

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

DATED 29th January 2025

(1) MINISTRY OF JUSTICE

and

(2) EUROFINS FORENSIC SERVICES LIMITED

AGREEMENT

relating to

The provision of Point of Care Testing Products and Associated Services

MoJ Contract reference: con_24671



Government Legal Department

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THIS AGREEMENT is made on

BETWEEN:

- (1) **Secretary of State for Justice** of the MINISTRY OF JUSTICE (the "**Authority**"); and
- (2) **EUROFINS FORENSIC SERVICES LIMITED** a company registered in England and Wales under company number **10715102** whose registered office is at **Dukes Green Avenue, Feltham, ENGLAND, TW14 0LR** (the "**Supplier**")

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

INTRODUCTION

- (A) The Authority undertakes drugs testing across Approved Premises and in the community as a key strategic tool for tackling substance misuse by individual offenders released from prisons on licence and wishes to engage a supplier for the provision of test devices for use in community settings.
- (B) On 21st December 2023, the Authority advertised on the Find a Tender service (reference 2023/S 000-037758), inviting prospective suppliers to submit proposals for the provision of test devices.
- (C) The Supplier is a leading provider of drugs testing devices.
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;

- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - 1.2.8 unless otherwise provided references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - 1.2.9 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Clauses and Schedule 1 (*Definitions*);
 - 1.4.2 Schedules 2.1 (*Specification*) and 2.2 (*Performance Levels*) and their Annexes;

- 1.4.3 any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes); and
- 1.4.4 Schedule 4.1 (*Supplier Solution*) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement, the Authority is acting as part of the Crown.

2 DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
 - 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (a) the Authority Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Authority; and
 - (d) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Goods.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of:
 - 2.2.1 any unsuitable aspects of the Operating Environment;

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

3 WARRANTIES

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 3.1.2 this Agreement is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

- 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and Invitation to Tender (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.10 it has all necessary rights in and to any Intellectual Property Rights in the Goods and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of or use of the Goods by the Authority or any other End User;
- 3.2.11 the Financial Model submitted as part of the Supplier Tender is a true and accurate reflection of the Supplier's costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Goods inconsistent with the Financial Model;
- 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - 3.2.14 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist;
- 3.3 The Supplier represents, warrants, and undertakes that in relation to the Goods:
- 3.3.1 the Goods are suitable for the purposes as set out in the Specification, be of satisfactory quality, and shall comply with the Standards and requirements set out in this Agreement;
 - 3.3.2 the Test Devices are capable of consistently identifying all of the Drugs to the degree of accuracy set out in the Supplier Solution and the Key Performance Indicators (KPIs), and in any event, shall be capable of identifying beyond reasonable doubt the Drugs in any Sample where the levels of those Drugs in such Sample are equal to or greater than the Cut-Off Level for the relevant Drug at the time of Testing;
 - 3.3.3 any Cut-Off Levels included in the Supplier Solution and any other Cut-Off Levels proposed by the Supplier in connection with any new Drug are prepared by reference to and are consistent with existing standards for such levels published by relevant accredited bodies and in accordance with Good Industry Practice;
 - 3.3.4 it shall ensure that, prior to actual delivery of the Goods to the Authority, the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
 - 3.3.5 the Charges for the Goods represent Value for Money;
 - 3.3.6 at the point that the Goods are supplied to the Authority, the Goods shall have valid CE marking (or pre-approved equivalent) as required by the Specification or any Law and Guidance and all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery or use of
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such Goods have been complied with. Without limitation to the foregoing warranty, the Supplier shall upon written request from the Authority make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals, or documentation required;

- 3.3.7 without prejudice to the generality of the warranty at Clause 3.3.2 it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice as may be defined under any Law, Guidance, Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
 - 3.3.8 it shall ensure that all facilities used to manufacture, store and distribute the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in connection with this Agreement;
 - 3.3.9 it has, or the manufacturer has manufacturing and warehousing capacity sufficient to comply with its obligations under this Agreement;
 - 3.3.10 it will ensure that sufficient stock levels are maintained to comply with its obligations under this Agreement in accordance with Clause 5;
 - 3.3.11 where the Goods are required to be stored at a certain temperature, it shall provide or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
 - 3.3.12 where there is any Documentation instruction information including without limitation user information or leaflets, that accompany the Goods such information shall be comprehensive, accurate, in English (with a Welsh Language translation) and prepared in accordance with Good Industry Practice and it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
 - 3.3.13 all Goods delivered to the Authority shall comply with any shelf-life requirements set out in the Supplier Tender;
 - 3.3.14 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Agreement
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and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;

- 3.3.15 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);
- 3.3.16 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, unless otherwise agreed between the Parties in writing, any such changes or substitute goods, if accepted, shall not lead to an increase in the Charges;
- 3.3.17 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;
- 3.3.18 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third-party rights, to include without limitation any Intellectual Property Rights;
- 3.3.19 it will promptly (and in any event within one (1) Working Day) notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 3.3.20 it will fully and promptly respond to all requests for information regarding this Agreement and the Goods at the frequency and in the format that the Authority may reasonably require;
- 3.3.21 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Agreement relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in

relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants and undertakes that:

- (a) at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 3, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
- (b) it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation any marketing authorisation) required in relation to the Goods in accordance with Law and Guidance or as set out in the Specification until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Agreement.

- 3.4 The representations and warranties set out in Clauses 3.2 and 3.3 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.5 Each of the representations and warranties set out in Clauses 3.1, 3.2 and 3.3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.6 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1, 3.2 or 3.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.7 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

- 3.8 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 3.9 If the Supplier is in breach of the warranties at Clause 3.2 and / or Clause 3.3, 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 indemnify and keep the Authority indemnified against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

SECTION B – THE GOODS**4 TERM**

4.1 This Agreement shall:

- 4.1.1 come into force on the Effective Date; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (*Termination Rights*), terminate:
 - (a) at the end of the Initial Term; or
 - (b) if the Authority elects to extend the Initial Term by giving the Supplier at least 20 Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 20 (*Confidentiality*), 21 (*Transparency and Freedom of Information*), 23 (*Publicity and Branding*), 24 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
- 4.3.1 this Agreement shall automatically cease and shall not come into effect; and
 - 4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the Condition Precedent set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the Condition Precedent and of any

circumstances which are likely to result in the Condition Precedent not being satisfied by the date set out in Clause 4.3.

