS) - Alternative Provider Medical Services (APMS) and/or
 - b) Commissioned by NHS England or other organisations involved in commissioning or overseeing General Practitioner services, as described above. The NHS in Wales, Scotland and Northern Ireland including but not limited to Primary care services - GPs, pharmacies, dentists and optometrists, Hospital services, and community services, including those provided through community health centres and mental health services at: NHS Wales (National Health Service for Wales): including but not limited to Welsh Health Boards, NHS Trusts and Public Health Wales:
<http://www.wales.nhs.uk/nhswalesaboutus/structure>
- 7.1.6 NHS Scotland (National Health Service for Scotland) including but not limited to Regional NHS Boards, Special NHS Boards and public health body at: <http://www.scot.nhs.uk/organisations/>
- 7.1.7 Health and Social Care Services in Northern Ireland: (National Health Service for Northern Ireland) including but not limited to Health Trusts, Social



Care Board and other HSC Agencies: <http://online.net/other-hsc-organisation>

- 7.1.8 Social Enterprise UK: <https://www.socialenterprise.org.uk>
- 7.1.9 Local Authority Councils in England, Scotland and Wales: county, unitary, district, borough, and metropolitan councils (parish/community councils)
Local Councils in England, Scotland and Wales: <https://www.gov.uk/find-local-council>
- 7.1.10 Local Authority Councils in Northern Ireland: <https://www.nidirect.gov.uk/contacts/local-councils-in-northern-ireland>
- 7.1.11 Isle of Man (IoM) Government and associated IoM based public bodies, including all IoM Government Departments and Cabinet Office, including but not limited to: Department of Health & Social Care: <https://www.gov.im/about-the-government/departments/health-and-social-care/>
- 7.1.12 The States of Jersey Government and administration including all Government Departments including but not limited to: Health & Social Services: <https://www.gov.je/Government/Departments/HealthSocialServices/Pages/index.aspx>
- 7.1.13 The States of Guernsey (Parliament and government) including but not limited to the Committee for Health & Social Care: <https://www.gov.gg/article/152954/Health-and-Social-Services>
- 7.1.14 Department Educational Establishments in England including schools and colleges: <https://get-information-schools.service.gov.uk>
- 7.1.15 Schools in Wales: <http://gov.wales/address-list-schools>
- 7.1.16 Further Education and 6th Form Colleges in the UK: <http://findfe.com>
- 7.1.17 Higher Education Recognised or listed bodies in the UK offering degree-level courses: <https://www.gov.uk/check-a-university-is-officially-recognised>
- 7.1.18 Schools in Scotland including primary, secondary and special schools: <https://education.gov.scot/parentzone/>
- 7.1.19 Educational Establishments in Scotland: <http://www.gov.scot/Topics/Statistics/ScotXed/SchoolEducation/SchoolEstablishments>
- 7.1.20 Schools and Educational Establishments in Northern Ireland: <https://www.education-ni.gov.uk/services/schools-plus>



- 7.1.21 Higher Education Universities and Colleges in Northern Ireland: <https://www.nidirect.gov.uk/articles/universities-and-colleges-northern-ireland>
 - 7.1.22 UK Police Forces in England, Northern Ireland, Scotland and Wales including National Special Police Forces. <https://www.police.uk/forces/>
 - 7.1.23 England Fire and Rescue Services <http://www.fireservice.co.uk>
 - 7.1.24 Scottish Fire & Rescue Services <http://www.firescotland.gov.uk/your-area.aspx>
 - 7.1.25 Welsh Fire & Rescue Services <http://gov.wales/fire-rescue>
 - 7.1.26 Northern Ireland Fire & Rescue Service <https://www.nifrs.org/areas-districts>
 - 7.1.27 UK Maritime & Coastguard Agency <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency>
 - 7.1.28 Registered charities in England and Wales: <https://www.gov.uk/find-charity-information>
 - 7.1.29 Registered charities in Scotland: <https://www.oscr.org.uk/charities>
 - 7.1.30 Registered charities in Northern Ireland: <http://www.charitycommissionni.org.uk/charity-search>
 - 7.1.31 Ministry of Defence (MOD): <https://www.gov.uk/government/organisations/ministry-of-defence>
 - 7.1.32 Registered social landlords, government funded, not-for-profit organisations that provide affordable housing, including housing associations, trusts and cooperatives.
 England: <https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>
 Scotland: <http://directory.scottishhousingregulator.gov.uk/pages/default.aspx>
 - 7.1.33 Wales: <http://gov.wales/registered-social-landlords>
 - 7.1.34 Northern Ireland: <https://www.nidirect.gov.uk/contacts/housing-associations>
 - 7.1.35 NHS Supply Chain: <https://www.nhssupplychain.nhs.uk>
- 7.2 For the avoidance of doubt, any successor bodies of any of the above entities shall be entitled to place Orders and shall be deemed Participating Authorities for the purposes of this Framework Agreement.



Optional Key Provisions

8 Quality assurance standards ☒ (only applicable to the Framework Agreement if this box is checked and the standards are listed)

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

- 8.1.1 ISO13485: 2016 Medical Devices – Quality Management Systems accreditation or equivalent;
- 8.1.2 ISO 9001:2015 – Quality Management System or an equivalent quality assurance standard;
- 8.1.3 ISO 14001 - Environmental / Sustainability Certificate or equivalent;
- 8.1.4 ISO 22301 - Business Continuity Accreditation or equivalent;
- 8.1.5 Declaration of Conformity to specification
- 8.1.6 Mod B (in addition to Mod C2/Mod D) - EU Type Examination Certificate
- 8.1.7 CE/UKCA marking
- 8.1.8 EU certificate for Sterility showing full compliance to EN556-1:2001
- 8.1.9 BS EN 455-1:2020, or equivalent
- 8.1.10 BS EN 455-2:2015, or equivalent
- 8.1.11 BS EN 455-3:2015, or equivalent
- 8.1.12 BS EN 455-4:2009, or equivalent
- 8.1.13 BS EN ISO 13485:2016 OR BS ISO 9001:2015 (Both or Either), or equivalent
- 8.1.14 BS EN ISO 21420:2020 (replaces EN 420:2003+A1:2009), or equivalent
- 8.1.15 BS EN ISO 10282:2014, or equivalent
- 8.1.16 General Requirements and test methods for Gloves.
- 8.1.17 Technical Data Sheet(s)

9 Different levels and/or types of insurance ☒ (only applicable to the Framework Agreement if this box is checked and the table sets out the requirements)

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



Type of insurance required	Minimum cover
Employer's liability insurance	£5 Million
Public liability insurance	£5 Million
Product liability insurance	£5 Million
Professional Indemnity Insurance	£5 Million

10 Guarantee ☒ (only applicable to the Framework Agreement if this box is checked)

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

Extra Key Provisions

11 Where the Supplier is subject to Conditional Inclusion on this Framework Agreement, the Award Letter will set out the Conditions which must be satisfied before any call off or order shall be placed with the Supplier through this Framework Agreement.

12 In the event that the Authority is made aware of the following matters of concern ("Matters of Concern"):

- 12.1 any breach, or potential breach, of the relevant Indicators, Laws, Convention or Guidance on Modern Slavery and/or Human Trafficking incident(s) by the Supplier or within the Supplier's supply chain relating to the Goods as identified in any Third Party Audit;
- 12.2 any actual, suspected and/or credible allegations (including but not limited to whistleblowing allegations, media reports and/or actions of foreign states relating to the Supplier) of Modern Slavery or Human Trafficking incident(s) by the Supplier or within the Supplier's supply chain relating to the Goods;
- 12.3 no Third Party Audit carried out within 6 months prior to the Commencement Date;
- 12.4 no annual Third Party Audit is provided as required; or
- 12.5 a Third Party Audit Risk Assessment is provided (whether prior to Commencement Date or after) setting out a non remedied non-compliance or breach of the Indicators, Laws, Convention or Guidance on Modern Slavery and/or Human Trafficking.

the Authority may:



- 12.5.1 immediately suspend in whole or part the inclusion of the Supplier from the Framework Agreement (and provide notice to all Participating Authorities of the suspension from the Framework Agreement); and/or
 - 12.5.2 require the Supplier to remove from performance of the Framework Agreement or any Contract:
 - (i) any Sub-Contractor,
 - (ii) Staff or other persons associated with the performance; whose acts or omissions have caused, or are alleged to have caused, the Matters of Concern to arise; and/ or
 - 12.5.3 where any Matter of Concern is determined to be, or would if substantiated, amount a breach of this Framework Agreement, require a Remedial Proposal in accordance with clause 15.3 of schedule 2 and Schedule 9 to remedy the breach; and/or
 - 12.5.4 require access to audit (including an audit against the Indicators), including requiring a Third Party Audit paid for by the Supplier of, any books, information systems, databases, records, premises and/or any other relevant documentation and/or access to personnel, to collect information held by the Supplier and all associated Sub-Contractors throughout the supply chain for all Goods in accordance with this Framework Agreement; and/or
 - 12.5.5 require the Supplier to conduct an investigation, that is carried out in a manner agreed with the Authority, and publish findings to the Authority, inclusive of any outcomes to the investigation and/or any required actions and/or recommendations, where relevant; and/or
 - 12.5.6 require the Supplier to permit an investigation, carried out by a third party or agent acting on behalf of the Authority, and publish findings to the Authority, inclusive of any outcomes to the investigation and/or any required actions and/or recommendations, where relevant.
- 13** Pursuant to clause 12 of this Schedule 1, in the event that the investigation or enquiries determine that the breach and/or incident is not capable of remedy or has not been remedied (in accordance with Clause 15.3 and 15.4 of Schedule 2), the Framework Agreement may be terminated, with immediate effect, and any outstanding payments treated in accordance with clause 16 of Schedule 2.
- 14** The Supplier must provide the Authority with an annual Third Party Audit of its business including site visits to manufacturing locations used in the supply of all Goods. Where no Third Party Audit is carried out or the Risk Assessment or conclusions of the Third Party Audit are that there are, or are high risks of, incidents of Modern Slavery or Human Trafficking, this shall be deemed a Matter of Concern.



15 The Supplier shall support the Authority to deliver social value objectives as evidenced in a number of ways, including the following:

15.1 To support towards net zero greenhouse gas emissions and effective stewardship of the Environment throughout the lifetime of the Framework Agreement, within six (6) months of the Commencement Date, the Supplier shall provide the Authority with evidence (to the absolute satisfaction of the Authority) that they have started to publicly report the Organisation's scope 1 and 2 emissions. The Parties agree that where the Supplier does not provide this evidence the Authority within six (6) months of the Commencement Date this shall be deemed as a material breach for the purposes of Clause 16.4 of Schedule 2 in this Agreement, meaning that the Authority reserves the right (acting in its absolute discretion) to use any of the remedial rights set out in the Framework Agreement, including but not limited to those set out at Clauses 16,17 and 18 of Schedule 2.

15.2 To support working towards net zero greenhouse gas emissions and effective stewardship of the Environment throughout the lifetime of the Framework Agreement, within eighteen (18) months of the Commencement Date, the Supplier shall provide to the Authority with evidence (to the absolute satisfaction of the Authority) of the Supplier's commitment, published publicly, to achieving its environmental targets and goals, including but not limited to: net zero carbon for scope 1&2 by 2040 and scope 3 by 2045, in line with the NHS targets. The Parties agree that where the Supplier does not provide this evidence to the Authority within eighteen (18) months of the Commencement Date this shall be deemed a material breach for the purposes of Clause 16.4 of Schedule 2 below, meaning that the Authority reserves the right (acting in its absolute discretion) to use any of the remedial rights set out in this Framework Agreement, including but not limited to those set out in Clauses 16,17 and 18 of Schedule 2.

16 The Authority has adopted the Supplier Registration Systems for the Government (SRS) for both Supplier Assessment and Supplier Mapping. The purpose of this is to increase oversight and enable due diligence on Sustainability and Social Value aspects. This is to support the Authority's Sustainability Strategy commitments; both to support the NHS' ambition to decarbonise and journey to net zero ("Delivering a Net Zero NHS") and to understand what due diligence the Supplier has in place to manage compliance with international Labour standards:

16.1 Within six (6) months of the Commencement Date, the Supplier is required to complete the Carbon Waste and Water Assessment tools (the template for which can be found at the following link: <https://supplierregistration.cabinetoffice.gov.uk/>). The Parties agree that where the Supplier defaults to complete the Assessment Tools within six (6) months of the Commencement Date this shall be deemed a material breach for the purposes of clause 16.4 of Schedule 3, meaning that the Authority may use any of the remedial rights set out in the Framework



Agreement, including but not limited to those set out at Clauses 16, 17 and 18 of Schedule 2.

- 17** To support the Authority in delivering the recommendations made following the Boardman Review into Pandemic Procurement and particularly the requirement to increase transparency of Supply Chains to the Authority:
- 18** Within six (6) months of the Commencement Date, the authority requires Suppliers to complete the Supply Chain Mapping for all products on the Framework Agreement using the Supply Chain Mapping Tool (which can be found at the following link: <https://supplierregistration.cabinetoffice.gov.uk/login>).
- 19** Pursuant to clause 18, in the event that the Supply Chain Mapping is not complete within six (6) months of the Commencement Date. the Authority reserves the right to suspend the contractual obligations and supply of affected Goods until resolution.



Schedule 2

General Terms and Conditions

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1 Supplier's appointment

- 1.1 The Authority appoints the Supplier as a potential supplier of the Goods and the Supplier shall be eligible to be considered for the award of Orders during the Term.
- 1.2 In consideration of the Authority agreeing to appoint the Supplier to this Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this Framework Agreement, the Supplier undertakes to supply Goods under Orders placed with the Supplier:
 - 1.2.1 of the exact quality, type and as otherwise specified in the Specification and Tender Response Document;
 - 1.2.2 at the Contract Price calculated in accordance with the Commercial Schedule; and
 - 1.2.3 in such quantities, at such times and to such locations as may be specified in an Order.
- 1.3 The Supplier agrees that the Call-Off Terms and Conditions for the Supply of Goods shall apply to all supplies of Goods made by the Supplier to a Participating Authority pursuant to this Framework Agreement. The Supplier agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract.
- 1.4 The Supplier shall comply fully with its obligations set out in this Framework Agreement, the Specification and Tender Response Document, the Call-off Terms and Conditions for the Supply of Goods and any other provisions of Contracts entered into under and in accordance with this Framework Agreement (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 1.5 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.6 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.5 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.7 In complying with its obligations under this Framework Agreement, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

2 Authority commitments

- 2.1 Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:
 - 2.1.1 there is no obligation on the Authority or on any other Participating Authority to purchase any Goods from the Supplier during the Term;



2.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by the Authority and/or any other Participating Authority in respect of the total quantities or value of the Goods to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;

2.1.3 in entering this Framework Agreement, no form of exclusivity has been granted by the Authority and/or other Participating Authority; and

2.1.4 the Authority and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods which are the same as or similar to the Goods.

3 Ordering procedure

3.1 Any Participating Authority may enter into Contracts by placing an Order in accordance with the Ordering Procedure.

4 Reasonable assistance

4.1 Upon the written request of any Participating Authority, the Supplier shall provide such Participating Authority with any reasonable and proportionate information that it holds about the Goods it supplies under this Framework Agreement including, without limitation, the compatibility and interoperability of such Goods with other products, to enable the Participating Authority to complete any necessary due diligence before purchasing such Goods.

5 Supplier Performance and Lifescience Industry Accredited Credentialing Register

5.1 The Supplier shall perform all Contracts entered into under this Framework Agreement by the Authority or any other Participating Authority in accordance with:

5.1.1 the requirements of this Framework Agreement; and

5.1.2 the provisions of the respective Contracts.

5.2 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Framework Agreement) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

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



6.1.1 the criticality of this Framework Agreement to the Participating Authorities; and

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

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

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Participating Authorities and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

6.3 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

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

6.5 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

7 The Authority's obligations

7.1 The Authority shall provide reasonable cooperation to the Supplier and shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this Framework Agreement.

7.2 The Authority shall comply with the Authority's Obligations, if any.

8 Contract management

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



- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Framework Agreement and to discuss matters arising generally under this Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operation of the Framework Agreement. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at quarterly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods and the operation of this Framework Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier under this Framework Agreement and any Contracts when assessed in accordance with the KPIs, as relevant to the Framework Agreement and any Contracts, since the last such performance report;
 - 8.3.2 details of any complaints by Participating Authorities in relation to the supply of Goods, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document as being relevant to the operation of this Framework Agreement;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavors to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management



information relating to the Goods ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.

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

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

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

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

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

9 Price and payment

- 9.1 The Contract Price for all Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Contracts shall be as set out in the Call-off Terms and Conditions for the Supply of Goods.

- 9.2 Where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.

- 9.3 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Framework Agreement, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.

- 9.4 If a Party fails to pay any undisputed sum properly due to the other Party under this Framework Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 Warranties

- 10.1 The Supplier warrants and undertakes that:

10.1.1 it will comply with the terms of all Contracts entered into by Participating Authorities under this Framework Agreement;



- 10.1.2 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Framework Agreement, any Contracts, the Goods, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.3 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Framework Agreement (to include, without limitation, as referred to in Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.4 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Framework Agreement;
- 10.1.5 it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;
- 10.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Framework Agreement and the documents referred to in this Framework Agreement;
- 10.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;
- 10.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.9 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;
- 10.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement; and
- 10.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under this Framework Agreement and has gathered all information necessary to perform its obligations under this Framework Agreement and all other obligations assumed by it.
- 10.1.12 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains and that a Risk Assessment of the Indicators are recorded in any Third Party Audits of its business and supply chains relevant to the Goods; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.13 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's



compliance with this Clause 10.1.12 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.

- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.4 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.4.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.4.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.6 Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Statutory compliance

- 11.1 The Supplier shall comply with all Law and Guidance relevant to its obligations under this Framework Agreement and any Contracts.
- 11.2 Without limitation to Clause 11.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Framework Agreement and any Contracts.

12 Independence of Participating Authorities

- 12.1 The Supplier acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Framework Agreement



and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 12.1.1 the conduct of Participating Authorities other than the Authority in relation to the operation of this Framework Agreement; or
- 12.1.2 the performance or non-performance of any Participating Authorities other than the Authority under any Contracts between the Supplier and such other Participating Authorities entered into under this Framework Agreement.

13 Limitation of liability

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

- 13.1.1 for death or personal injury resulting from its negligence;
- 13.1.2 for fraud or fraudulent misrepresentation;
- 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law;
- 13.1.4 to make any payments agreed in accordance with Clause 9.2 of this Schedule 2; or
- 13.1.5 pursuant to 31.5 of Schedule 3.

13.2 Subject to Clause 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.

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

13.5 The liability of the Supplier and any Participating Authorities under any Contracts entered into pursuant to this Framework Agreement shall be as set out in the Call-off Terms and Conditions for the Supply of Goods forming part of such Contracts.

14 Insurance

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



the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.

- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Framework Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Framework Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Framework Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay sums due under this Framework Agreement), the non-breaching Party may, without prejudice to its other rights and



remedies under this Framework Agreement, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Framework Agreement in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as set out in Schedule 9 of this Framework Agreement or as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless Schedule 9 applies to the Remedial Proposal in which case the time limits in that Schedule shall apply save as otherwise agreed between the Parties); and/or
- 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

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

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

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

15.5 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier if:

- 15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Framework Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of



it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

- 15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of the Authority;
 - 15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 28.1 of this Schedule 2;
 - 15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
 - 15.5.5 the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Framework Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
 - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Framework Agreement in accordance with Clause 15.4(i) of this Schedule 2.
- 15.7 In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.



- 15.8 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:
- 15.8.1 the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.8.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Framework Agreement;
 - 15.8.3 the Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 15.8.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law including where the Supplier is in breach of its warranties under clauses 10.1.12 or 10.1.13 or the requirements of clause 26. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Framework Agreement under this Clause 15.8.4 or
 - 15.8.5 information supplied as part of its submissions in the tender leading to its inclusion on the Framework Agreement is found to be false or misleading in any significant regard as determined by the Authority in its sole discretion; or
 - 15.8.6 There is a failure to carry out a Third Party Audit as required by the Framework Agreement.
- 15.9 If the Authority novates this Framework Agreement to anybody that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Framework Agreement in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Framework Agreement by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.10 A breach of clauses 24.3 or 24.4 may, in the absolute discretion of the Authority, be considered a breach not capable of remedy. If the Authority considers that the breach is not capable of remedy the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
- 15.11 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier in the event that there is:
- 15.11.1 A failure to maintain a minimum of a 70% score on the Labour Standards Assessment (or an equivalent score on any successor certification scheme) within 15 months of the Commencement Date; or
 - 15.11.2 A failure to achieve a minimum of an 80% score on the Labour Standards Assessment (or an equivalent score on any successor certification scheme) within 27 months of the Commencement Date; or



- 15.11.3 A failure to maintain a minimum of a 40% score on the Modern Slavery Assessment (or an equivalent score on any successor certification scheme) in each year following the Commencement Date.

16 Consequence of expiry or early termination of this Framework Agreement

- 16.1 Upon expiry or earlier termination of this Framework Agreement, the Authority and the Supplier agree that all Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.
- 16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Framework Agreement, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The expiry or earlier termination of this Framework Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.4 The expiry or earlier termination of this Framework Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.5 In the event of a termination of the Framework Agreement under clauses 15.4, 15.8.4 15.10 or 15.11 of this Schedule 2 the Authority shall give notice of such termination to all Participating Authorities. Where such notification leads a termination of unfulfilled Contracts entered into under this Framework Agreement (where Goods have not been supplied and accepted at the date of termination) by the Participating Authorities such termination is without further liability for the Authority or any Participating Authorities.

17 Suspension of Supplier's appointment

- 17.1 Without prejudice to the Authority's rights to terminate this Framework Agreement, if a right for the Authority to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 15 of this Schedule 2, or a right to suspend arises under the Key Provisions, the Authority may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Participating Authorities. Such suspension may apply to:
- 17.1.1 the entire appointment under the Framework Agreement;
 - 17.1.2 not used;
 - 17.1.3 to the supply of individual Goods, service lines, products or other items supplied under the Framework Agreement; or



- 17.1.4 the use of any Sub-Contractor in the provision of the Services (such suspension being without prejudice to the right to require the replacement of a Sub-Contractor).
- 17.2 If the Authority provides notice to the Supplier in accordance with Clause 17.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time provided that such suspension shall be lifted where:
- 17.2.1 the circumstances leading to the Authority's right to terminate this Framework Agreement have been remedied;
- 17.2.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate or suspend this Framework Agreement no longer requires such suspension; or
- 17.2.3 the Authority exercises its rights to terminate this Framework Agreement in accordance with Clause 15 of this Schedule 2.

18 Complaints

- 18.1 The Supplier shall notify the Authority of any formal written complaints made by other Participating Authorities relating to the Supplier's noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
- 18.2 Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or the Authority may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 18.3 Within two (2) Business Days of a written request by the Authority, the Supplier shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

19 Sustainable development

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



as proportionate to the nature and scale of the Supplier's business operations;
and

19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.

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

20 Electronic product information

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

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

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

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

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

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

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



21 Change management

- 21.1 The Supplier acknowledges to the Authority that the requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Goods or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Framework Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Framework Agreement (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Framework Agreement the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as



they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

22.6 Nothing in this Framework Agreement shall prevent:

- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.

22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.

23 Force majeure

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

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

- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.

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

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

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

23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue



and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.

- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Framework Agreement.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Framework Agreement. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Framework Agreement.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Framework Agreement, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours, having given advance written notice of no less than five (5) Business Days, access to any person, premises and facilities, books and records used in the performance of the Supplier's obligations under this Framework Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Framework Agreement for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or



- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Framework Agreement.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Framework Agreement.

25 Conflicts of interest and the prevention of fraud

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

26 Equality and human rights

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and any associated services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its



Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

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

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

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

27 Notice

27.1 Subject to Clause 22.5 of this Schedule 2, any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

27.2 A notice shall be treated as having been received:

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

27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

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

28 Assignment, novation and Sub-contracting

28.1 The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Framework Agreement, every act or omission of the Sub-contractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.



- 28.2 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Framework Agreement shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Framework Agreement.
- 28.3 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.3.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 28.3.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.4 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.5 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Framework Agreement to anybody that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

29.1 The Supplier warrants and represents that:

- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
 - (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (ii) in connection with this Framework Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and



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

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

29.2.1 the Authority shall be entitled:

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

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

29.2.3 notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:

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

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

30 General

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

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

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

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



- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Framework Agreement are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Framework Agreement or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Framework Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Framework Agreement.
- 30.9 This Framework Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Framework Agreement or any variation to this Framework Agreement, contain the entire understanding between the Supplier and the Authority relating to the operation of this Framework Agreement to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Framework Agreement. Nothing in this Framework Agreement seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Framework Agreement shall form part of this Framework Agreement.
- 30.10 This Framework Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Framework Agreement shall be in English.



Schedule 3

Information and Data Provisions

(a) **Confidentiality**

30.13 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause (a) of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

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

30.13.2 the provisions of Clause (a) of this Schedule 3 shall not apply to any Confidential Information:

- (i) which is in or enters the public domain other than by breach of this Framework Agreement or other act or omissions of the Recipient;
- (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (iii) which is authorised for disclosure by the prior written consent of the Discloser;
- (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

30.14 Nothing in Clause (a) of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

30.15 The Authority may disclose the Supplier's Confidential Information:

30.15.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

30.15.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

30.15.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;



30.15.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

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

30.15.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Framework Agreement;

and for the purposes of this Framework Agreement, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 30.15 of this Schedule 3.

30.16 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to the operation of this Framework Agreement, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Framework Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause (a) of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Framework Agreement.

30.17 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Framework Agreement and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Framework Agreement.

30.18 Clause (a) of this Schedule 3 shall remain in force:

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

30.18.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Framework Agreement unless otherwise agreed in writing by the Parties.

31 Data protection

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

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



- 31.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 31.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 31 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 31.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Framework Agreement.

32 Freedom of Information and Transparency

- 32.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 32.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 32.2.1 that this Framework Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 32.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 32.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
 - 32.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;



- 32.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Framework Agreement; and
- 32.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 32.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.
- 32.4 Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 32.5 In preparing a copy of this Framework Agreement for publication under Clause 32.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 32.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
- 32.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 32 of this Schedule 3, as if such Sub-contractor were the Supplier.

33 Information Security

- 33.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 33.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 33.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.



Schedule 4

Definitions and Interpretations

(a) Definitions

33.2 In this Framework Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions for the Supply of Goods at Appendix A of this Framework Agreement. The definitions and Interpretations that apply to the Call-off Terms and Conditions for the Supply of Goods are as set out at Appendix A of this Framework Agreement.

“Award Letter”	means the letter confirming to the Supplier that they are being admitted to the Framework Agreement and which may include Conditions where the admission to the Framework Agreement is a Conditional Inclusion;
“Authority”	means the authority named on the form of Framework Agreement on the first page;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Framework Agreement;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Call-off Terms and Conditions for the Supply of Goods”	means the call-off terms and conditions for Contracts as set out at Appendix A of this Framework Agreement forming part of the Contracts placed under this Framework Agreement;
“Codes of Practice”	shall have the meaning given to the term in Clause 30.14 of Schedule 3;
“Conditions”	means any conditions set out in the Award Letter which must be completed before any suspension from the Framework Agreement shall occur and any call off or



	orders may be placed with the Supplier through this Framework Agreement;
“Conditional Inclusion”	means that the Supplier has been included on the Framework Agreement and immediately suspended from the Framework Agreement subject to the satisfactory completion of any Conditions set out in the Award Letter;
“Commencement Date”	means the date of this Framework Agreement;
“Commercial Schedule”	means the document set out at Schedule 6;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is: (b) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (c) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (d) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Contract”	means any contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Supply of Goods;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract;
“Controller”	shall have the same meaning as set out in the GDPR;



“Convention”	means international treaties that have been ratified by the United Kingdom, and recommendations and guidance concerning the same, which serve as non-binding guidelines, and set out the principles to be implemented by ratifying countries.
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	33.3 means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Framework Agreement;
“Dispute(s)”	33.4 means any dispute, difference or question of interpretation or construction arising out of or in connection with this Framework Agreement, any matters of contractual construction and interpretation relating to the Framework Agreement, or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	33.5 means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with



	such message standards and protocols as the Authority may specify from time to time;
“Environment”	Means the air, water, and land in or on which people, animals and plants live;
“Environmental Regulations”	shall have the meaning given to the term in Clause 30.14 of Schedule 3;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“FOIA”	shall have the meaning given to the term in Clause 30.14 of Schedule 3;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: 1. war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Framework Agreement; (e) acts of terrorism; (f) flood, storm or other natural disasters; (g) fire; (h) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (i) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;

	(j) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (k) industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (l) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;
"Framework Agreement"	means the form of framework agreement at the front of this document and all schedules and appendices attached to the form of framework agreement;
"Fraud"	means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations;
"Goods"	means all goods, materials or items that the Supplier is required to supply to Participating Authorities under Contracts placed under this Framework Agreement, details of such Goods, materials or other items being set out in the Specification and Tender Response Document and any Order;

“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Human Trafficking”	Means the recruitment or movement of people for exploitation by the use of threat, force, fraud, or the abuse of vulnerability;
“Indicators”	means the 11 International Labour Organisation’s forced labour indicators, or such other indicators or standards as may be notified to the Supplier by the Authority from time to time and which shall in any Third Party Audit be subject to a Risk Assessment as to the occurrence or prevalence and severity of any non-conformity against such standards;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in Schedule 5;
“Law”	33.6 means any applicable legal requirements including, without limitation,: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;



	(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Modern Slavery”	means the recruitment, movement, harbouring or receiving of children, women or men through the use of force, coercion, abuse of vulnerability, deception or other means for the purpose of exploitation. It is a crime under the Modern Slavery Act 2015 and includes holding a person in a position of slavery, servitude forced or compulsory labour, or facilitating their travel with the intention of exploiting them soon after;
“NHS”	means the National Health Service;
“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (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 (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Order Form”	means the template order form on which Orders are to be placed, as set out in Schedule 7;
“Ordering Procedure”	means the procedure enabling Participating Authorities to call-off Goods and enter into Contracts under this Framework Agreement, as set out in Schedule 7;
“Orders”	means orders for Goods placed under this Framework Agreement by Participating Authorities;

“Organisation”	Means the Supplier company;
“Participating Authority”	means a Contracting Authority entitled to place Orders under this Framework Agreement including the Authority and any other Contracting Authority as set out in the Key Provisions;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
“Prohibited Acts”	has the meaning given under 29.1.1 of Schedule 2;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Action Plan”	Means the agreed remedial plan of action developed by the Supplier and agreed by the Authority to remedy a Default, Breach or issue.
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Risk Assessment”	means an assessment of the risks of Modern Slavery undertaken as part of any Third Party Audit of the Supplier completed in compliance with the instructions set out in the documents issued to the Supplier as part of the procurement process to be admitted to the Framework Agreement and such further Third Party Audits carried out over the duration of the Framework Agreement;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement

	including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Framework Agreement;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the form of Framework Agreement on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Term”	means the term as set out in the Key Provisions;
“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 Framework Agreement on a specified date and setting out the grounds for termination;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2; and
“Third Party Audit”	means an official inspection of the business and supply chain of the Supplier, undertaken at the Supplier’s cost carried out by an independent and suitably qualified body, which is recognised and selected in accordance with Good Industry Practice which reviews the Indicators and includes a Risk Assessment.
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

33.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.