5 SUPPLY OF GOODS AND ORDER PROCESS

5.1 Nothing in this Agreement confers any exclusivity or guarantee of or commitment to particular volumes of Goods to be purchased by the Authority from the Supplier under this Agreement.

5.2 The Supplier shall provide:

5.2.1 the Mobilisation Activity from (and including) the Effective Date; and

5.2.2 the Goods from (and including) the Commencement Date.

5.3 The Supplier shall ensure that the Goods:

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

5.4 The Supplier shall:

5.4.1 perform its obligations under this Agreement, including in relation to the supply of the Goods in accordance with:

- (a) all applicable Law and Guidance;
- (b) Good Industry Practice;
- (c) the Standards (including, without limitation, any ethical standard requirement set out in the Specification);
- (d) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clause 5.4.1(a) to 5.4.1(c);

- 5.4.2 provide the Goods using efficient business processes and ways of working having regard to the Authority's obligation to ensure Value for Money and the accuracy of the outcome of the Tests.

Forecasting and Stock

- 5.5 During the Term, the Authority will give the Supplier:
 - 5.5.1 not less than five days before the beginning of each month, a forecast of the Goods it expects to purchase during the three months following that month; and
 - 5.5.2 not less than one month before the end of each year, a forecast of the Goods it expects to purchase during the following year.
- 5.6 Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within two (2) Working Days. The Authority shall act in good faith when forecasting its requirements for the Goods.
- 5.7 Forecasts provided under this Clause 5 are provided for information purposes only, are not binding and do not constitute an Order.
- 5.8 If the Supplier anticipates that it will be unable to meet the Authority's forecasted requirements provided in accordance with Clause 5:
 - 5.8.1 the Supplier shall inform the Authority in writing as soon as practicable; and
 - 5.8.2 without limiting any other right or remedy that the Authority may have, the Authority may at its option agree alternative delivery dates for the relevant Goods, or obtain from any other person substitute goods for the Goods which the Supplier anticipates it will be unable to supply.
- 5.9 The Supplier shall at all times (subject to the provisions of any Exit Plan), hold sufficient stock in UK based storage facilities to meet the Authority's forecasted requirements for any Month (or such other period as the Authority may reasonably request) provided in accordance with this Clause 5.9 and 5.10 (the "**Retained Stock**"). The Supplier shall store and manage any Retained Stock in accordance with Good Industry Practice.
- 5.10 Any request to store a defined amount of Retained Stock is not a commitment by the Authority to purchase such Retained Stock and the Supplier shall be responsible for such Retained Stock and shall manage and rotate the Retained Stock in accordance with Good Industry Practice and to ensure that the shelf life of the Retained Stock at

any given time is in accordance with the minimum shelf life as set out in the Supplier Solution.

Order Process

- 5.11 At any time from the Commencement Date, the Authority may order Goods by submitting to the Supplier an Order specifying the type and quantity of Goods required, the required Delivery Date and where applicable the Delivery Location.
- 5.12 Upon receiving an Order for Goods, the Supplier shall:
- 5.12.1 within 2 days acknowledge receipt and acceptance of the Order; and
 - 5.12.2 deliver the Goods to the Delivery Location on the Delivery Date or where the Delivery Date is not specified within the Order, within the timescales set out in the applicable KPIs for delivery in Schedule 2.2 (*Performance Levels*).
- 5.13 The Authority may at any time prior to the dispatch of the Goods amend or cancel an Order by written notice to the Supplier without liability to the Supplier.
- 5.14 The Supplier agrees that in the event that an Approved User requests to place orders directly for goods which are the same as the Goods, then it shall offer terms and pricing for such goods which are no higher than or more onerous than those in this Agreement.

Supply of Goods

- 5.15 The Supplier shall deliver the Goods specified in the Order in accordance with any delivery timescales, Delivery Dates and delivery instructions (to include, without limitation, the Delivery Location and delivery times) set out in the Order and in accordance with the remainder of this Clause 5. Where the Supplier fails to make Delivery on the Delivery Date, then the Supplier shall at its own cost procure that a further attempt at delivery is made to the Authority on a further Delivery Date to be agreed between the Parties (and which shall be no later than five (5) Working Days from the planned Delivery Date). In the event that the Supplier fails to redeliver in accordance with this Clause 5.15, then the Authority may at its option (without prejudice to any other rights or remedies in this Agreement):
- 5.15.1 reject the delayed Goods and the provisions of Clause 7.3 shall apply;
 - 5.15.2 accept the delayed Goods (on a revised Delivery Date which shall be agreed between the Parties), in which case the Supplier shall apply Delay Payments in accordance with Schedule 7.1 (Charges and Invoicing).

- 5.16 Delivery shall be completed when the Goods have been unloaded at the Delivery Location and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall use reasonable endeavours to procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed Delivery Date and times in order to accept such delivery.
- 5.17 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information agreed with the Authority in writing including (without limitation) in any Order. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description, the quantity and specific storage instructions (if any) of the Goods, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the manufactured on and use by dates.
- 5.18 Part deliveries and/or deliveries outside of the agreed Delivery Date or times may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 5.18, 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 Date or time. Where the Authority accepts delivery more than five (5) days before the Delivery Date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed Delivery Date.
- 5.19 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the Delivery Location and unloading of the Goods at the Delivery Location. Without limitation to the foregoing provision of this Clause 5.19, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Order.