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

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

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



- 33.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.
- 33.7 The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.
- 33.8 Words denoting the singular shall include the plural and vice versa.
- 33.9 Where a term of this Framework Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 33.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Framework Agreement, such other part of this Framework Agreement shall prevail.
- 33.11 Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 33.12 Any guidance notes in grey text do not form part of this Framework Agreement.
- 33.13 Any Breach Notice issued by a Party in connection with this Framework Agreement shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 33.14 Any terms defined as part of a Schedule or other document forming part of this Framework Agreement shall have the meaning as defined in such Schedule or document.



Schedule 5

Specification and Tender Response Document

SCHEDULE A2 (A) - PRODUCT SPECIFICATION

Tender for Surgical Gloves

1. Introduction

The Supply Chain Coordination Ltd is seeking to establish a multi supplier framework agreement for Surgical Gloves which will provide a comprehensive range of products suitable for use across the NHS in England. The scope of this agreement will include Surgical gloves (natural latex rubber & synthetic latex free)

The purpose of The **Surgical Gloves 2022** framework is: -

- To assure the NHS that framework suppliers are compliant to clinical and industry standards and are therefore safe to contract with.
- Build sustainable partnerships between the NHS and Suppliers which ensures the NHS
- Benefit from ongoing cost-effective, value-added products and services whilst enabling suppliers continued profitable growth within this market area.
- To provide a Nationally Contracted Pricing Matrix - to set the commercial parameters in how pricing can be applied for the NHS, which is consistent across Industry, in a fair and transparent way.
- To enable the reopening of competition to support the Nationally Contracted Products model.
- Transformation of the NHS landscape - championing rationalisation, standardisation, co-operation and collaboration to affect patient pathways and clinical outcomes.
- Lay the foundations for efficiency savings and process improvements beyond the price of products.
- To support facilitation of changes in clinical practice, new technologies and new treatment.
- To provide a sustainable and robust supply of products to the NHS.
- To enable the use of data to improve health outcomes; and
- Ensure effective characterisation of Products and cataloguing for the NHS.

1.2 Full technical specifications of the products awarded to this Framework Agreement must be made available to NHS Supply Chain on request during the lifetime of this Agreement.

- NHS Supply Chain must be notified immediately about any proposed changes to the technical specifications throughout the lifetime of the Framework Agreement.
- If changes to the technical specification of any offered product mean that the product no longer meets the minimum requirements outlined in this document, NHS Supply Chain reserves the right to exclude the product from the Framework Agreement.
- NHS Supply Chain reserves the right to request evidence of compliance with the specifications outlined in this document throughout the lifetime of this Framework Agreement.



- 1.3 The specifications refer to several standards and legislation. The list of standards/legislation/directives is not intended to be exhaustive and any relevant standard/legislation/directive (even if not stated) must be complied with.
- 1.4 Products must comply with the stated standards/legislation/directives (as amended, extended, or re-enacted from time to time) and/or the relevant section within the standard/legislation/directive and/or the relevant standard within the stated suite of standards.
- 1.5 Evidence of compliance to the standards/legislation/directives must be available to NHS Supply Chain on request during the lifetime of this Agreement; if sufficient evidence is not supplied, NHS Supply Chain reserve the right to suspend product until such evidence is available.
- 1.6 Gloves may meet the definition of both PPE and a Medical Device. These products will be considered to have a dual purpose and will fall within the scope of both the PPE regulation and the Medical Device Regulation.
- 1.7 All products classified as PPE or Dual Purpose must be certified by a UK Approved Body (EU Notified body). Appropriate certification must be supplied e.g., Module B and Module C2/Module D.
- 1.8 All products classified as PPE or Dual Purpose must have UKCA/CE marking followed by the UK approved body/notified body number.
- 1.9 **Biocompatibility Compliance** an Evaluation Summary to confirm the biological suitability of the product, must contain the details of the individual who analysed the results and authored the Summary.
- 1.10 The NHS e-Procurement Strategy published by the Department of Health in April 2014 requires the NHS to adopt global standards including the implementation of GS1 product coding. Awarded suppliers will be expected to work with NHS Supply Chain and NHS customers during the term of the Framework Agreement to meet these requirements.
- 1.11 Product images are mandatory and will be required at time of tender submission. Images must be of the product and the box the product will be in. Artwork of the box is required showing all sides



2 Criteria applicable across all product lines

Standards and Legislation

STANDARD / CERTIFICATION

Where we have stated a Standard is to be achieved, for example, Medical Devices Regulations 2002 (SI 2002 No 618, as amended), this means the Standard or an equivalent.

Medical Devices Regulations 2002 (SI 2002 No 618, as amended) (UK MDR 2002). Directive for active implantable medical devices, medical devices, and in vitro diagnostic medical devices (IVDs) in the UK

UKCA (UK Conformity Assessment), as of January 2023; or

(For General medical devices and IVDs) existing valid certification/declaration of conformity to the CE standard, issued under the EU Medical Devices Regulation (Medical Devices Regulation 2017/745) or the EU in vitro Diagnostic Medical Devices Regulation, until either the certificate expires or for five years after the new regulations take effect, whichever is sooner. This will apply even if the certification/declaration of conformity is dated after the new regulations take effect; or

(For Marked Devices certified under EU MDD 93/42/EEC) existing valid CE certification/declaration of conformity to the CE standard, issued under the EU Medical Devices Directive, the EU Active Implantable Medical Device Directive or the EU in vitro Diagnostic Medical Devices Directive before the regulations take effect, until either the certificate expires or for three years (for general medical devices) and five years (for IVDs) after the new regulations take effect, whichever is sooner; or

(For products certified under Regulation 2016/425 and the Personal Protective Equipment (Enforcement) Regulations 2018: Great Britain), an existing valid CE Certification/Declaration of conformity to the CE standard, issued under Regulation 2016/425 (as incorporated into UK law), until 31 December 2022.

Any product that contains phthalates must be indicated on the packaging in accordance with Directive 2007/47/EC (amending Directives 90/385/EEC and 93/42/EEC).

BS EN 556-1:2001

IF NO BS EN 556-1:2000 OR equivalent technical solutions IS REQUIRED specifies the requirements for a terminally sterilized medical device to be designated "STERILE" Test report / certification from an ISO/IEC 17025:2017 accredited laboratory



ISO 10282:2014 Single-use sterile rubber surgical gloves, or equivalent
specifies requirements for packaged sterile rubber gloves intended for use in surgical procedures to protect the patient and the user from cross-contamination

BS EN ISO 13485:2016 OR BS EN ISO9001:2015 (Both or Either), or equivalent
An additional Quality Management Standard for suppliers of medical devices
Test report / certification from an ISO/IEC 17025:2017 accredited laboratory

BS EN ISO 21420:2020 (replaces EN 420:2003+A1:2009), or equivalent
General Requirements and test methods for Gloves. Test report / certification from an ISO/IEC 17025:2017 accredited laboratory

BS EN 455-1:2020, or equivalent
Medical gloves for single use. Requirements and testing for freedom from holes. The compliance level for freedom from holes for a medical glove must be an acceptable quality level (AQL) of 1.5 % and Surgical Gloves Requirement (AQL) of 0.65%
Test report / certification from an ISO/IEC 17025:2017 accredited laboratory

BS EN 455-2:2015, or equivalent
Medical gloves for single use.
Requirements and testing for physical properties. The gloves are tested to determine dimensions (length and palm width) and physical strength (force at break) Surgical Gloves Requirement: ≥ 9.0 Newtons Test report / certification from an ISO/IEC 17025:2017 accredited laboratory

BS EN 455-3:2015, or equivalent
Medical gloves for single use.
Requirements and testing for biological evaluation. The gloves are tested to determine the presence of potentially hazardous material that could affect the wearer.
The manufacturer shall disclose, upon request, a list of chemical ingredients either added or already known to be present that will cause adverse health effects.

BS EN 455-4:2009, or equivalent
Medical gloves for single use.
Requirements and testing for service life determination. The gloves are tested to determine the shelf life that can be applied. Requirements and testing for shelf-life determination (Only required if claiming 5 years expiry date, otherwise, for 3 years, manufacturing and expiry date on packaging is sufficient). Test report / certification from an ISO/IEC 17025:2017 accredited laboratory

Medical devices are classified depending on their use and are risk based:

Product	Classification	Level of Risk
Surgical gloves	Class IIa	Low – Medium



2.1 In accordance with the Control of Substances Hazardous to Health Regulations 2002 (as amended) safety data sheets for all products that fall under this Regulation must be provided to NHS Supply Chain.

2.2. All products and packaging must be **latex free** where possible. Any products or packaging containing latex must be clearly labelled as such to inform the user. EN ISO 15223-1:2021 symbol for latex



2.3. All products must be supplied with a minimum 3 year shelf life from the date of manufacture and 2 years on delivery into NHS Supply Chain.

2.4 Labelling – Must specify the size of the glove and must have a manufacturing and/or expiry date on the packaging.

2.5 The sterilisation process for the supply of sterile product lines must be certified by a UK Approved Body (EU notified body).

2.6 Where applicable all products must be supplied with instructions for use and disposal/recycling instructions, or symbols printed in English.

3.1 All product lines in this Framework Agreement are intended to be disposed of after use and must be clearly marked as such on the primary packaging to inform the user; they are not intended for sterilisation.

3.2 Where non-latex product is provided, product and packaging must be latex free and clearly stated.

3.3 All products must be powder free e.g., Removable Surface Powder: $\leq 2\text{mg/glove}$

3.4 All products must have a shelf life of at least 3 years from date of manufacture and 2 years on delivery into NHS Supply Chain.

STERILE SURGICAL GLOVES

Is for the supply of surgeons' gloves made from natural latex rubber and synthetic latex free.

4.2 Must be a minimum of 9 newton.

4.3 To be supplied in left/right hand pairs individually packed.

4.4 Must be labelled STERILE along with the method of sterilisation and clearly marked sterile on the packaging

4.5 All products must be powder free.

5. Latex Related Conditions

5.1 If applicable the Supplier shall ensure that products are free from natural rubber latex in their construction and have not been exposed to latex at any time during manufacturing or packaging procedures.



6 Storage

- 6.1 The Supplier shall identify any special instructions for storage.

7 Product Technical Information

- 7.1 The Supplier shall provide the Authority with technical product information if the form of a recognised technical data sheet

8 Product Evaluations

- 8.1 Participating Authorities reserve the right to undertake trials and evaluations of alternative suppliers' products. Any trials and evaluations conducted will be following the individual Authority's policies and protocols.
- 8.2 Suppliers may provide the Participating Authorities with the option to participate in a Trial. Written authorisation must be obtained from the Authority prior to the commencement date of any Trial. The Authority shall not be liable for any costs incurred by the supplier in relation to the Trial.
- 8.3 The supplier is expected to support any required product trials or clinical evaluations as requested by the Participating Authority and must provide samples to enable the Participating Authority to carry out required evaluations. To enable the Authority to manage and complete a meaningful evaluation, product training and clinical guidance must also be provided.
- 8.4 In exceptional cases where there is a significant cost associated with undertaking any trial a Supplier will be within their right to negotiate a reasonable charge in advance of the trial commencing. For the avoidance of doubt this is only in exceptional circumstances and once agreed the charge will not increase regardless of the trial length.
- 8.5 Full and effective training must be given to each member of staff associated with the trial and at respective levels / requirements prior to any clinical trial being conducted.
- 8.6 Trials will be time-bound, and this will be clearly agreed between the Supplier and affected parties within the Participating Authority(s). The Supplier must inform the Authority of the trial start date and duration.
- 8.7 The supplier is required to supply appropriate supporting documentation, including evaluation forms if requested to do so. As a minimum, it is expected that supporting documents establish the duration, content, cost, desired outcome, and method for managing the trial to the Authority.
- 8.8 The Participating Authority will provide feedback to Suppliers on clinical trials of any samples evaluated.



SCHEDULE A2 (B) SERVICE SPECIFICATION

Surgical Gloves

NHS Supply Chain is seeking to establish a multi-supplier framework for the supply of **Surgical Gloves** which will provide a comprehensive range of products suitable for use across the NHS in England.

The framework is to be available for use by NHS Trusts and other UK public sector bodies in England, Scotland, Wales and Northern Ireland including those operating in both an acute and community environment, Integrated Care Boards (ICB), GP Practices and other health and social care providers (including any future successor organisations). The framework will be available for use by Participating Authorities as outlined in Schedule A7.

It is recognised that primary use of the framework will be by Participating Authorities in England. These are referred to as “Participating Authorities”.

The framework will provide a route to market fully compliant with Public Contracts Regulations (2015) enabling participating authorities to focus on their own specific requirements without the burden of cost and time in undertaking individual full procurement processes.

This framework is for surgical gloves and the scope is set out as follows:

- surgical undergloves
- surgical overgloves
- extra sensitive surgical gloves
- textured surgical gloves
- tear/puncture indication surgical gloves
- coated surgical gloves

More detailed product requirements are contained within schedule A2 (A) Product Specification.

The Framework Agreement will be for a maximum term of 48 months (24 months fixed period with the option to extend for a further period of up to 24 months).



1 INTRODUCTION

This procurement supports the aims of the Department of Health and Social Care's - The Operating Model (OM) for NHS Procurement developed to transform the landscape of NHS Procurement.

The Operating Manual is a strategic response to enhancing procurement efficiency and effectiveness across the NHS, as laid out in the Carter Report, to:

- benefit the NHS as a whole;
- benefit all Participating Authorities/NHS Participating Authorities regardless of size;
- benefit the procurement profession; and
- benefit Patients.

Whilst we recognise that the introduction of the Operational Management represents a significant change in the way in which the NHS purchases goods, and this will have potential impacts on Suppliers' ways of working, we believe that the OM creates opportunities for Suppliers, for example:

- a reduced burden of participating in procurement exercises, as the number of competing frameworks is reduced;
- the inclusion of clinical expertise embedded into the towers means that we will be buying those products that the NHS wants rather than simply the cheapest;
- commitment deals will make it easier for Suppliers to plan their business and outputs, and to reduce internal costs and this also means more certainty and predictable cash flow; and
- there is a much clearer route for innovation.

On 1 April 2018 the new operating model went live. The new supply chain service is designed to help the NHS deliver clinically assured, quality products at the best value through a range of specialist buying functions. The NHS has the potential, through greater collaboration, to improve the NHS's purchasing power on a national scale and deliver better value for money for NHS Participating Authorities and the taxpayer.

Oversight and operational management of the new model is delivered by a new management function, (SCCL) The Authority, a Limited company wholly owned by the Secretary of State for Health and Social Care and forms part of the NHS family.

The OM is organised into eleven Category Towers covering medical, capital and non-medical areas of procurement spend. This procurement relates to Tower 2 – Sterile Intervention Equipment and Associated Consumables.

The purpose of the **Surgical Gloves** Framework is to assure the NHS that Framework Suppliers are compliant to clinical and industry standards and are therefore safe to contract with:

- build sustainable partnerships between the NHS and Suppliers which ensures the NHS benefit from ongoing cost effective, value added products and services whilst enabling Suppliers' continued profitable growth within this market area;



- to provide the NHS with the best market price available - to set the commercial parameters in how pricing can be applied for the NHS which is consistent across Industry, in a fair and transparent way;
- transformation of the NHS landscape - championing rationalisation, standardisation, co-operation and collaboration to affect patient pathways and clinical outcomes;
- lay the foundations for efficiency savings and process improvements beyond the price of products;
- to support facilitation of changes in clinical practice, new technologies and new treatment;
- to provide a sustainable and robust supply of products to the NHS;
- to enable the use of data to improve health outcomes; and
- ensure effective characterisation of Products and cataloguing for the NHS.

Working with Participating Organisations and Industry under the Framework Agreement

the Authority aims to work collaboratively and transparently with the NHS and Industry to enable an effective and compliant route to market for the NHS. The Authority has established a team which will focus on driving value across the NHS through effective category management and clinical engagement. This team includes the following functions which will engage at varying levels across the NHS and Industry:

- Data analysts – responsible for reviewing spend data and running any required analysis.
- Contracting – responsible for procurement processes, catalogue management and supporting the category management team.
- Category Managers – responsible for contributing to the ongoing development of the category strategy and working with Participating Authorities to establish their baseline, develop work plans and manage projects at individual Participating Authorities and across any collaborative working organisations.
- Clinical Engagement and Implementation Managers (CEIM) – responsible for contributing to the ongoing development of the category strategy and engaging with NHS clinicians regarding clinical procedures, informing them of products from the market and supporting the surgical teams to find an optimum solution for their patient care.
- The Authority also works with the customer engagement team whose local account managers support Participating Authorities at local level to assist with transition to the CTSP/NHS Supply Chain transacted model.

The Authority's process of engaging with Participating Authorities is designed to ensure the timely delivery of projects across the NHS in collaboration with Industry. This involves, but is not limited to the following:

1. Identify and Profile the Participating Organisation(s);
2. Meet clinical, procurement & business leads to discuss and scope the project;
3. Obtain usage, analysis of 12 months activity data with all Suppliers;
4. Commercial analysis of the opportunities available for individual or groups of Trusts to show the potential benefits on different scenarios; And
5. Participating Authorities may request to access all or part of the Framework Agreement subject to outcomes, as described above in point 2. If further analysis is required and the Participating Authority wishes to further consolidate their expenditure:
 - a) CEIMs work closely with the clinical team to identify the correct choice of product for the specific requirement/procedure;
 - b) Industry is engaged to align and support the clinical department;



- c) Supplier events may be facilitated; And
- d) Expenditure reviewed and forecasted usage (and commitment if relevant) translates into subsequent and appropriate commercial offering.

Historic Spend Data

The anticipated total annual sales via this Framework Agreement are as follows:

Title	Annual Sales
Surgical Gloves	£12,341,827

2 NHS

2.1 NHS Mergers and Acquisitions

NHS transformation has resulted in NHS organisations merging and, in some instances, one organisation has acquired all or part of another NHS entity.

Where a merger or acquisition affects the contracting position of an organisation using the Framework, the Supplier shall be advised that a re-calculation of the activity profile shall be undertaken.

2.2 Collaborative Procurement

Partnerships and collaboration are at the heart of NHS reforms in England.

Collaborative working within the NHS has been promoted to help meet a 'triple challenge' set out in the NHS Five Year Forward View – better health, transformed quality of care delivery, and sustainable finances.

The Supplier shall be required to provide data in relation to these groups and future groups formed to support NHS collaborative working.

2.3 Collaborative Working by Participating Authorities

The eligibility for multiple legal entities acting collaboratively shall be based on the following:

- Participating Authorities regarded as a single legal entity, prior to final merger. (e.g. NHS Trusts which have merged or have formally satisfied the Supplier, through written commitment, of their intention to merge at a given date).
- Participating Authorities regarded as a single contracting authority.
- Participating Authorities operating under a shared service. (e.g. Trusts with one central purchasing department but not necessarily one delivery point)
- Participating Authorities who are part of an Integrated Care System (ICS)



- Any two or more Participating Authorities who wish to commit as a group and satisfy certain requirements as outlined below:

Two or more NHS Trusts qualify:

- Participating Authorities will look to access such commercial offerings as part of any product rationalisation processes (unless already in a common rationalised supply relationship);
- Rationalisation may not result in outright majority supply, but a solution for a common product range across the Trusts in scope;
- Participating Authorities wishing to access the Framework as a group, must be geographically close to one another to allow the Supplier to optimally service those Participating Authorities;
- Participating Authorities may wish to contract together linked by speciality whereby niche or more specialist care is taken into consideration and requires joint activity;
- Commitment to volume / spend and to term must be offered, consistently across the group subject to Supplier offers;
- Commitment must be approved by the relevant Participating Authority boards, and each Participating Authority should sign the commitment access form at finance, procurement and clinical lead level;
- In offering commitment, each Participating Authority agrees to share full liability for the duration of the commitment.

Integrated care systems (ICSs) are designed around the care needs of whole areas, not just individual organisations and coordinate services in a way that improves population health and reduces inequalities between different groups.

There are currently 42 ICS areas covering all of England, where local NHS organisations and councils have drawn up proposals to improve health and care in the areas, they serve by working together. ICS' are voluntary partnerships, which are governed by Integrated Care Boards (ICBs) that are legal entities as of 01 July 2022.

3. General Requirements

The following details the specification of requirements:

The Supplier must respond to the corresponding questions in **Schedule B4 (A) Quality Questions** confirming compliance with the generic specification of requirements, where applicable.

All quality questions must be answered on the Jaggaer e-Tendering Portal and can be found within the 'Technical Envelope'.

If, during Award, or subsequent to Award a Supplier is found to have misrepresented their compliance with the Specification, the Supplier will be suspended from the Framework Agreement pending investigation, which may result in permanent removal from the Framework Agreement. Any Participating Authorities engaged with that Supplier will be notified accordingly as soon as issues concerning misrepresentation of compliance is identified.

Suppliers are subject to an on-going obligation to notify the Authority of any material changes in their identity, financial or other circumstances. This includes, but is not limited to, changes in the identity of partner organisations or sub-contractors or the ownership or financial or other circumstances thereof and solvency of the Supplier or their agents.



The Authority shall be notified of any material change as soon as it becomes apparent.

Failure to notify the Authority or to comply with these provisions may lead to a Supplier being liable for disqualification from the Framework Agreement.

3.1 Compliance – Medical Devices

Where applicable, it is a mandatory requirement that all Suppliers comply with and supply products in line with the Medical Devices Regulations 2002 (SI 2002 No 618, as amended) (UK MDR 2002) which, prior to the end of the transition period, gave effect in UK law to the directives listed below:

- Directive 90/385/EEC on active implantable medical devices (EU AIMDD)
- Directive 93/42/EEC on medical devices (EU MDD)
- Directive 98/79/EC on in vitro diagnostic medical devices (EU IVDD)

This means that the Great Britain route to market and UKCA marking requirements are based on the requirements derived from the above EU legislation.

For reference, guidance can be found here:

<https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency>

Where applicable, all equipment and products complying with the UK MDR 2002 shall bare valid CE markings or UK equivalent CE marking and compliant to MHRA and EUCOMED.

Suppliers shall; where applicable; comply with and provide evidence in support of the following Industry requirements

- Manufacturing and certificates of standards for quality assurance accreditation
- CE or UKCA Marking in compliance with UK MDR 2002
- Certification / MSAT
- Compliance with MHRA and EUCOMED
- Registration with relevant bodies; UK Medical Devices Agency
- Classification of products (and proof of)
- Compliance with the Department of Health and Social Care Master Indemnity Agreement
- Declaration of all MDA / FDA reports / alerts, relating to any products, in use or removed from the market
- Product documentation to include design rationale and surgical techniques
- All relevant academic papers and peer review journal submissions
- Product white papers
- Survivorship data including relevant registry information
- Clinical follow up papers monitoring products
- Sterilisation certification
- Audit records

Suppliers must abide by Beyond Compliance for all new entrants to the market (where relevant).



3.2 Compliance – Personal Protective Equipment

Where applicable, it is a mandatory requirement that all Suppliers comply with and supply products in line with the EU Regulation 2016/425, as implemented into UK law by the Personal Protective Equipment (Enforcement) Regulations 2018 (SI 2018 No. 390).

For reference, guidance can be found here:

<https://www.gov.uk/government/organisations/medicines-and-healthcare-products-regulatory-agency>

During the transition period: -

- Suppliers shall advise the Authority on attainment of full compliance.
- For products placed on the EEA or the UK Market before 01 January 2021, the individual goods can continue to circulate on either market until they reach their end user and do not need to comply with the changes that took effect from 1 January 2021.
- The UK will allow CE marked PPE that has been either self-declared as compliant (where permissible), or where compliance must and has been demonstrated through assessment by an EU-recognised conformity assessment body (notified body), to be placed on the GB market until 31 December 2022.
PPE lawfully placed on the market with a CE marking by 31 December 2022 can continue to circulate on the GB market after this date.

Suppliers shall; where applicable; comply with and provide evidence in support of the following Industry requirements

- Manufacturing and certificates of standards for quality assurance accreditation
- Certification / MSAT
- Compliance with MHRA and EUCOMED
- Registration with relevant bodies; UK Medical Devices Agency
- Classification of products (and proof of)
- Compliance with the Department of Health and Social Care Master Indemnity Agreement
- Declaration of all MDA / FDA reports / alerts, relating to any products, in use or removed from the market
- Product documentation to include design rationale and surgical techniques
- All relevant academic papers and peer review journal submissions
- Product white papers
- Survivorship data including relevant registry information
- Clinical follow up papers monitoring products
- Sterilisation certification
- Audit records

Suppliers must abide by Beyond Compliance for all new entrants to the market (where relevant).

3.3 New Standards or legislation

Where new or subsequent standards come into force during the period of the Framework, Suppliers shall ensure goods and services supplied under this Framework meet them, where appropriate / applicable. Evidence of compliance to the standards/legislation/directives must be



made available on request at any time during the term of the Framework. In the event that sufficient evidence is not supplied the Authority reserves the right to suspend the relevant product(s) until such evidence is available.

Evidence of compliance to the standards/legislation/directives listed in Schedule A2(A) must be provided as part of the Tender submission (unless otherwise specified), where they apply to the products tendered. Files uploaded as part of the Tender submission must be clearly named with the directive / standard to which they relate as well as clearly identifying which product / products they cover.

The awarded Supplier must make the Authority aware of any product awarded to the Framework Agreement that is classed by the MHRA as a Medicinal Product.

3.4 Quality Management System relating to Medical Devices

Manufacturers of equipment provided under this Framework ideally shall possess and maintain registration of ISO13485: 2016 Medical Devices – Quality Management Systems accreditation or equivalent. Suppliers shall evidence QMS compliance throughout the term of the Framework.

Distributors / agents etc, who are bidding on behalf of a manufacturer are required to ensure that the manufacturers they are supplying on behalf of, have the necessary quality management systems in place to ensure compliance (and evidence compliance) with this Specification.

Distributors / agents shall possess and maintain registration of ISO 9001:2015 – Quality Management System or an equivalent quality assurance standard.

3.5 Quality Assurance

Suppliers shall evidence Quality Assurance compliance throughout the term of the Framework.

3.5.1 Quality Assurance Products

The Authority supports the requirements of the Participating Authorities' Clinical and Product Assurance (CaPA) function which seeks to systematically and consistently apply assurance criteria to each part of the procurement process by providing relevant guidance and tools to measure compliance with the associated assurance requirements.

CaPA are responsible for providing oversight to the procurement process and to assure all associated strategies comply with the CTSP Assurance Guidance ensuring that all procurement decisions are safe, fit for purpose and value for money, and represent the needs of Allied Health and Care Professionals (AHCPs), patients, carers and citizens across the Health and Care System.

CaPA has developed an Assurance Framework which allows a consistent and effective approach to clinical and product assurance to be established.



A single definition of quality in the NHS was first set out in “High Quality Care for All” (2008), following the NHS Next Stage Review led by Lord Darzi. This definition sets out three dimensions to quality, all three of which must be present to provide a high-quality service:

- Outcomes/Clinical effectiveness: quality care is care which is delivered according to the best evidence as to what is clinically effective in improving an individual’s health outcomes;
- Safety: quality care is care which is delivered to avoid all avoidable harm and risks to the individual’s safety;
- Patient experience: quality care is care which looks to give the individual as positive an experience of receiving and recovering from the care as possible, including being treated according to what that individual wants or needs, and with compassion, dignity and respect”. (Quality in the new health system – National Quality Board January 2013)

The underlying principle of the Assurance Process is to continually support the Health and Care system to improve patient safety, service quality and associated health outcomes.

The Assurance Process is aligned with partner organisations (NHS England, HealthTech Connect, GIRFT, Accelerated Access Review, Office of Life Sciences), so providing consistent requirements for Suppliers to ensure:

- Products procured are safe, fit for purpose and value for money;
- Patient safety and Supplier compliance with medical device regulations is integral to the assurance process;
- All stakeholders across the health and care system inform product specifications;
- Product evaluations reflect clinical product complexity and dependencies; and
- Special requirements for product storage and/or maintenance are defined within the product specification to minimise additional costs to the Supplier and/or user, due to practices that are not aligned with the manufacturer’s recommendations.

3.5.2 Patient Safety

Patient Safety concerns raised via the complaints process and/or existing regulatory standards will inform the procurement process working in collaboration with NHS England and other partners to implement an ‘early warning system’ proactively to address any issues raised by AHCPs and/or patient, carers and citizens as a priority.

3.5.3 Innovation / Health Tech Connect

HealthTech Connect is a secure online system for identifying and supporting health technologies as they move from inception to adoption in the UK health and care system.

It is intended for devices, diagnostic and digital health technologies that either:

- offer measurable benefits to patients (or other health and care service users) compared to those already offered by current routine practice in the UK, or
- provide measurable benefits to the UK health and care system compared to those already offered by current routine practice in the UK

Suppliers should input information about new products with the potential to offer additional user benefits onto HealthTech Connect. This is a digital system hosted by the National Institute for Health and Care Excellence. The system is secure, recognising the confidential nature of the information



held. This information will be viewed by an approved list of national bodies who have specified roles in supporting companies in the development of their products, in evaluating appropriate products and in relevant procurement and commissioning processes. It will also be used by the Accelerated Access Programme in its work to identify and support products with high potential which should be fast tracked to wide scale adoption. Further information can be found here:

www.HealthTechConnect.org.uk.

3.5.4 Product / Asset Management

3.5.4.1 Suppliers shall furnish NHS Supply Chain with relevant “Field Safety Notices” (FSN) “Safety Action Bulletins” (SAB) and “Medical Device Alerts” (MDA) relating to products provided under this Framework within 3 days of detection / identification of a concern to the Contract Manager.

3.5.4.2 Suppliers shall notify the Authority of any Medical Device / MHRA alerts relating to any products submitted and during the lifetime of the Framework Agreement.

3.5.5 Product Recall

3.5.5.1 The Supplier shall ensure that it has robust procedures to respond to any product recall. In the event of products being recalled or defective the Supplier shall, without delay and at its own expense, arrange for the collection and replacement for any product(s) delivered but unused, including part used packs.

3.5.5.2 If the Participating Authority finds that there is no suitable alternative product available within the Supplier's product range to replace the affected product, the Supplier is required to recompense the relevant Participating Authority to the value of the stock uplifted. In these circumstances, the Participating Authority also reserves the right to move its business to another Supplier on the Framework Agreement in order to maintain its service.

3.5.5.3 Where a batch number of a product is identified as being defective, the Supplier shall replace the defective batch(s) with the same product but different batch numbers. The Supplier shall maintain communication with the Participating Authority to confirm dates and times of delivery of replacement products, to ensure no impact of patient care delivery.

3.6 Coding Requirements

The Supplier shall ensure full compliance with any guidance issued by the Department of Health and Social Care in relation to coding requirements.

3.6.1 GS1 Standards

3.6.1.1 GS1 standards are a fundamental part of the Department of Health and Social Care (DHSC) strategy for building a safer and more efficient NHS. the Department of Health's eProcurement strategy mandated that any service or product procured by an NHS Acute Trust in England must be compliant with GS1 standards. The deadline for compliance is 2019/20.