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

6 PASSING OF RISK AND TITLE

- 6.1 Risk in the Goods shall pass to the Authority when the Goods are Delivered as specified in this Agreement.
- 6.2 Ownership of the Goods shall pass to the Authority on the earlier of:
- 6.2.1 full payment for such Goods; or
 - 6.2.2 Delivery of the Goods at a Delivery Location or at the point such Goods are taken into use.
- 6.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Agreement shall be and remain at the sole risk of the Supplier, whether or not they are situated at a Delivery Location.

7 INSPECTION, REJECTION, RETURNS AND RECALL

- 7.1 The Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Agreement and/or that stock holding and quality assurance processes are in accordance with the requirements of this Agreement.
- 7.2 Without prejudice to the provisions of Clause 7.5, the Authority shall visually inspect the Goods within a reasonable time following delivery and may by written notice reject any Goods found to be damaged, or delivered late, or otherwise not in accordance with the requirements of this Agreement ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Agreement.

- 7.3 Without prejudice to the provisions of Clause 7.5, upon the rejection of any Goods in accordance with Clause 7.2, the Supplier shall at the Authority's written request:
- 7.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Working Days of issue of written notice from the Authority rejecting the Goods and reimburse the Authority for any Charges paid in connection with the Goods (including without limitation any pre-payment or advance payments) along with any costs reasonably incurred by the Authority as a result of any such rejection; and
 - 7.3.2 without extra charge, promptly (and in any event within five (5) Working Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 7.5 (provided that in the event that the Supplier fails to deliver replacements for the Rejected Goods in the time required under this Clause 7.3.2, the Authority may at its option either reject such replacements, in which case Clause 7.3.1 shall apply, or accept such replacements, in which case Clause 7.3.3 shall apply).
 - 7.3.3 If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.
- 7.4 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 7.3; or (b) immediately following the expiry of ten (10) Working Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Working Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Working Days from the date of notification of rejection.
- 7.5 Where the Authority rejects any Goods in accordance with Clauses 7.2 and/or 7.6 and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid (in whole or in part) for such Rejected Goods, the Supplier shall refund such payment along with any costs reasonably incurred by the Authority as a result of any such rejection to the Authority within thirty (30) days of

the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

- 7.6 Without prejudice to any other provisions of this Agreement or any other warranties or guarantees applicable to the Goods supplied if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion, upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 7.2 to 7.5.
- 7.7 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:
- 7.7.1 promptly (taking into consideration the potential impact of the continued use of the Goods on Test Recipients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
 - 7.7.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 7.6;
 - 7.7.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and
 - 7.7.4 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.

Supplier covenants

- 7.8 The Supplier shall:
- 7.8.1 comply with all Law, Guidance and Policies in place and as updated from time to time in so far as is relevant to the supply of the Goods and otherwise in the performance of its obligations under this Agreement;
 - 7.8.2 at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods in accordance with this Agreement;

- 7.8.3 subject to Clause 15 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods;
- 7.8.4 ensure that any equipment it uses in the manufacture and delivery of the Goods:
- (a) meets all accreditation and other requirements set out in the Specification;
 - (b) comply with all relevant Law and Guidance;
 - (c) are fit for their intended purpose; and
 - (d) are maintained fully in accordance with any manufacturer's specification (in the case of equipment) and in accordance with Good Industry Practice;
- 7.8.5 minimise any disruption to the Operating Environment and Authority's operations when carrying out its obligations under this Agreement;
- 7.8.6 co-operate with the Other Suppliers and provide reasonable information (including any documentation), advice and assistance in connection with the Goods to any Other Supplier and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the provision of Goods (or any of them) to the Authority and/or to any Replacement Supplier;
- 7.8.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of the Goods and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 7.8.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 7.8.4(b);
- 7.8.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Goods;

- 7.8.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
 - 7.8.11 notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
 - 7.8.12 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 7.8.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority;
- 7.9 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

Packaging and Labelling

- 7.10 The Supplier shall:
- 7.10.1 ensure that the Goods are properly packed in tamper-proof and traceable packaging in accordance with the Specification, Supplier Solution and Good Industry Practice;
 - 7.10.2 ensure that the Goods are stored and packaged in such a manner to ensure the integrity of the Goods are maintained during storage and transport;
 - 7.10.3 comply with all obligations imposed on it by Law and Guidance relevant to the Goods in relation to packaging, identification and obligations following end of use by the Authority;
 - 7.10.4 unless otherwise agreed with the Authority in writing, ensure that the Goods are securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable

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

7.10.5 comply with any labelling requirements in respect of the Goods:

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

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

Continuing obligation to provide the Goods

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

7.11.1 the existence of an unresolved Dispute; and/or

7.11.2 any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 31.4.1 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Power of attorney

7.12 By way of security for the performance of its obligations under Clauses 7.8.4(b) and 7.8.4(c) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 7.12 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

8 MOBILISATION

8.1 The Parties shall comply with the provisions of Schedule 6.1 (Mobilisation Plan) in relation to the agreement and maintenance of the Agreed Mobilisation Plan.

8.2 The Supplier shall:

8.2.1 comply with the Outline Mobilisation Plan until such time that it is Approved and becomes the Agreed Mobilisation Plan, at which point the Supplier shall comply with the Agreed Mobilisation Plan; and

8.2.2 ensure that each Milestone is Achieved on or before its Milestone Date.

8.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:

8.3.1 notify the Authority in accordance with Clause 27 (Rectification Plan Process); and

8.3.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

8.3.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

8.4 Where the Supplier does not comply with Clause 8.2.2 (for whatever reason), the Authority reserves the right, but shall not be required, to extend the Mobilisation Period to the duration necessary to ensure compliance with Clause 8.2.2.