3.6.1.2 All product shall comply with the GS1 coding standard by 2020.



3.6.1.3 For products / packs too small to carry a linear barcode, a GS1 DataMatrix barcode is to be used.

3.6.1.4 GS1 standards include:

- GTINs (Global Trade Item Number) to identify products
- GLNs (Global Location Number) to identify locations
- GDSN (Global Data Synchronisation Network) to manage product catalogues
- GS1 XML to standardise purchase to pay business messages such as electronic invoices and purchase orders

3.6.2 Other Unique Device Identification Systems (UDI)

The Authority can accommodate other Unique Device Identification Systems – the preference is GS1

3.6.3 PEPPOL

Pan-European Public Procurement Online (PEPPOL) refers to a set of specifications and governance model that focuses on the critical eProcurement components to solve interoperability issues in Europe.

3.6.3.1 This technology facilitates the electronic exchange of purchase orders and invoices.

3.6.3.2 Participating Authorities and Suppliers must select a PEPPOL access point provider.

3.6.3.3 The Supplier shall have the ability to receive purchase orders electronically via the PEPPOL network that contain the GS1 identifiers (GTIN and GLN) and when a purchase order is received from an NHS customer, or party acting on behalf of an NHS customer, via the PEPPOL network, the ability to return an Order Response message via the PEPPOL network to NHS customers.

3.6.4 Data Security and Protection Toolkit (DSPT Toolkit) - previously The Information governance Toolkit (IG Toolkit)

3.6.4.1 All organisations that access NHS patient data and systems must demonstrate their compliance with the DHSC (Department of Health and Social Care)'s data security and information governance requirements. This is achieved by submitting a self-assessment using the DSP (Data Security and Protection) Toolkit, <https://www.dsptoolkit.nhs.uk/> an online tool that replaced the IG Toolkit in April 2018.

3.6.4.2 Compliance with the DSPT Toolkit is mandatory for organisations that access the HSCN (Health and Social Care Network), which replaced N3 in 2017.

3.6.4.3 The Data Security and Protection Toolkit is an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards. All organisations that have access to NHS patient data and systems must use this toolkit to provide assurance that they are practising good data security and that personal information is handled correctly.

3.7 Patient Confidentiality



- 3.7.1 The Supplier shall ensure that all patient information (personal and sensitive) is correctly handled in accordance with the UK General Data Protection Regulation (UK GDPR) Regulation, tailored by the Data Protection Act 2018.
- 3.7.2 Personal information is any piece of information that relates to a living, identifiable human being. People's names, contact details, financial health, purchase records: anything that you can look at and say "this is about an identifiable person"
- 3.7.3 Sensitive data encompasses a wide range of information and can include ethnic or racial origin; political opinion; religious or similar beliefs; memberships; physical or mental health details; personal life; or criminal or civil offences. These examples of information are protected by civil rights policies.

3.8 NHS Supply Chain's Ethical Procurement and Code of Conduct

- 3.8.1 All suppliers successfully awarded a place on the Framework Agreement are required to complete the Labour Standards Assessment and Modern Slavery Assessment Tool every 12 months and achieve the minimum score stated in Schedule A6.
- 3.8.2 Corporate Social Responsibility (CSR) Supplier self-assessment modules are incorporated into this tender and if successful, suppliers will be required to complete all six modules before go live of the Framework Agreement and demonstrate 'completed' status within the first 6 months from the Framework Agreement commencement date.
- 3.8.3 Please refer to Schedule A5, Conditions and Guidance for further information and guidance on LSA/MSAT and CSR Assessments.
- 3.8.4 Ethical sourcing is the process of ensuring the products being sourced are obtained in a responsible and sustainable way, that the workers involved in making them are safe and treated fairly and that environmental and social impacts are taken into consideration during the sourcing process.
- 3.8.5 NHS Supply Chain delivers an end to end logistics and supply service to the English NHS. We are fully aware of the responsibility we bear toward our customers, employees and the communities in which we work. Thus, we have given ourselves a strict set of ethical values to guide us in our business dealings. We expect all our suppliers, i.e., all companies who do business with NHS Supply Chain, to adhere to the same ethical principles. For this purpose, NHS Supply Chain has drawn up this Supplier Code of Conduct, (See Schedule A10) which sets the standards for doing business with us.
- 3.8.6 If successful, suppliers will be required to complete the following:
 - Supply Chain Mapping (Component Build Questionnaire)
 - Carbon Waste and Water Assessment tools
- 3.8.7 The supplier shall comply with all laws applicable to its business. The supplier should support the principles of the United Nations Global Compact, the UN Universal Declaration of Human Rights as well as the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work, in accordance with national Law and practice.

3.9 Environmental Considerations

3.10



3.10.1 Environmental Considerations

All NHS stakeholders are committed to promoting environmental and sustainability issues within all frameworks and contracts.

3.10.1.1 Corporate social responsibility (CSR), also called corporate sustainability, sustainable business, corporate conscience, corporate citizenship or responsible business is a type of international private business self-regulation. A copy of your CSR policy is required for supporting information.

3.10.1.2 Suppliers shall demonstrate a commitment to incorporate environmental and sustainable considerations into all elements of the Framework including 'Green' transport initiatives, packaging, description of how environmental factors are "taken into account" in respect of manufacturing, material sourcing and ethical trading.

3.10.1.3 Suppliers shall identify environmental management awards that have been received, and/or externally recognised programmes to which their company is involved.

3.10.1.4 The Supplier shall comply with the requirements of the Packaging (Essential Requirements) Regulations 2015 (as amended) which implements the EU Directive on Packaging and Packaging Waste (94/62/EC) in the UK, and which requires packaging to be minimised, recoverable, and not to exceed by weight specified concentrations of heavy metals.

3.10.1.5 ISO 14001 or Equivalent

It is expected that Suppliers effectively manage their environmental performance and minimises negative impact where possible. Suppliers shall hold an Environmental / Sustainability Certificate – ISO 14001 or equivalent in support of their commitment to promoting environmental and sustainability issues. Suppliers shall provide a copy of their Environmental / Sustainability Certificate – ISO 14001 or equivalent.

3.10.1.6 Packaging Regulations

The Supplier shall comply with the requirements of the Packaging (Essential Requirements) Regulations 2015 (as amended) which implements the EU Directive on Packaging and Packaging Waste (94/62/EC) in the UK, and which requires packaging to be minimised, recoverable, and not to exceed by weight specified concentrations of heavy metals.

3.10.1.7 Waste Carriers Licence

Any business transporting waste, whether their own or someone else's; for free or for profit; must now register as a waste carrier with the Environment Agency in England. The Supplier shall ensure that appropriate registration and a Waste Carriers Licence is available for inspection, should the transporting of waste be applicable at any time under this Framework.

3.10.1.8 Sustainability

The supplier is expected to take issues of Sustainability (which for purposes of clarity includes Labour Standards) seriously and have implemented measures to ensure that its suppliers and subcontractors do likewise.



The Supplier shall support the Authority and the Department of Health and Social Care with the implementation of the voluntary instrument entitled: “Green Public Procurement Criteria for Electrical and Electronic Equipment used in the Healthcare Sector (EU GPP for EEE)” and shall in particular provide upon request the following:

- User instructions for green performance management, including instructions on how to maximise the environmental performance of the Goods;
- Training with energy efficiency optimisation, including on the adjustment and finetuning of the Goods in relation to their consumption of electricity (using parameters (for example, standby mode) in order to optimise the electricity use);
- Installation with energy efficiency optimisation, and a ‘needs assessment’ for the Participating Authority so the Participating Authority understands how to optimise the Goods’ electricity consumption;
- Confirmation of the energy profiles of the Goods (where pre-determined use scenarios exist within EU GPP Guidance).

For Goods with no pre-determined use scenarios, the Authority may develop these during the term of the Framework Agreement.

3.10.1.9 Management and disposal of healthcare waste (HTM 07-01)

Upon request - The Supplier shall provide information on the management of the product at end-of-life, including (but not restricted to) opportunities for re-use and recycling.

Product literature shall identify information pertaining to the disposal; re-use; refurbishing or recycling of products.

3.11 Product Specification

3.8.3 The Supplier is to ensure that all goods supplied under this Framework meet all of the requirement set out within Schedule A2 (A) Product Specification.

3.12 Product Changes Throughout the Framework

3.12.1 New Products / Range Extensions

3.12.1.1 Suppliers must inform Participating Authorities(s) and the Authority in writing of any new products which they wish to include on the Framework for consideration/evaluation and subsequent agreement by the Authority.

3.12.1.2 The Supplier shall request additional products to be added to their commercial offer.



- 3.12.1.3 The Supplier must inform the Authority and individual Participating Authorities concerned in writing of any proposed changes to the specification of the goods being supplied under the Framework, including proposed changes to packaging quantity or format, for consideration by the Participating Authority. Notification of any such proposals shall be made at least three months prior to the proposed implementation date of any changes.
- 3.12.1.4 The price of additional products shall be in line with the discount structure contained within the Schedule B5 and will be reviewed and accepted by the Authority's Category Management Team.
- 3.12.1.5 The Supplier shall inform the Authority in writing of any additional products which it wishes to include on the Framework.
- 3.12.1.6 Notification of the request to add products shall be by e-mail to the Contract Manager in the format determined by the Authority.
- 3.12.1.7 Where relevant, Suppliers must adhere to the protocol set out in Beyond Compliance.
<http://www.beyondcompliance.org.uk/>
- 3.12.1.8 The Authority shall notify the Supplier that products have been added to the Framework. Any products added are at the discretion of the Authority.

3.12.2 Product changes

- 3.12.2.1 The Supplier should have and maintain a policy that governs the managed specification changes of products within its portfolio. The Supplier is required to inform the Authority in writing of any proposed specification changes to products being supplied under the Framework, including proposed changes to packaging quantity or format, for consideration by the Authority. Notification of any such proposals shall be made at least three (3) months prior to the proposed implementation date of any changes.
- 3.12.2.2 The Supplier shall confirm provision for future technological advances such as advances or alterations in materials of construct, sizing, anatomical improvements, imaging compatible products, etc. and associated disposable / non-disposable instrumentation that may be used for various procedures within elective and emergency surgery which relate to the product areas described in this Specification.
- 3.12.2.3 All information regarding the changes including, but not limited to sizing, packaging, unit of measure etc. shall be notified via e-mail to the Contract Manager.
- 3.12.2.4 The Authority shall notify the Supplier that product changes have been applied to the Framework.

3.12.3 Product obsolescence – Delisting

- 3.12.3.1 The Supplier shall notify the Authority in writing of any proposed product deletions at least three months prior to the proposed implementation date to the Contract Manager.
- 3.12.3.2 The Supplier shall notify the Authority in writing if the product deletions will affect the purchase of associated products and provide a report of Participating Authority usage associated with those products in the rolling 12 months to the date of the notification.
- 3.12.3.3 The Supplier must confirm that any affected customers have been notified of the intention to delist and advised of any required action that needs to be taken.



- 3.12.3.4 The Supplier shall advise of the “reasons” for the request to delete/delist the products.
- 3.12.3.5 The Supplier shall notify the Authority in writing of any alternative product to those being delisted. Alternative products may not be “like for like” but may facilitate the same clinical outcome.
- 3.12.3.6 Once approved, the affected pricing schedule must be resubmitted to the Authority with all delisted product NPC highlighted in red and with all pricing in each cell replaced by the word “obsolete”.
- 3.12.3.7 Once delisted, products may only be re-enlisted at the equivalent or reduced price, prior to delisting.
- 3.12.3.8 The Authority shall notify the Supplier that products have been removed from the Framework.

3.13 Business Continuity, Risk Management and Supply Chain Resilience

- 3.13.1 All NHS stakeholders are committed to business continuity, identifying, eliminating and mitigating risk, and maintaining supply of goods to meet NHS and participating bodies requirements to ensure supply meets demands.
- 3.13.2 Suppliers must demonstrate their commitment to providing goods of the right quality, the right quantity, to the right place, at the right time, and at the right price.
- 3.13.3 Suppliers must demonstrate their commitment to work transparently and collaboratively with all NHS stakeholders to proactively drive value for money whilst meeting the business needs and requirements set out within the Framework Agreement.
- 3.13.4 It is expected that Suppliers effectively manage business continuity to minimise negative impact wherever possible. Suppliers shall hold Business Continuity Accreditation – ISO 22301 or equivalent in support of their commitment to ensuring continuity of supply. Suppliers shall provide a copy of their Business Continuity Certification – ISO 22301 or equivalent.
- 3.13.5 The Supplier must maintain a suitable Business Continuity plan to ensure continuity of supply in the event of a disruption to the Supplier’s manufacturing or distribution process:
- of supply in event of a disruption to Supplier’s manufacturing or distribution channels;
 - of service in the event of a disruption to Supplier’s resource;
 - of supply & services from 3rd parties;
 - of supply & service in the event of adverse weather conditions; And
 - of supply in the event of a pandemic.
- 3.13.6 Contingency planning shall include, but not be limited to: -



- Evacuation of Supplier premises;
- IT and / or telecoms failure;
- Industrial Action (internal or external influences);
- Device / product recall;
- Production failure; And
- Working from home

3.13.7 In the event of a Major Incident or local emergency involving an NHS body, the Supplier shall facilitate supply requests by telephone from the Authorised Person(s).

3.13.8 The Supplier must provide copies of its Business Continuity Plans and/or Risk management Policy towards supply chain continuity as part of its Tender submission.

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

- i. the criticality of this Framework Agreement to the Participating Authorities; and
- ii. the size and scope of the Supplier's business operations,

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

3.13.10 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Participating Authorities and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of the framework agreement and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

3.13.11 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

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

3.13.13 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

3.14 Account Management



3.14.1.1 There is a requirement for the Supplier to provide a range of activities in support of the Framework Agreement, including but not limited to:

- new accounts when new business is awarded
- implementation / exit plans
- clinical training and training of any affected member of staff, if required
- new product launches / phasing out of technology – swap outs
- on site customer engagement
- technical and professional support available as and when required

3.14.1.2 Suppliers are expected to maintain routine communication with each Participating Authority through a relevant account manager and clinical lead.

3.14.1.3 Supplier Representatives shall be a named contact designated for Account Management support and be contactable during normal working hours. An out of hours contact should be available as may be required and alternative nominated persons should be identified and contact information supplied, should the main representative contact not be available.

3.14.2 Customer Services

3.14.2.1 The Supplier shall provide a responsive customer service function during normal working hours which enables a customer to resolve issues, over the telephone or by e-mail, within a maximum 24-hour timescale.

3.14.2.2 Individual Participating Authority accounts shall have a named Supplier Specialist Support Staff / Sales Representative with customer facing responsibilities. Key roles and responsibilities and how they will interface with the Participating Authority shall be provided and maintained.

3.14.3 Compliments and Complaints

3.14.3.1 The Supplier must have a clear and comprehensive written complaints management procedure. This procedure will be followed in the event of any issue to the supply of goods or support provided as part of the Framework Agreement. Such procedure shall enable the Authority's Customer Services or the Participating Authority to make complaints quickly and simply and shall require the Supplier to investigate and resolve a complaint in accordance with strict timescales. For the avoidance of doubt complaints can be written or verbal.

3.14.3.2 The Supplier shall keep a full written record of the nature of each complaint and details of the action taken as a result of the complaint. Records shall be available for inspection at any time. This is to show:

- Reason for the complaint, from whom and date;
- Initial complaint, complainant, Participating Authority and date;
- Action taken;
- Corrective Action taken to prevent recurrence (complaint); And
- Date of resolution

3.14.3.3 The Supplier shall use reasonable endeavours to ensure that all complaints are resolved within 10 days of the complaint being notified to the Supplier, unless the nature of the complaint requires additional investigation or action, in which case the Supplier shall ensure that the complaint is resolved as soon as possible thereafter. Where the complaint relates to



a faulty or spoiled device or product the Supplier shall provide a full written report, with supporting root cause analysis to the relevant Participating Authority within one month of the complaint.

- 3.14.3.4 The details of how the complaint has been resolved should be notified to the Authority's Customer Services in writing as soon as possible thereafter and the Supplier will on request at any time provide the Authority's Customer Services with an update as to the progress of the resolution of the complaint. It is a requirement that Suppliers have corrective/preventative action plans in place to remove the causes of an existing or potential undesirable situation.
- 3.14.3.5 The Supplier shall possess a complaints policy which details roles and responsibilities of key roles and details escalation routes. A copy of which should be provided as part of the Tender submission.

3.14.4 Company Representatives On-Site Conduct Visiting NHS Sites

- 3.14.4.1 Supplier Representatives must comply and ensure that its staff comply with the requirements of the Health and Safety at Work Act 1974 and other relevant legislation, including regulations and codes of practice issued there under and with the Participating Authority's own policies and procedures.
- 3.14.4.2 The Supplier shall ensure that all staff assigned to the call-off Contract shall possess, and exercise relevant care, appropriate qualifications, expertise and experience as are necessary for the proper provision of support. Supplier staff must at all times when on Participating Authority premises, wear an identification badge, complete with photograph.
- 3.14.4.3 The Supplier's representative shall meet with the Participating Authority staff only by prior appointment. Product presentations and samples should only be provided to wards or medical and / or nursing staff following discussion and agreement with the Participating Authority employed clinical lead or a member of their team to do so.
- 3.14.4.4 When the attendance of an appointment cannot be met, the Supplier Representative shall withdraw the meeting request giving as much notice as possible.
- 3.14.4.5 Supplier Representatives promoting the sale of their products and services shall not enter any clinical or non-clinical area without an appointment unless otherwise advised by the Participating Authority(s).
- 3.14.4.6 A Representative who does not have a pre-arranged appointment may be asked to leave the premises.
- 3.14.4.7 Representatives arriving for an appointment (pre-arranged time and place) shall be met by the person with whom they have an arrangement; or a person designated by them.

3.14.5 Supplier Product Specialist Support Staff

- 3.14.5.1 The Supplier is required to have capacity within their clinical team to assist the Participating Authority with product advice and support any training where needed. This requirement will be specific to each individual Authorities support requirement and will be identified and agreed during implementation or anytime throughout the lifetime of the framework.



- 3.14.5.2 Supplier product specialist support staff shall have the capabilities (training & experience) to undertake in depth discussions with clinical staff and Authority staff, support clinical discussions and when requested conduct on-site training.
- 3.14.5.3 Supplier Product Specialist Support Staff shall be required to evidence the effectiveness and customer satisfaction rating of their: -
- training sessions
 - implementations (planning & deployment)
 - product trials
 - product / systems knowledge
 - ongoing support
- 3.14.5.4 Training programmes must be fit for purpose, competency based wherever possible and appropriate to the products provided. Training shall be supplied free of charge, at Participating Authority sites or “as agreed” and repeated when staff changes necessitate.
- 3.14.5.5 Product Training Programmes shall provide individuals with the knowledge and skills they need to identify:-
- Selection and appropriate use of the gloves; And
 - Risk assessment for patients
- 3.14.6 Secure Areas**
- 3.14.6.1 Supplier Representatives who require access to consignment stock to audit or for other purposes shall hold a current DBS check, carry photo identity and notify a nominated person in advance of their requirement for access.

3.15 Framework Contract Management / Monitoring

3.15.1 Management Information

The Supplier shall provide information to enable performance and ongoing monitoring of the Framework to the Authority as detailed below:

3.15.2 Future Opportunities

- 3.15.2.1 Suppliers will respond to benchmarking requests, approved by Participating Authorities, within 7 working days of the request. This will cover the previous 12 months' activity data for specified Participating Authorities.
- 3.15.2.2 The output from benchmarking is for the Authority to provide the Participating Authority procurement staff, operational teams and clinician(s) with an analysis of the opportunity detailing any cost efficiencies or cost pressures, this information facilitates decision making and determines “next steps” and the development of agreed work plans.
- 3.15.2.3 It is the responsibility of the Supplier to ensure that the Authority's Category Manager is informed of any discussions with a Participating Authority that may directly or indirectly lead to a change in practice or price of the products under the call-off Contract and/or Framework Agreement.

3.15.3 KPI's



3.15.3.1 The KPI's (See Schedule 8 Service level Agreement of the Framework Agreement) shall inform the effectiveness of the Framework Agreement between the Supplier, end users and the Authority and form part of the contract review meeting discussions with the Authority.

3.15.3.2 The Authority reserve the right to include additional KPI measures during the term of the Framework Agreement as circumstances may dictate.

3.15.4 Contract Review Meetings

3.15.4.1 Suppliers are expected to meet with the Authority at least every quarter for the purpose of reviewing the Supplier's performance. Such meetings must be attended by the relevant account manager from the Supplier. Meetings may increase to monthly as may be required depending on the nature of the call-off Contract/ access agreement in place.

3.15.4.2 Representatives from the individual Participating Authorities may also require similar meetings on a quarterly basis as part of their own call-off Contract with the Supplier. The Participating Authority will agree these requirements with the Supplier on a case by case basis.

3.15.5 Contract Implementation for New Customers

3.15.5.1 On the award of any new business, if requested by the Participating Authority, the Supplier is expected to provide a detailed implementation plan to support the switch of product from the Participating Authority's incumbent supplier. It is expected the implementation plan includes the following key points to ensure that there is minimal disruption to services during and after transition:

- Supplier resource provided to support any transition
- Define and agree delivery lead time expectations
- Identify key end users
- Initial training plan for appropriate product usage
- Supporting literature distribution
- Agree the support required
- Identification of any resource intensive tasks required during implementation

3.15.5.2 Contract implementation meetings shall be held with the Supplier to facilitate the resolution of any "teething problems" and establish an understanding of working relationships as part of call off Contracts under the Framework Agreement.

3.15.6 Orders for Participating Authority Requirements

3.15.6.1 Transacted sales – edirect. Please see Appendix 13 which details the operating process for eDirect services with the Authority. The Supplier must comply with the operating process detailed in Appendix 13 to facilitate the e Direct ordering services.

3.15.6.2 eDirect relates to goods and services ordered by the Authority on behalf of the Participating Authority which are delivered direct to the Participating Authority and invoiced to the Authority.

3.15.6.3 The Authority has an ordering system which is used by most Participating Authorities to issue purchase orders for direct delivery to their stores or clinical area. The Authority can create standing orders for customers who require a regular delivery of the same products and quantities – a unique purchase order number will be created for each order / delivery.



3.15.6.4 A call-off order will be placed by each Participating Authority based on their anticipated individual annual usage/spend. They will use this order to purchase volumes as and when required. The Supplier is required to send only the quantity released from the call-off order.

Or: - Alternatively Participating Authorities will place ad-hoc orders as and when a requirement is identified for direct delivery.

Or: - Products will be ordered via third party vendors and retrospective quarterly discounts should be made payable direct to the individual Participating Authority within 14 days of the end of each quarter. Any such discount should be clearly identified within the returned Tender submission documents.

Or: -The Authority, with the Participating Authorities' approval, reserves the right to use a 3rd party distribution service, where possible. The Authority will work together with the Supplier to make this happen.

3.15.6.5 All 3rd party carriers engaged to deliver goods shall be deemed to be an agent of the Supplier, and not the Customer of the Authority, and the Supplier shall ensure that any agent or sub-contractor engaged by it in the performance of this contract shall comply with the Supplier's obligations under the Framework Agreement.

3.15.6.6 If a Supplier's product is awarded onto the stock route, to ensure resilience in the supply chain there is a requirement to ensure adequate stock holding. The intention is for suppliers to provide a solution for stock holding levels that at least covers product lead times. As a minimum the requirement will be 50% of stock to be held in the country and 50% to be in transit, for example for a 16 week lead time 8 weeks stock to be held in the suppliers network and 8 weeks of stock in transit on the road/water.

- Please provide the lead times for each category, from order placement to delivery into the network.
- Please provide details of the stock holding solution to be put in place to meet this requirement.

3.15.6.7 The Supplier is to confirm how long it will take for your organisation to replenish stocks held to support this framework. Please advise your proposed stock holding (volume and expected number of weeks demand, minimum levels and re-order thresholds) by Product type for stocked lines and e-Direct lines, please provide a breakdown by product type for the length of time from the bidder placing the order with the factory or manufacturer to the delivery to the supplier to a location which will enable delivery times into NHS SC as per the tender (48 hours for stock, or as per bidders offer for e-Direct).

NHS Supply Chain will work with suppliers on annual demand signal for each product category.

3.15.7 Goods Received notes

The process for goods receipting relating to the e-direct system is detailed within the Operational Guide included within **Schedule A11** Supply Chain Operational Requirements Guide.

3.15.8 Invoicing



The Supplier shall submit invoices which must relate to specific order numbers, either direct to the Participating Authority or to a 3rd party (as advised by each Participating Authority). No personally identifiable data shall be included on invoices or credit notes – this includes any patients' name, NHS number or address.

3.15.9 Invoice

Invoices in relation to goods should include as a minimum:

- the order number;
- the name and address of the delivery location (including the requisition point, if appropriate);
- the description and quantity of the Goods as set out in the Order;
- details of any item forming part of the relevant delivery;
- whether any containers supplied are required to be returned or collected; and
- the GTIN (GS1 Code) for the Goods;

Invoices in relation to Services should include as a minimum:

- the name and address of the service recipient; and
- a description of the Services.

3.15.10 Shared Business Services (SBS)

Shared Business Services provides some NHS organisations with purchase to pay services. When advised that the Authority or Participating Authority is using SBS, Suppliers shall ensure that they follow the good invoicing practice to reduce invoice rejection.

<https://www.sbs.nhs.uk/Supplier-good-invoicing-practice>

SBS utilise an e-Invoicing platform through technology partners, Tradeshift

visit <http://tradeshift.com/Supplier/nhs-sbs> for more information

3.15.11 Order and Invoice Queries

The Supplier shall contact the purchase order issuing organisation with queries relating to receipt of order and price queries.

3.15.12 Distributor changes



The Authority is aware that during the lifetime of the Framework Agreement, a manufacturer of products may decide to change who it utilises to distribute its products. This may be to a distributor who is not listed on the Framework Agreement. Therefore, to ensure the continued availability of that specific manufacturer's particular product, the Authority's intention is that any new distributor of that manufacturer's product will be permitted to join the Framework Agreement, provided that any new distributor firstly meets the Selection Questionnaire requirements set out in this ITT.

Any new distributor must abide by the Specification and commercial requirements agreed within the scope of the Framework Agreement and any existing call off Contracts in place with Participating Authorities at the time of change of distributor.

END.



The Tender Response Document means the Supplier's full tender submission as submitted via the JAGGAER e-Procurement Portal sent on 17/11/2022 09:00. This is available via your contract record on JAGGAER (the Authority's contract management system).



Schedule 6

Commercial Schedule

[REDACTED]



Schedule 7

Ordering Procedure, Award Criteria and Order Form

Introduction

Call-offs from the framework are required to be undertaken in accordance with Regulation 33 of the Procurement Contracts Regulations 2015 (as amended) (Regulations). Call-offs need to be consistent with the terms of the call-off contract within the Framework Agreement attached to the ITT at Schedule A6.

Participating Authority/ies purchase of good(s) under the Framework Agreement

33.15 If awarded to the framework, the supplier grants NHS Supply Chain the right to supply the supplier's awarded products to the Participating Authority/ies using the following methods.

33.15.1 NHS Supply Chain Catalogue

NHS Supply Chain reserve the right to list supplier's awarded products onto the NHS Supply Chain catalogue under the appropriate route using correct product information by which NHS Supply Chain's Customer(s) will be able to access and buy the products from. Please note: Customer orders placed directly with Supply Chain Coordination Limited (SCCL) are subject to SCCL's supply terms available at the NHS Supply Chain catalogue (<https://my.supplychain.nhs.uk/catalogue>).

33.15.2 Duration and/or Volume and/or Spend based Purchases

Participating Authority/ies may sign up to a duration and/or volume and/or spend based saving arrangement(s) such as a National Pricing Matrix which may provide the customer with improved pricing from supplier(s) in return for commitment. To access these prices, an access agreement "Order Form" will be drafted by NHS Supply Chain signed by all three parties (the Authority, Participating Authority/ies and Supplier) to enable commencement of the commitment.

33.15.3 Bulk Purchases

During the life of the framework, NHS Supply Chain may be asked by Participating Authority/ies, Arm's Length Bodies or any other government bodies to purchase products awarded onto this framework on their behalf in varying quantities based on the need at the time.

Call-Off Processes and Procedures

Call-offs from the framework can be by either direct award or through the reopening of competition.



Direct Award

A Participating Authority/ies may decide to directly award a call-off contract where:

- 1 The pricing for a Participating Authority's/ies' requirements is met by the framework and a proposed call-off from it; and
- 2 Objective conditions for a direct award set by the Participating Authority/ies have been applied and met.

Objective conditions are to be established by each Participating Authority/ies.

As an example, in order to identify the Successful Supplier for Direct Award, the below methodology will be used for evaluation:

Price Score – Min 20% - Max 100%

A Basket of Goods containing all the products required for the Participating Authority/ies will be evaluated as follows:

A basket of goods total cost will be determined by applying the banded price the Participating Authority/ies are eligible for, less any other discounts offered by the Supplier.

See worked example below:

	Supplier A	Supplier B	Supplier C
Total Basket of Goods based on Banded Price	£15,500.00	£16,000.00	£17,000.00
Other Available Discount Applied	2%	4%	0%
Other Available Discount Applied	3%	6%	4%
Combined Discount	5%	10%	4%
Final Price used for Evaluation	£14,725.00	£14,400.00	£16,320.00

For the pricing element in the above scenario **Supplier B** offers the most competitive price, therefore, they would achieve the highest price score overall and would be successful for the Direct Award.

Quality Score – Min 0% - Max 80%

Participating Authority/ies may also determine the Successful Supplier by including the Quality Criteria weighting range set out in the table below to the relevant Framework Criteria for Framework Bids as the criteria relates to the Participating Authority's/ies' requirements in respect of the particular Order.



Standard Goods and Services Sub-Criterion	Original Framework Weighting	Standard Goods and Services Weighting Range
Quality	70%	0% - 80%
Product Technical Requirements	15%	0% – 40%
Supply Chain Resilience	10%	0% – 30%
Service & Supply	10%	0% – 30%
Customer Service & Contract Management	10%	0% – 30%
Clinical Support, Education & Training	5%	0% – 20%
Environment & Sustainability	7%	0% – 30%
Social Value	13%	0% – 30%
TOTAL QUALITY SCORE (Weighted)	70%	0% - 80%

The Participating Authority/ies may adjust/amend the Quality evaluation criteria weightings within the ranges above.

The list above is for guidance only.

Reopening of Competition

As it is recognised that not all the terms governing the provision of the products and services may be included in the Framework Agreement and may be subject to specific requirements to be determined by Participating Authority/ies, call-offs from the framework can be through the reopening of competition amongst the successful suppliers awarded to the framework.

When a call-off is to be made, Participating Authorities should:

- (i) Invite all suppliers awarded to the Framework Agreement, other than suppliers suspended from the Framework (including any Conditionally Included on the Framework, to participate in the further competition. Not all suppliers are required or may choose to respond to the further competition opportunity;
- (ii) allow suppliers enough time to respond to further competition opportunities;
- (iii) award each call-off contract to the supplier that has submitted the best tender based on the award criteria set out in the procurement documents issued by the Participating Authority and on which each further competition is based;
- (iv) utilise award criteria which is consistent with the criteria used to award to the framework i.e., a combination of price and qualitative criteria but with the flexibility



to amend the weightings for each to best help meet the specific requirements of the Participating Authority/ies.

Suppliers are not obliged to respond to all or any further competition opportunities.