9 TRAINING AND HELPDESK

9.1 The Supplier shall provide from the Commencement Date, free of charge training to End Users relating to the use, storage and administration of the Test Devices to identify the Drugs, such training to:

9.1.1 be delivered at the locations (online or in person) and frequency as the Parties may agree from time to time (acting reasonably), and in any case to be delivered in the event that the Test, Test Devices or Drugs are changed;

9.1.2 include the provision of clear and accurate training materials to support the training;

9.1.3 be delivered in accordance with Good Industry Practice by suitably qualified training personnel;

9.1.4 meet any requirements and/or descriptions set out in the Specification and the Supplier Tender or other reasonable requirements of the Authority.

- 9.2 The Supplier and the Authority shall once in each Contract Year meet at the Contract Review Meeting held on or around the anniversary of 1 April in each Contract Year to discuss and agree the training needs of the Authority, and required training content and schedule for the upcoming Contract Year.
- 9.3 The Supplier shall provide, free of charge, a helpdesk facility providing support to End Users of the Test Devices in the use, storage and administration of the Test Devices to identify the Drugs, such helpdesk to:
- 9.3.1 be available between the hours of 9am and 5pm on Working Days;
 - 9.3.2 be delivered in accordance with Good Industry Practice by suitable qualified personnel;
 - 9.3.3 meet any requirements and/or descriptions set out in the Specification and the Supplier Tender or other reasonable requirements of the Authority.
- 9.4 The Supplier shall during the Term maintain and make available to the Authority updated materials and support documentation relating to the Goods and use of the Test Devices.

10 KEY PERFORMANCE INDICATORS

- 10.1 The Supplier shall:
- 10.1.1 provide the Mobilisation Activities in such a manner so as to meet or exceed the Target Performance Levels for each relevant Key Performance Indicator during the Mobilisation Period;
 - 10.1.2 provide the Goods in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator from the Commencement Date; and
 - 10.1.3 comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Key Performance Indicators.
- 10.2 If in any Goods Delivery Period:
- 10.2.1 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process;

Critical Performance Failure

- 10.3 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 31.1 or 31.3 (Termination by the Authority).

Changes to Key Performance Indicators

- 10.4 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) months' notice change the weighting that applies in respect of one or more specific KPIs.
- 10.5 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 10.4, or increase the Charges as a result of such changes provided that:
- 10.5.1 the total number of KPIs does not exceed 20;
 - 10.5.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.

Complaints and Incidents

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

11 CONTINUOUS IMPROVEMENT AND VALIDATION

- 11.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Goods in accordance with this Clause 11.1 and paragraph 18 of the Specification. As part of this obligation the Supplier shall at least once every 12 months identify and report to the relevant Contract Review Meeting on:
- 11.1.1 the emergence of new and evolving relevant technologies which could improve the accuracy of the Goods and/or range of Drugs capable of being tested, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

- 11.1.2 identify, and provide its plans to implement changes in business processes and ways of working that would enable the Goods to be delivered at lower cost and/or with greater benefits to the Authority;
 - 11.1.3 identify, and provide its plans to implement changes to the business processes and ways of working that would enable reductions in the total energy consumed in the manufacture and delivery of the Goods; and/or
 - 11.1.4 identify, and provide its plans to implement any savings which could be made by the Authority where the volume of Goods ordered by the Authority increases materially over the course of any Contract Year.
- 11.2 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.
- 11.3 The Supplier shall at least once every 12 months:
- 11.3.1 conduct a full and comprehensive review of the Goods, and the Charges to demonstrate that they continue to be Value for Money to the Authority;
 - 11.3.2 conduct a full and comprehensive review of all standard operating procedures (including any quality assurance processes as further described in the Specification) in the manufacture and delivery of Goods;
 - 11.3.3 conduct validation testing for all Goods which shall test (without limitation) the accuracy and precision of test results in respect of all Drugs and any other tests that the Authority may reasonably require; and
 - 11.3.4 provide to the Authority full reports on the outputs of the review and testing activity required under Clause 11.3.3 along with any published scientific papers which support the design and manufacture for the Goods.
- 11.4 The Supplier shall at its own cost provide any reasonable support and materials as the Authority may require to enable the Authority to carry out its own validation and/or accuracy testing on the Goods from time to time.
- 11.5 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 11.6 In the event that any validation testing carried out by the Supplier in accordance with this Clause 11 or by the Authority further to Clause 11.4 reveal a Test Result Failure or
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otherwise reveals an inconsistency between the Test Result and the validation test result, then the Authority may conduct or require the Supplier to conduct additional validation testing in accordance with Clause 11.4.

- 11.7 In the event that any further validation testing carried out in accordance with Clause 11.4 reveals further Test Result Failures or inconsistency between the Test Result and the validation test result, then the Parties shall work together in good faith to determine the reason for the Test Result Failure (or any other inconsistency between the Test Result and validation test result from any Sample) and where the Authority reasonably determines that the Test Result Failure arises from a failure of the Goods to meet the Specification requirements the Parties shall follow the Rectification Plan Process.
- 11.8 The Supplier shall notify the Authority immediately (and in any event within 1 Working Day) on becoming aware of any breach of this Agreement, failure to deliver the Goods in accordance with the KPIs, or any event that may lead to such a breach of this Agreement or failure to deliver the Goods in accordance with the KPIs by the Supplier.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**12 FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 12.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the supply of Goods, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 12.2 Unless otherwise stated in the Order, the Charges shall:
- 12.2.1 be subject to any Deductions applied in accordance with Schedule 7.1;
 - 12.2.2 be the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and include, without limitation:
 - (a) packaging, packing, materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
 - (b) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier if any Intellectual Property Rights for the purposes of performing this Agreement and any licence rights granted to the Authority; and
 - (c) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.
- 12.3 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 11 (*Continuous Improvement and Validation*) 14 (*Records, Reports, Audits, Assurances and Open Book Data*), 21 (*Transparency and Freedom of Information*), 22 (*Protection of Personal Data*).