In addition to the general points included in points (i) to (iv) above, Participating Authority/ies should note and follow the processes and procedures outlined below when calling off from the framework by way of further competition.

1 Ordering Procedure

1.1 If a Participating Authority/ies wishes to place an order for any products or services included in this Framework Agreement, that Participating Authority/ies shall:

- 1.1.1 develop a specification or statement of requirements setting out its requirements;
- 1.1.2 supplement and refine the call-off Contract terms only to the extent:
 - (i) anticipated within the call-off contract terms and conditions as indicated by references to potential extra key provisions and/or as otherwise indicated;
 - (ii) permitted by and in accordance with the requirements of the Regulations and the law;
- 1.1.3 invite tenders from all the suppliers who have entered into an agreement in the same form as the Framework Agreement that the specification or statement of requirements falls under by conducting a competition for the delivery of the relevant specification or statement of requirements and in particular:
 - (i) consult in writing and invite the suppliers referred to in this Clause 1.1.3 to submit a Tender within a specified time limit by issuing a Further Competition ITT;
 - (ii) conduct the competition in accordance with this Schedule;
 - (iii) specify in a Further Competition ITT for that competition the further pricing information requested from the suppliers;
 - (iv) set out in a Further Competition ITT for that competition a time limit for the receipt by it of Tenders which takes into account factors such as the complexity of the subject matter of the intended call-off contract and the time needed to submit a Tender; and
 - (v) keep each Tender received confidential until the expiry of the time limit for the receipt by it of the Tenders;
- 1.1.4 apply the award criteria to all compliant Tenders submitted through the competition; and



- 1.1.5 subject to Clause 1.3 to 1.4 of this Schedule, place an order with the highest scoring supplier(s) using the Order Form.
- 1.2 The suppliers agree that all Tenders submitted by the suppliers in relation to further competitions held pursuant to Clause 1 of this Schedule shall remain open for acceptance for ninety (90) days (or such other period specified in the relevant Further Competition ITT issued by the relevant Participating Authority/ies) in accordance with Clause 1 of this Schedule.
- 1.3 Notwithstanding the fact that a Participating Authority/ies has followed the procedure set out in Clause 1 of this Schedule when conducting any further competition, the relevant Participating Authority/ies may postpone, delay or end any such procedure without placing an order for any products or services or awarding a call-off contract. Nothing in this Framework Agreement shall oblige any Participating Authority/ies to place any order for any products or services.
- 1.4 Before placing an order a Participating Authority/ies may conduct a standstill period between announcing the results of any further competition and the execution of the relevant call-off contract but is not required to do so by the Regulations. For the avoidance of doubt where a standstill period is conducted in respect of any further competition that standstill may but need not be conducted in a way that is compliant with the Regulations.
- 1.5 Following the execution of any Call-Off Contract a Participating Authority/ies:
- 1.5.1 may publish a contract award notice as described in the Regulations but is not required to do so by the Regulations; and/or
 - 1.5.2 may publish information concerning the call-off contract on Contracts Finder or any successor of Contracts Finder.
- 2 Call-Off Rules**
- 2.1 Unless permitted under Clause 2.2 of this Schedule a Participating Authority/ies must conduct a Competition in accordance with this Schedule before awarding any call-off contract.
- 2.2 A Participating Authority/ies may run a further competition and issue a Further Competition ITT on its own behalf (in respect of its own requirements) and/or on behalf of other Participating Authority/ies (in respect of such other Participating Authority's/ies' requirements)
- 2.3 Nothing in this Framework Agreement shall prevent a Participating Authority/ies in engaging in preliminary market consultations before commencing a procurement process as permitted under Regulation 40 of the Regulations.



- 2.4 If a Participating Authority/ies engages in preliminary market consultations, they shall ensure that all consultations are carried out in accordance with the Regulations and in particular will ensure that the consultations do not have the effect of distorting competition and do not result in the violation of the principles of non-discrimination and transparency.
- 2.5 Participating Authority/ies shall, when running a further competition, issue a Further Competition ITT to each supplier appointed to the framework.
- 2.6 These call-off rules do not prescribe particular timescales for each stage of each further competition. It is anticipated that the timescales for each further competition will vary in accordance with the requirements of the relevant Participating Authorities and/or the nature of the specification or statement of requirements, including timescales for each stage of the process.
- 2.7 Participating Authority/ies and suppliers shall comply with the obligations and expectations of the Cabinet Office Statement of Practice “Staff Transfers in the Public Sector” (as amended) (“COSOP”) and Fair Deal for Staff Pensions (2013) in relation to any call-off contract (where relevant).
- 2.8 The transfer of staff in connection with the award of call-off contracts shall be governed by TUPE, or, if TUPE is considered not to apply in any particular circumstances, by COSOP. In line with the principles of TUPE, the terms and conditions (including continuity of service) of transferring staff shall be protected and staff must be treated no less favourably than had TUPE applied.
- 2.9 As provided for by COSOP, neither Participating Authority/ies nor the suppliers shall orchestrate a non-TUPE situation.



Schedule 8

Service Levels

The Supplier agrees to conform to the following KPIs during the Term of this Framework Agreement:

The following provides details regarding KPI measures to support the management for the framework and call off arrangements.

The Authority reserve the right to add KPIs and circumstances dictate during the period of the Framework Agreement.

Compliance with the KPIs will be monitored monthly and form part of the review meeting process.

KEY PERFORMANCE INDICATORS		Performance Measure		
		Green	Amber	Red
KPI				
1	Perfect Order on-time delivery, in full delivery, damage-free delivery, and appropriate, accurate documentation.	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
2	Invoicing Accurate invoices supplied with required supporting documentation	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
2.1	Credit notes actioned within 14 days of agreement that a credit is pertinent	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
3	MI reports & KPI reports Issued monthly within 10 working days at the end of the month	Supplied within time frame	Supplied up to 5 working days late	Supplied more than 5 working days late
3.1	Response to ad-hoc report/data requests i.e., Bench marking/sales data delist/product change/range extension data within 5 working days of request.	Supplied within time frame	Supplied up to 5 working days late	Supplied more than 5 working days late
4	Service/product complaints Complaints raised dealt with and resolved within time frames agreed	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month



5	Annual Labour Standards Assessment audit reporting	No later than each 12- month anniversary from the Commencement Date	Up to 1 month late	More than 1 month late
6	Annual Modern Slavery Assessment Tool Assessment audit reporting	No later than each 12- month anniversary from the Commencement Date	Up to 1 month late	More than 1 month late

1. Any KPI discrepancy attributable to an act or omission of the Authority (or another Participating Authority) shall not be used to calculate the Supplier's sub-standard performance level.
2. The Supplier's performance shall be measured as indicated in the KPI Schedule above.
3. Should the Service Level of the Supplier fall below the relevant KPI:
 - 3.1 on three (3) or more occasions in any six (6) month period relating to the AMBER alerts;
 - 3.2 on two (2) or more occasions in any six (6) month period relating to the RED alerts;

The Authority may serve a performance notice on the Supplier. The Supplier shall present to the Authority within thirty (30) days of receipt of such performance notice an action plan to improve the Supplier's Monthly Service Level ("Action Plan"). The Parties shall, within ten (10) Business Days of the Authority receiving the Action Plan meet to discuss and agree the Action Plan. The Authority may make reasonable amendments to the Action Plan to improve the Supplier's performance. The Action Plan must include a timetable for improvement of the Supplier's performance to, as a minimum, the level required in relation to the relevant KPI. Such timetable shall be agreed by the Parties but shall in any event be no longer than six (6) months.

4. In the event that the Supplier:
 - 4.1 fails to produce an Action Plan in accordance with Clause 3 of this Schedule 8; or
 - 4.2 fails to improve its Monthly Service Level to the minimum level required of this Schedule 8 within the timetable set out in the Action Plan in accordance with Clause 3.1 of this Schedule 8,

the Supplier shall be considered to have committed a material breach capable of remedy for the purpose of Clause 16.4 of Schedule 2 of the NHS Terms and Conditions.

5. If the Supplier disputes the Authority Monthly Service Level as applicable to the Supplier, the Supplier shall provide evidence to the Authority that the Monthly Service Level is incorrect within seven (7) days of disputing such Monthly Service Level and the Parties shall meet to discuss any necessary amendment to the Monthly Service



Level. If the Parties cannot agree the Monthly Service Level the matter shall be referred to the dispute resolution procedure set out in Clause 23 of Schedule 22 of the Framework Terms and Conditions.

6. For the avoidance of doubt, nothing in this Schedule 8 shall limit in any way either Party's rights and remedies, including the right to claim damages and or termination rights which may arise, under this Framework Agreement or any Contract.

7. Management information

- 7.1 The supplier shall provide information to enabled performance and ongoing monitoring of the framework to the Authority as detailed below.

7.2 Sales Data

- 7.2.1 Framework suppliers shall provide monthly sales data for all activity under the framework as prescribed below: -

This must be in electronic format no later than the 10th day of each month the category manager detailing the previous months sales activities per participating authority.

- 7.2.2 All management information must be provided free of charge as part of the overall service offered under the Framework Agreement.

7.3 Benchmarking requests

- 7.3.1 The supplier shall respond to benchmarking requests, approved by participating Authority's, within 5 working days of the request.
- 7.3.2 The output from the benchmarking is for the Authority to provide the NHS procurement staff, operational teams and lead clinician(s) with a spend efficiency report (SER) which facilitates decision making and determines "next steps" and development of agreed work plans.

7.4 KPI's

- 7.4.1 The KPI's (See Schedule 8) shall inform the effectiveness of the framework agreement between the supplier a, end users and the Authority and from part of the monthly management reports required to be submitted to the Authority.

7.5 Contract Management

- 7.5.1 The contract review meeting shall be undertaken quarterly, this may increase to monthly as may be the requirement dependent on the nature of the contract/Call off/Access agreement in place.
- 7.5.2 The focus of contract management meetings will be the review of KPI's the management of contracts established under the framework, opportunity's new products, issues, training, debt management and LSAS compliance where applicable.



- 7.5.3 The Authority reserves the right to request updated copies of all documents and materials prepared and in use by the Supplier in the course of Modern Slavery Assessment Tool and Labour Standards Assessment compliance and to review and require change to comply with UK Guidance and Law concerning Modern Slavery and Human Trafficking.
- 7.5.4 MDA reports / alerts relation to products supplied under the framework – update on actions taken, or action plans to facilitate resolution.
- 7.5.5 Future technological advantages or additional service provisions.
- 7.5.6 Representatives from the individual participating Authority's may also require similar meetings on a quarterly basis as part of their own contract with the supplier. The Participating Authority will agree these requirements with the supplier on a case by case basis.



Schedule 9

Modern Slavery or Human Trafficking Remedial Proposal

Nothing in this Schedule is intended to limit the rights of the Authority under any other provision of the Framework Agreement.

This Schedule sets out the actions which must be taken and which must be included in any Remedial Proposal agreed under clause 15.3 of Schedule 2 when such a plan is required in relation to a Matter of Concern under the Key Provisions of Schedule 1 and/or other allegation or substantiated instance of Modern Slavery or Human Trafficking occurring within the Supplier's supply chain in relation to the Goods. Nothing in this Schedule is intended to limit the ability of the Authority to make additional requirements of the Supplier when agreeing to any Remedial Proposal.

The timescales for the provision of the Remedial Proposal in such instances is as amended by this Schedule.

When the Authority is made aware of any actual, suspected and/or allegation of Modern Slavery or Human Trafficking incident(s) in the Supplier's supply chain which relates to this Framework Agreement:

- The Supplier will take immediate, decisive action on any actual, suspected and/or allegation(s) which shows or indicates that incidents of Modern Slavery or Human Trafficking is taking place in their supply chain.
- The Supplier will investigate fully any actual, suspected and/or allegation(s) of Modern Slavery or Human Trafficking and promptly and regularly report to the Authority the details of the investigation in full and transparent manner and in reporting progress of the investigation it shall including the conclusions (including provisional conclusions) of the investigation and any final conclusions. Notwithstanding any ongoing civil or criminal proceedings in any jurisdiction, the investigation must continue and all relevant parties including the Authority shall be informed of the findings of any investigation.
- Work in good faith with the Authority, and with the statutory processes and authorities in the country concerned to address incidents of Modern Slavery or Human Trafficking.
- Share information with the Authority that will help stop, or prevent, the abuse or exploitation of workers, including where either party has been made aware of risks specific to the supply chain.
- Treat any Confidential Information provided by the Authority sensitively and appropriately and not disseminate it without prior agreement of the Authority.
- The Supplier will appoint dedicated lead to implement any agreed Remedial Proposal, to coordinate the response and liaise with all necessary agencies the Authority and law enforcement agencies in the UK and overseas if required by the Authority. The lead appointed by the Supplier must have sufficient seniority to be



responsible for the exchange of information and an understanding of how sensitive information should be handled.

- When the steps and investigation under any agreed Remedial Proposal identify to the satisfaction of the Authority that the allegations of Modern Slavery or Human Trafficking which led to the investigation are not substantiated, the Remedial Proposal will be concluded.

When either an agreed Remedial Proposal or the Authority acting reasonably identifies that Modern Slavery and/or Human Trafficking, allegations or breaches (potential or actual) has (or has on the balance of probabilities) taken place or been identified:

- Where incidents of Modern Slavery or Human Trafficking are identified or established (including on the balance of probabilities) to the reasonable satisfaction of the Authority, the Authority may, without prejudice to the rights of termination and suspension of the Authority under the Framework Agreement, require a Remedial Proposal is put forward for agreement by the Authority with such Remedial Proposal detailing how the Supplier will work with victims, victims' representatives and, where relevant, statutory authorities to tackle root causes and support identified victims of Modern Slavery or Human Trafficking.
- Where incidents of Modern Slavery or Human Trafficking are identified or in a Remedial Proposal such Remedial Proposal shall detail how the Supplier will work with victims, victims' representatives and, where relevant, statutory authorities to tackle root causes and support identified victims of Modern Slavery or Human Trafficking.
- Remedial Proposals concerning Where incidents of Modern Slavery or Human Trafficking must comply with the following timescales. It shall be for the Authority in its sole discretion to determine whether it consider any incident of Modern Slavery or Human Trafficking identified to be of Low, Moderate, High Risk or a Critical Risk.

Incident	Timescale for Proposing Remedial Proposal	Timescale to Implement Remedial Proposals
Low risk	Within 10 Business Days of incident being confirmed or identified	Implemented before the next third party audit is due, or sooner if required by the Authority .
Moderate risk	Within 10 Business Days of incident being confirmed or identified	Implemented within 60 Business Days of the issue or confirmed incident being identified, or sooner if required by the Authority.



High risk	Within 10 Business Days of risk being confirmed or identified	Implemented within 30 Business Days of the issue or confirmed incident being identified, or sooner if required by the Authority.
Critical risk	Within 10 Business Days of risk being confirmed or identified	With Implemented within in 20 Business Days of the issue or confirmed incident being identified and updates every 5 Business Days on progress.