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

VAT

- 12.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 12.6 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 12.6 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 12.7 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 12.8 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 12.7, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Financial Distress

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

Promoting Tax Compliance

12.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

SECTION D – CONTRACT GOVERNANCE**13 GOVERNANCE**

- 13.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

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

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

- 14.1 The Supplier shall comply with the provisions of:
- 14.1.1 Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - 14.1.2 Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data (as defined in Schedule 7.5).

14.2 The Parties shall comply with the provisions of:

14.2.1 Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

14.2.2 Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

Assurance Visits

14.3 Without prejudice to any other audit rights of the Authority, the Authority, acting by itself or through its Audit Agents (which may include the Authority Quality Assurance Provider), shall have the right during the Term and for a period of eighteen (18) months thereafter to access the Supplier's Sites and those of its Key Sub-contractors to observe, assess and investigate the treatment, integrity and security of the Testing processes undertaken by the Supplier (or its Key Sub-contractors). The Supplier shall at no additional cost to the Authority provide all support, access, access to suitably qualified Personnel, and documentation as the Authority may reasonably require in the exercise of its rights under this Clause 14.3, subject to the Supplier's compliance with Data Protection Legislation.

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

15 CHANGE

Change Control Procedure

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

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

Change in Law

15.3 The Supplier shall neither be relieved of its obligations to supply the Goods in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

15.3.1 a General Change in Law; or

- 15.3.2 a Specific Change in Law where the effect of that Specific Change in Law on the provision and delivery of the Goods is reasonably foreseeable at the Effective Date.
- 15.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 15.3.2), the Supplier shall:
 - 15.4.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any Change is required to the Goods or the Specification, the Charges or this Agreement; and
 - 15.4.2 provide the Authority with evidence:
 - (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors; and
 - (b) as to how the Specific Change in Law has affected the cost of providing the Goods.
- 15.5 Any variation in the Charges shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**16 SUPPLIER PERSONNEL****16.1 The Supplier shall:**

- 16.1.1 Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 16.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to supply the Goods and deliver any training or helpdesk support with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Specification*) or such other vetting requirements of the Authority may notify from time to time; and
 - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises including any security requirements or policies of the Authority concerning conduct at the Authority Premises as notified to the Supplier from time to time;
- 16.1.3 retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority; and
- 16.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

Employment Indemnity**16.2 The Parties agree that:**

- 16.2.1 the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

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

Income Tax and National Insurance Contributions

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

17 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

- 17.1 The Supplier shall:
- 17.1.1 subject to Clauses 17.3 and 17.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods above a minimum threshold of £25,000 that arise during the Term;
 - 17.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - 17.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

- 17.1.4 provide reports on the information at Clause 17.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
- 17.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 17.2 Each advert referred to in Clause 17.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 17.3 The obligation at Clause 17.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 17.4 Notwithstanding Clause 17.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 17.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
 - 17.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 17.5.2 comply with its obligations under this Agreement in the delivery of the Goods; and
 - 17.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 17.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:
 - 17.6.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 17.6.2 the goods, services or materials to be provided by the proposed Sub-contractor; and
 - 17.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

17.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 17.6, the Supplier shall also provide:

- 17.7.1 a copy of the proposed Sub-contract;
- 17.7.2 details of the proposed Sub-contractor's quality management processes, lead times and contingency plans;
- 17.7.3 details of the procurement policy and evaluation undertaken in the proposed appointment of the Sub-contractor; and
- 17.7.4 any further information reasonably requested by the Authority.

17.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 17.6 (or, if later, receipt of any further information requested pursuant to Clause 17.7), object to the appointment of the relevant Sub-contractor if it considers that:

- 17.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Goods and/or may be contrary to the interests of the Authority;
- 17.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 17.8.3 the proposed Sub-contractor employs unfit persons; and/or
- 17.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 17.22;

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

17.9 If:

- 17.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (a) the Supplier's notice issued pursuant to Clause 17.6; and
 - (b) any further information requested by the Authority pursuant to Clause 17.7; and
- 17.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 17.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment.

Appointment of Key Sub-contractors

17.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- 17.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Goods or may be contrary to the interests of the Authority;
- 17.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable goods or services to its other customers; and/or
- 17.10.3 the proposed Key Sub-contractor employs unfit persons; and/or
- 17.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 17.22 (*Termination of sub-contracts*).

17.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Key Sub-contractors*).

17.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- 17.12.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 17.12.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- 17.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- 17.12.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;

- 17.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- (a) data protection requirements set out in Clauses 19 (*Authority Data and Security Requirements*) and 22 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 21 (*Transparency and Freedom of Information*);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 7.8.13 (*Supplier Covenants*);
 - (d) the keeping of records in respect of the Goods and or services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*).
- 17.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1 (*Termination by the Authority*);
- 17.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the goods or services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 17.12.8 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to procure replacement goods further to Clause 28 (*Replacement Goods*);
- 17.12.9 a provision requiring the Key Sub-contractor to participate in and, if required by the Authority in the relevant Multi-Party Procedure Initiation Notice, to procure the participation of all or any of its Sub-contractors in the Multi-Party Dispute Resolution Procedure; and
- 17.12.10 a provision requiring the Key Sub-contractor to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

- (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,
 - (iii) and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
- (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Goods, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

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

Supply chain protection

17.14 The Supplier shall ensure that all Sub-contracts (which in this Clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- 17.14.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- 17.14.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- 17.14.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 17.14.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 17.14.4 after a reasonable time has passed;
- 17.14.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not

exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

- 17.14.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 17.14.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 17.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

17.15 The Supplier shall:

- 17.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 17.15.2 report to the Authority on an annual basis as part of the Annual Performance Report (as set out in Schedule 8.4) a summary of its compliance with Clause 17.15.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

17.16 Without prejudice to Clause 17.15.1, the Supplier shall:

- 17.16.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 17.16.2 report to the Authority as part of its Annual Service Performance Report a summary of its compliance with Clause 17.16.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

17.17 If any reporting in accordance with this Clause 17 shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall within 15 Working Days of

submission of the latest Annual Service Performance Report submit to the Authority an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- 17.17.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - 17.17.2 actions to address each of the causes set out in Clause 17.17.1; and
 - 17.17.3 a mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 17.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is submitted to the Authority.
- 17.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 17.20 The Supplier shall comply with the Action Plan, or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 17.21 Notwithstanding any provision of Clauses 20 (*Confidentiality*) and 23 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in an Annual Performance Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

17.22 The Authority may require the Supplier to terminate:

17.22.1 a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.2.2 (*Termination by the Authority*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Goods or otherwise;
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 17.27; and

17.22.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:

- (a) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
- (b) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

17.23 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Goods, then the Authority may:

- 17.23.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

- 17.23.2 enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 17.24 If the Authority exercises either of its options pursuant to Clause 17.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 17.25 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 17.25.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods; and
 - 17.25.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 17.26 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 17, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Goods delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Goods.

Exclusion of Sub-contractors

- 17.27 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 17.27.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - 17.27.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

- 17.28 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.
- 17.29 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**18 INTELLECTUAL PROPERTY RIGHTS**

- 18.1 Except as expressly set out in this Agreement:
- 18.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors; and
 - 18.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.
- 18.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 18.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 18.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 18.4 Unless specified otherwise in the Order, 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 Agreement.
- 18.5 The Authority may sub-license the rights granted under Clause 18.4 to a third party provided that the sub-licence is on terms no broader than those granted to the Authority.
- 18.6 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 18.4 to a Central Government Body or to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 18.7 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

- 18.8 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 18.8.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 18.8.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (c) the terms and conditions of this Agreement shall apply to the replaced or modified Goods.
- 18.9 If the Supplier elects to procure a licence in accordance with Clause 18.8.1 or to modify or replace an item pursuant to Clause 18.8.2, but this has not avoided or resolved the IPRs Claim, then:
- 18.9.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - 18.9.2 without prejudice to the indemnity set out in Clause 18.7, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 19.1 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- 19.2 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor. If the Authority Data is corrupted or lost, the Supplier shall notify the Authority immediately and the Authority may require the Supplier (at the Supplier's expense) to take such steps as are necessary to restore the Authority Data, or do so itself and be repaid by the Supplier any reasonable expenses incurred in doing so.

- 19.3 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with any reasonable security requirements provided by the Authority to the Supplier from time to time.

20 CONFIDENTIALITY

- 20.1 For the purposes of this Clause 20, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 20.2 Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 20.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 20.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - 20.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 20.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 20.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 20.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 21 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - 20.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination

pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Goods provided under this Agreement; or

(c) the conduct of a Central Government Body review in respect of this Agreement; or

20.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

20.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

20.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

20.5.1 Supplier Personnel who are directly involved in the provision of the Goods and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;

20.5.2 its auditors; and

20.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 20.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

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

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

20.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- 20.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 20.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 20.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- 20.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including without limitation Exit Management rights; or
- 20.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 20.

- 20.7 Nothing in this Clause 20 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

21 TRANSPARENCY AND FREEDOM OF INFORMATION

- 21.1 The Parties acknowledge that:

- 21.1.1 the Transparency Reports;
- 21.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
 - (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (b) Commercially Sensitive Information; and
 - (c) the Publishable Performance Information

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

- 21.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 21.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (*Reports and Records Provisions*).
- 21.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 21.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 21.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Goods shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 20.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

- 21.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 21.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 21.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 21.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 21.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 21.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

22 PROTECTION OF PERSONAL DATA

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier may process Personal Data as a Processor on behalf of the Authority or a Prison, Approved Premises or Approved User as the Controller (the **Relevant Controller**).
- 22.2 Schedule 11 (*Processing Personal Data*) sets out the details of the Personal Data processing activities that may be carried out by the Supplier on behalf of the Relevant Controller. To the extent that the Supplier processes Personal Data on behalf of the Relevant Controller, the Supplier shall comply with this Clause 22. The term

"processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

Where one Party is Controller and the other Party its Processor

- 22.3 The only processing that the Supplier is authorised to do is listed in Schedule 11 (*Processing Personal Data*). The Supplier shall process the Personal Data only in accordance with Schedule 11 (*Processing Personal Data*) unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Relevant Controller before processing the Personal Data unless prohibited by Law.
- 22.4 The Supplier shall notify the Relevant Controller immediately if it considers that any of the Relevant Controller's instructions infringe the Data Protection Legislation.
- 22.5 The Supplier shall provide all reasonable assistance to the Relevant Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Relevant Controller, include assisting with the following tasks and/or providing the following information:
- 22.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 22.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 22.5.3 an assessment of the risks to the rights and freedoms of Data Subjects;
and
 - 22.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.6 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 22.6.1 ensure that it has in place Protective Measures, including the measures set out in Clause 19 (*Authority Data and Security Requirements*), which the Relevant Controller may reasonably reject (but failure to reject shall not amount to approval by the Relevant Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;

- (c) state of technological development; and
 - (d) cost of implementing any measures;
- 22.6.2 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11 (*Processing Personal Data*));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause, Clauses 20 (*Confidentiality*) and 19 (*Authority Data and Security Requirements*);
 - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Relevant Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 22.6.3 not transfer Personal Data outside of the United Kingdom, other than to the Relevant Controller, unless the prior written consent of the Relevant Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with the Data Protection Legislation;
 - (b) the Relevant Controller or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Relevant Controller;
 - (c) the Data Subject has enforceable rights and effective legal remedies;
 - (d) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal

Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Relevant Controller in meeting its obligations); and

- (e) the Supplier complies with any reasonable instructions notified to it in advance by the Relevant Controller with respect to the processing of the Personal Data; and
- (f) at the written direction of the Relevant Controller, delete or return Personal Data (and any copies of it) to the Relevant Controller on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

22.7 Subject to Clause 22.8, the Supplier shall notify the Relevant Controller immediately if it:

- 22.7.1 receives a Data Subject Request (or purported Data Subject Request);
- 22.7.2 receives a request to rectify, block or erase any Personal Data;
- 22.7.3 receives any other request, complaint or communication relating to either Party's obligations under Data Protection Legislation;
- 22.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- 22.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 22.7.6 becomes aware of a Data Loss Event.