- The Supplier shall monitor the delivery of the Remedial Proposal, in conjunction with the Authority
- The Supplier shall, without prejudice to the rights of the Authority to suspend or terminate this Agreement, prepare further Remedial Proposals for agreement with the Authority detailing further actions where Remedial Proposal are not delivered, or where delivery is not effective or timely

All Remedial Proposals shall put the victim's welfare first, specifically the dedicated lead shall: -

1. Prioritise the safety and security of the victims of and potential victims of Modern Slavery and/or Human Trafficking, particularly children
2. Work and consult with victims and potential victims of Modern Slavery and/or Human Trafficking to identify remedial solutions that work for them and improves their situation
3. Address child labour and potential victims of Modern Slavery and/or Human Trafficking as part of a wider approach to improve working conditions, aiming for continuous improvement
4. Phase out child labour in a responsible fashion

Enforcement of the Remedial Proposal:

If the Supplier:

- (a) Does not cooperate with investigations, including concealing information or unreasonably delay sharing information
- (b) Does not put the victims first
- (c) Continues to employ child labour illegally, or in what the Authority in its sole discretion determines are hazardous conditions
- (d) Does not implement the phasing out child labour
- (e) Continues to employ people who are victims of Modern Slavery and/or Human Trafficking
- (f) Does not implement a Remedial Proposal to the satisfaction of the Authority and/or third parties and/or third parties operating on behalf of the Authority
- (g) Refuses to improve their practice

The Authority will:

- (h) Consider additional steps, including:
 - a. Suspension
 - b. termination, and



- c. sharing past performance information with other public sector contracting authorities

The Authority will where it considers it to be appropriate, in its sole discretion:

- (a) work with the Supplier to remedy any identified instances of and potential victims of Modern Slavery and/or Human Trafficking and/or child labour abuses.
- (b) work with the Supplier and our other suppliers to share lessons learnt, raise awareness within the supply chain and protect workers from exploitation and abuse.



Appendix A

Call-off Terms and Conditions for the Supply of Goods

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

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract.

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

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

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

Schedules

Schedule 1 of these Call-off Terms and Conditions	Key Provisions
Schedule 2 of these Call-off Terms and Conditions	General Terms and Conditions
Schedule 3 of these Call-off Terms and Conditions	Information and Data Provisions
Schedule 4 of these Call-off Terms and Conditions	Definitions and Interpretations



Schedule 1 of these Call-off Terms and Conditions

Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

2 Term

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

3 Contract Managers

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

4 Names and addresses for notices

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

5 Management levels for escalation and dispute resolution

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

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



6 Order of precedence

- 6.1 Subject always to Clause 1.10 of Schedule 4 of these Call-off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
- 6.1.1 the Order Form;
 - 6.1.2 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
 - 6.1.3 the provisions on the front page of these Call-off Terms and Conditions for the Supply of Goods;
 - 6.1.4 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;
 - 6.1.5 the Specification and Tender Response Document (but only in respect of the requirements);
 - 6.1.6 Schedule 2 of these Call-off Terms and Conditions : General Terms and Conditions;
 - 6.1.7 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;
 - 6.1.8 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations; and
 - 6.1.9 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.



Schedule 2 of these Call-off Terms and Conditions

General Terms and Conditions

Contents

1. Supply of Goods
2. Delivery
3. Passing of risk and ownership
4. Inspection, rejection, return and recall
5. Staff and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Contract
17. Packaging, identification and end of use
18. Coding requirements
19. Sustainable development
20. Electronic product information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General



1 Supply of Goods

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

- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
- 1.1.2 in accordance with all other provisions of this Contract;
- 1.1.3 using reasonable skill and care in their delivery;
- 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
- 1.1.5 in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
- 1.1.6 in accordance with the Law and with Guidance;
- 1.1.7 in accordance with Good Industry Practice;
- 1.1.8 in accordance with the Policies; and
- 1.1.9 in a professional and courteous manner.

In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.

- 1.2 The Supplier shall comply fully with its obligations set out in the Framework Agreement, the Specification and Tender Response Document and/or the Order Form (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 1.3 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.
- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.



- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.5 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.8 The Authority may be notified of the suspension or the termination of the Supplier from the Framework Agreement for reasons relating to Modern Slavery or Human Trafficking (as defined in the Framework agreement) including under clauses 15.4, 15.8.4 15.10 or 15.11 of Schedule 2 of the Framework Agreement. In the event of such notification the Authority may:
- 1.8.1 terminate this Contract and any order placed under an Order Form without further liability for the Authority; and / or
 - 1.8.2 without any additional liability to itself, give notice to the Supplier suspending the operation of this Contract and any order placed on any Order Form. The Authority shall without penalty or costs to itself be permitted to decline to accept delivery of any Goods for the duration of any suspension or until the Authority determines to terminate this Contract and any order placed on any Order Form.
 - 1.8.3 Where the Authority exercises right to suspend the Contract and any order placed on any Order Form all timescales and dates for the delivery of Goods shall be extended as reasonably required by the Authority until;
 - (i) the Supplier elects, at its sole discretion, to end the suspension with or without the Supplier being restored to the Framework Agreement whereupon the parties shall in good faith rearrange for delivery of the Goods in accordance with the terms of this Contract and the Order Form; or
 - (ii) the Supplier elects to terminate the Contract and any order placed under an Order Form without further liability for the Authority, such notice being with immediate effect under this clause.

2 Delivery

- 2.1 Subject to clause 1.8. the Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised



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

- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.
- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.



3 Passing of risk and ownership

- 3.1 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.
- 3.2 Ownership of the Goods shall pass to the Authority on the earlier of:
- 3.2.1 full payment for such Goods; or
- 3.2.2 where the goods are consumables or are non-recoverable (e.g., used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3.2.2 of this Schedule 2 of these Call-off Terms and Conditions, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.
- 3.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

4 Inspection, rejection, return and recall

- 4.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 4.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 2 of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall at the Authority's written request:
- 4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and



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

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

- 4.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 4.5 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.
- 4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:
- 4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 4.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2 of these Call-off Terms and Conditions.
- 4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.5 (inclusive) and/or Clause 4.6 of this Schedule 2 of these Call-off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 4.8 The Authority's rights and remedies under Clause 4.6 of this Schedule 2 of these Call-off Terms and Conditions shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the



Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any. For the avoidance of doubt, goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.

- 4.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Supplier shall:
- 4.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
 - 4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 2 of these Call-off Terms and Conditions;
 - 4.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavors to minimise the impact on the Authority of the recall; and
 - 4.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

5 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff during Staff holidays or absence.
- 5.2 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.3 The Supplier shall employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed and shall maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) and has the qualifications to carry out their duties.
- 5.4 The Supplier shall comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.
- 5.5 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier



representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

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

6.1.1 the criticality of this Contract to the Authority; and

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

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

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 of these Call-off Terms and Conditions and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

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

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

7 The Authority's obligations

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

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

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

7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Authority of any such cooperation necessary in circumstances where



such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints by the Authority in relation to the supply of Goods, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavors to reach agreement. If



agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods purchased, any payments made under this Contract and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
 - 8.6.2 sharing the management information, or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 of these Call-off Terms and Conditions, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to anybody that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

- 9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.
- 9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:
- 9.2.1 shall remain fixed during the Term; and
 - 9.2.2 is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:



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

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

9.3.1 where the Framework Agreement and/or the Order Form confirms that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods supplied in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clause 9.3.1 of this Schedule 2 of these Call-off Terms and Conditions does not apply, the Supplier shall invoice the Authority for Goods at any time following completion of the supply of the Goods in compliance with this Contract.

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

- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 9.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.



- 9.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 22 of this Schedule 2 these Call off Terms and Conditions . For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.8 The Authority reserves the right to set-off:
- 9.8.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
- 9.8.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 **Warranties**

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it shall comply with the Framework Agreement;
- 10.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;
- 10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
- 10.1.4 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.5 without prejudice to the generality of the warranty at 10.1.4 of this Schedule 2 of these Call-off Terms and Conditions, it shall ensure that, the Goods are



manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;

- 10.1.6 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.7 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.8 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.9 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.10 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;
- 10.1.13 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.14 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.15 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 10.1.16 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;



- 10.1.17 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.18 it has and shall as relevant maintain all rights, consents, authorisations, licences, and accreditations required to supply the Goods;
- 10.1.19 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.20 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods;
- 10.1.21 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.22 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains including comply with all Audit requirements under the Framework Agreement; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.23 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.23 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.24 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.25 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and/or Order Form) and all accompanying materials is accurate;
- 10.1.26 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.27 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.28 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;



- 10.1.29 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
 - 10.1.30 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
 - 10.1.31 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 10.1.32 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;
 - 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
 - 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.



- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.7 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.7.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
 - 10.7.2 promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.
- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

- 11.1 Unless specified otherwise in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent



necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.

12 Indemnity

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

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

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

12.1.3 any breach of Clause 10.1.19 and/or Clause 11 of this Schedule 2 of these Call-off Terms and Conditions;

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

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

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

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

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

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

13 Limitation of liability

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

13.1.1 for death or personal injury resulting from its negligence;



- 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
- 13.3.1 extra costs incurred purchasing replacement or alternative goods;
 - 13.3.2 costs incurred in relation to any product recall;
 - 13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 13.3.4 the costs of extra management time; and/or
 - 13.3.5 loss of income due to an inability to provide health care services,
- in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);
 - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);



- 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 of these Call-off Terms and Conditions and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement, if any.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 of these Call-off Terms and Conditions on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered



void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 15.1 This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority:
- 15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions, shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term referred to in the Key Provisions; or
 - 15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 2 of these Call-Off Terms and Conditions, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business



Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

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

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

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

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

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

15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;

15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions;



- 15.5.4 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions; or
 - 15.5.5 the warranty given by the Supplier pursuant to Clause 10.7 of this Schedule 2 of these Call-off Terms and Conditions is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.7 of this Schedule 2 of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.7 of this Schedule 2 of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
 - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 of these Call-off Terms and Conditions.
 - 15.6.4 In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;



- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
 - 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

16 Consequences of expiry or early termination of this Contract

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



continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

17 Packaging, identification and end of use

- 17.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 17.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 17.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 17.4 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.
- 17.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 17.5 of this Schedule 2 of these Call-off Terms and Conditions.

18 Coding requirements

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



Supply Chain

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Goods and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods being supplied and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2 of these Call-off Terms and Conditions.

Electronic product information

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

- 20.5 The Authority may reproduce for its sole use the Product Information provided by the Supplier in the Authority's product catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Product Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2 of these Call-off Terms and Conditions, any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business



Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 of these Call-off Terms and Conditions or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods; or
 - 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

23 Force majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;



- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions shall continue in full force and effect unless otherwise specified in this Contract.

24 Records retention and right of audit

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.



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

25 Conflicts of interest and the prevention of fraud

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



- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 of these Call-off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26 Equality and human rights

26.1 The Supplier shall:

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

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

27 Notice

- 27.1 Subject to Clause 22.5 of Schedule 2 of these Call-off Terms and Conditions, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time



or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and Sub-contracting

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

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

- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.6 of this Schedule 2 of these Call-off Terms and Conditions;
- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
- 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
- 28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and



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

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

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

28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods to the extent relevant to such Sub-contracting;

28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;

28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

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

28.4.5 requires the Supplier or other party receiving goods under the contract to consider and verify invoices under that contract in a timely fashion;

28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 of these Call-Off Terms and Conditions after a reasonable time has passed;

28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2 of these Call-off Terms and Conditions;

28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-



contractor in accordance with Clause 28.5 of this Schedule 2 of these Call-Off Terms and Conditions;

28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 of these Call-off Terms and Conditions in any Sub-contract which it awards.

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

28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or

28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.

28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.

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

28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to anybody that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 Prohibited Acts

29.1 The Supplier warrants and represents that:

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

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of



this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or

- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

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

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

29.2.1 the Authority shall be entitled:

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

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

29.2.3 notwithstanding Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any Dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2 of these Call-off Terms and Conditions; or
- (ii) the amount or value of any gift, consideration or commission,

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

30 General

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

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



- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2 of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.





Schedule 3 of these Call-off Terms and Conditions

Information and Data Provisions

1 Confidentiality

1.2 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

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

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

- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
- (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (iii) which is authorised for disclosure by the prior written consent of the Discloser;
- (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.3 Nothing in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

1.4 The Authority may disclose the Supplier's Confidential Information:

1.4.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

1.4.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;



- 1.4.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.4.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.4.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.4.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.4 of this Schedule 3 of these Call-off Terms and Conditions.

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

2 Data protection

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



Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

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

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;



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

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3 of these Call-off Terms and Conditions, the Supplier shall:
 - 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
 - 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority



and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.



Schedule 4 of these Call-off Terms and Conditions

Definitions and Interpretations

1 Definitions

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

“Award Letter”	means the letter confirming to the Supplier that they are being admitted to the Framework Agreement and which may include Conditions where the admission to the Framework Agreement is a Conditional Inclusion;
“Authority”	means the authority named on the Order Form;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document and/or the Order Form;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Call-off Terms and Conditions”	means these Call-off Terms and Conditions for the Supply of Goods;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.3 of Schedule 33 of these Call-off Terms and Conditions;
“Conditions”	means any conditions set out in the Award Letter which must be completed before any suspension from the Framework Agreement shall occur and any call off or orders may be placed with the Supplier through this Framework Agreement;
“Conditional Inclusion”	means that the Supplier has been included on the Framework Agreement and immediately suspended from the Framework Agreement subject to the



	satisfactory completion of any Conditions set out in the Award Letter;
“Commencement Date”	means the date of the Order Form;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: I. Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (h) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (i) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Contract”	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 22 of these Call-off Terms and Conditions;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
“Controller”	shall have the same meaning as set out in the GDPR;
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and



	(iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document appended to the Order Form;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 22 of these Call-off Terms and Conditions;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 22 of these Call-off Terms and Conditions;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Environment”	Means the air, water, and land in or on which people, animals and plants live;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.3 of Schedule 33 of these Call-off Terms and Conditions;



“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“FOIA”	shall have the meaning given to the term in Clause 1.3 of Schedule 33 of these Call-off Terms and Conditions;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (j) acts of terrorism; (k) flood, storm or other natural disasters; (l) fire; (m) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (n) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; (o) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (p) industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and



	(q) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;
"Framework Agreement"	means the Framework Agreement referred to in the Order Form;
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
"Goods"	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;



“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Human Trafficking”	Means the recruitment or movement of people for exploitation by the use of threat, force, fraud, or the abuse of vulnerability;
“Indicators”	means the 11 International Labour Organisation’s forced labour indicators, or such other indicators or standards as may be notified to the Supplier by the Authority from time to time and which shall in any Third Party Audit be subject to a Risk Assessment as to the occurrence or prevalence and severity of any non-conformity against such standards;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Key Provisions”	means the key provisions set out in Schedule 11 of these Call-off Terms and Conditions and/or as part of the Order Form;
“KPI”	means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
“Law”	means any applicable legal requirements including, without limitation,: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and



	(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Modern Slavery”	means the recruitment, movement, harbouring or receiving of children, women or men through the use of force, coercion, abuse of vulnerability, deception or other means for the purpose of exploitation. It is a crime under the Modern Slavery Act 2015 and includes holding a person in a position of slavery, servitude forced or compulsory labour, or facilitating their travel with the intention of exploiting them soon after;
“NHS”	means the National Health Service;
“Occasion of Tax Non-Compliance”	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (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 (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Order Form”	means the order form for the Goods issued by the Authority in accordance with the Framework Agreement;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;



“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 22 of these Call-off Terms and Conditions for inclusion in the Authority's product catalogue from time to time;
“Rejected Goods”	has the meaning given under Clause 4.2 of Schedule 22 of these Call-off Terms and Conditions;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 22 of these Call-off Terms and Conditions;
“Remedial Action Plan”	Means the agreed remedial plan of action developed by the Supplier and agreed by the Authority to remedy a Default, Breach or issue.
“Requirement to Recall”	has the meaning given under 4.9 of Schedule 22 of these Call-off Terms and Conditions;
“Risk Assessment”	means an assessment of the risks of Modern Slavery undertaken as part of any Third Party Audit of the Supplier completed in compliance with the instructions set out in the documents issued to the Supplier as part of the procurement process to be admitted to the Framework Agreement and such assessments in further Third Party Audits carried out over the duration of the Framework Agreement;
“Specification and Tender Response Document”	means the Specification and Tender Response Document set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;



“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the Order Form;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Term”	means the term as referred to in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 22 of these Call-off Terms and Conditions; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 22 of these Call-off Terms and Conditions, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.



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