22.8 The Supplier's obligation to notify under Clause 22.7 shall include the provision of further information to the Relevant Controller in phases, as details become available.

22.9 Taking into account the nature of the processing, the Supplier shall provide the Relevant Controller with full assistance in relation to the Relevant Controller's obligations under Data Protection Legislation any complaint, communication or request made under Clause 22.7 and any Data Loss Event (and insofar as possible within the timescales reasonably required by the Relevant Controller) including by promptly providing:

- 22.9.1 the Relevant Controller with full details and copies of the complaint, communication, or request;

- 22.9.2 such assistance as is reasonably requested by the Relevant Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 22.9.3 the Relevant Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 22.9.4 assistance as requested by the Relevant Controller following any Data Loss Event; and/or
 - 22.9.5 assistance as requested by the Relevant Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 22.10 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 22.10.1 the Relevant Controller determines that the processing is not occasional;
 - 22.10.2 the Relevant Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 22.10.3 the Controller determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 22.11 The Supplier shall allow for audits of its Data Processing activity by the Relevant Controller or the Relevant Controller's designated auditor.
- 22.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 22.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 22.13.1 notify the Relevant Controller in writing of the intended Sub-processor and processing;
 - 22.13.2 obtain the written consent of the Relevant Controller; and
 - 22.13.3 enter into a written agreement with the Sub-processor which contains terms substantially equivalent to those set out in this Clause 22 such that they apply to the Sub-processor;
-

- 22.13.4 provide the Relevant Controller with such information regarding the Sub-processor as the Relevant Controller may reasonably require.
- 22.14 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 22.15 The Supplier shall, in respect of any transfers of Personal Data outside of the United Kingdom that are authorised by the Relevant Controller in accordance with Clause 22.6.1(c), to the extent permitted by Law:
- 22.15.1 provide all reasonable assistance to the Relevant Controller to enable the Relevant Controller to carry out a transfer risk assessment in respect of such transfers if required to ensure compliance with the Data Protection Legislation;
- 22.15.2 notify the Relevant Controller immediately if it becomes aware of any change to the relevant country's data protection laws;
- 22.15.3 work with the Relevant Controller to implement any additional safeguards or supplementary measures reasonably requested by the Relevant Controller to ensure compliance with Data Protection Legislation;
- 22.15.4 notify the Relevant Controller immediately if it becomes aware of any request from a government or law enforcement agency (**Requesting Body**) in any third country for a copy of, or access to, Personal Data (a **Request**) and, in such circumstances:
- (a) inform the Requesting Body that Personal Data may not be disclosed to the Requesting Body without the Authority's consent; and
- 22.15.5 not provide a copy of or access to Personal Data, or allow a copy or access to be provided, in response to any Request without the Authority's prior written consent.
- 22.16 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 22.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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

23 PUBLICITY AND BRANDING

- 23.1 The Supplier shall not:

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

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

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

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

SECTION G – LIABILITY, INDEMNITIES, AND INSURANCE

24 LIMITATIONS ON LIABILITY

Unlimited liability

- 24.1 Neither Party limits its liability for:

24.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

24.1.2 fraud or fraudulent misrepresentation by it or its employees;

24.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

24.1.4 any liability to the extent it cannot be limited or excluded by Law.

- 24.2 The Supplier's liability in respect of the indemnities in Clause 12.6 (VAT), Clause 16.2 (*Employment Indemnity*), Clause 16.3 (*Income Tax and National Insurance Contributions*), Clause 18.7 (*IPRs Indemnity*), Clause 25 (*Indemnity*) shall be unlimited.

- 24.3 The Authority's liability in respect of the indemnities in Clause 16.2 (*Employment Indemnity*) shall be unlimited.

Financial and other limits

- 24.4 Subject to Clauses 24.1 and 24.2 (*Unlimited Liability*) and Clause 24.7 (*Consequential losses*):

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

24.4.2 the Supplier's aggregate liability in respect of:

- (a) loss or damage to Authority Data;
- (b) breach of the Data Protection Legislation,

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £3 million;

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

- (a) in relation to Defaults occurring during any Contract Year, an amount equal to 200% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the relevant Contract Year; and
- (b) in relation to Defaults occurring after the end of the Term, an amount equal to 200% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 24.4.3 have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 200% shall be deemed to be references to 300%.

- 24.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 24.4.3.

24.6 Subject to Clauses 24.1 and 24.3 (*Unlimited Liability*) and Clause 24.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

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

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

Consequential Losses

24.7 Subject to Clauses 24.1, 24.2 and 24.3 (*Unlimited Liability*) and Clause 24.8, neither Party shall be liable to the other Party for:

24.7.1 any indirect, special or consequential Loss; or

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

24.8 Notwithstanding Clause 24.7 but subject to Clause 24.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

24.8.2 any wasted expenditure or charges;

24.8.3 extra costs incurred purchasing replacement or alternative goods;

24.8.4 costs associated with advising, screening or retesting or otherwise providing healthcare to Test Recipients;

24.8.5 any costs associated with any claim brought by a third party or compensation or interest paid to a third party by the Authority; and

- 24.8.6 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;

25 INDEMNITY

- 25.1 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:

- 25.1.1 any injury or allegation of injury to any person, including injury resulting in death; and/or
- 25.1.2 any loss of or damage to property (whether real or personal); and
- 25.1.3 any breach of Clause 3.3.18 of this Agreement

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

Conduct of indemnity claims

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

Mitigation

- 25.1.5 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

26 INSURANCE

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

SECTION H – REMEDIES AND RELIEF**27 RECTIFICATION PLAN PROCESS**

27.1 In the event that:

- 27.1.1 there is, or is reasonably likely to be a Delay; and/or
- 27.1.2 in any Goods Delivery Period there has been:
 - (a) a Material KPI Failure; and/or
 - (b) a persistent Test Result Failure as further described in Clause 11.7; and/or
- 27.1.3 the Supplier commits a material Default of this Agreement or a material failure to meet the Authority Requirements that is capable of remedy (and for these purposes a material Default or failure may be a single material Default or failures or a number of Defaults or failures or repeated Defaults or failures (whether of the same or different obligations and regardless of whether such Defaults or failures are remedied) which taken together constitute a material Default or failure); and/or
- 27.1.4 there is any KPI Failure arising in respect of the same KPI two or more consecutive Goods Delivery Periods.,

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

Notification

27.2 If:

- 27.2.1 the Supplier notifies the Authority pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- 27.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

- 27.3 The "**Rectification Plan Process**" shall be as set out in Clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

- 27.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 27.5 The draft Rectification Plan shall set out:

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

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

Agreement of the Rectification Plan

- 27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- 27.7.1 is insufficiently detailed to be capable of proper evaluation;
- 27.7.2 will take too long to complete;
- 27.7.3 will not prevent reoccurrence of the Notifiable Default; and/or

- 27.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 27.9 If the Authority consents to the Rectification Plan:
- 27.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- 27.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default;
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.
- 27.10 The Parties shall meet and discuss the Supplier's performance against any Rectification Plan at the next Performance Management Meeting as defined in Schedule 8.1 (*Governance*).

28 REPLACEMENT GOODS

- 28.1 Where there is a Material KPI Failure, a persistent Test Result Failure as further described in Clause 11.7, a failure to deliver any of the Mobilisation Activity by the Commencement Date, a material Default or material failure to comply with the Authority Requirements, or a Rectification Plan Failure, then without prejudice to any other rights and remedies of the Authority (including any right to reject any Goods in accordance with Clause 7 or any rights to terminate this Agreement in accordance with Clause 31), the Authority may temporarily suspend the provision of the Goods under this Agreement, and may either itself or with the assistance of a third party (including any Key Sub-contractors of the Supplier) procure replacement goods until such time as the Supplier has demonstrated to the Authority's reasonable satisfaction that it is capable of delivering the Goods in accordance with the terms of this Agreement.
- 28.2 For the period of such suspension, the Authority shall be entitled to recover from the Supplier any additional costs incurred by the Authority in the procuring of such replacement goods.

29 AUTHORITY OBLIGATIONS

29.1 Notwithstanding any other provision of this Agreement, subject to the Supplier supplying the Goods in accordance with this Agreement the Authority shall:

- 29.1.1 pay the Supplier for the Goods in accordance with Clause 12 and Schedule 7.1 (*Charges and Invoicing*)
- 29.1.2 provide copies or give the Supplier access to any policies or other materials as are relevant to the supply and delivery of the Goods;
- 29.1.3 use reasonable endeavours to provide the Supplier with reasonable and proportionate co-operation necessary to enable the Supplier to comply with its obligations under this Agreement. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such co-operation necessary in circumstances where such co-operation will require the Authority to plan for and/or allocate specific resources in order to provide such co-operation; and
- 29.1.4 comply with its obligations in Clause 5.16.

30 FORCE MAJEURE

30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly prevented by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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

30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:

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

- 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by this Agreement; or
- 30.3.3 are the result of the Supplier's failure to comply with its Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Continuity Plan).
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 31.2.3 (*Termination by the Authority*) or Clause 31.4.2 (*Termination by the Supplier*); and
- (b) neither Party shall be liable for any Default arising as a result of such failure;
- 30.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
- (a) the Authority shall not be entitled to withhold any of the Charges or recover any additional costs in the procurement of replacement goods in accordance with Clause 27.2 to the extent that a KPI Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Goods (or part

of the Goods) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

- 30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 30.8 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 30.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT**31 TERMINATION RIGHTS****Termination by the Authority**

- 31.1 The Authority may terminate this Agreement for convenience at any time by giving the Supplier at least six (6) months written notice.
- 31.2 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:
- 31.2.1 where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU or any such replacement domestic law in place from time to time;
 - 31.2.2 if a Supplier Termination Event occurs;
 - 31.2.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
 - 31.2.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 31.3 Where the Authority:
- 31.3.1 is terminating this Agreement under Clause 31.2.2 due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
 - 31.3.2 has the right to terminate this Agreement under Clause 31.2.2 or Clause 31.2.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Goods which are materially affected by the relevant circumstances.

Termination by the Supplier

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

- 31.4.1 this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds **an amount equivalent to the Monthly Average Charges** and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- 31.4.2 the provision of any Goods that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Goods (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 31.4.2 would result in a Partial Termination, the provisions of Clause 31.5 (*Partial Termination*) shall apply.

Partial Termination

31.5 If the Supplier notifies the Authority pursuant to Clause 31.4.2 (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Goods incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 31.5, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

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

- 31.6.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Goods that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 31.6.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

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

32 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

32.1 The provisions of Clauses 12.5 and 12.6 (*VAT*), 12.7 and 12.8 (*Set-off and Withholding*), 14 (*Records, Reports, Audits, Assurance and Open Book Data*), 16.2 (*Employment Indemnity*), 16.3 (*Income Tax and National Insurance Contributions*), 18 (*Intellectual Property Rights*), 20 (*Confidentiality*), 21 (*Transparency and Freedom of Information*), 22 (*Protection of Personal Data*), 24 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), and 8.5 (*Exit Management*) shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

32.3 If this Agreement is terminated (in part or in whole), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

32.3.1 payments in respect of any Retained Stock or apportionments thereof in accordance with Schedule 8.5 (*Exit Management*); and

32.3.2 payments in respect of unpaid Charges for Goods received up until the Termination Date.

Payments by the Supplier

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

SECTION J – MISCELLANEOUS AND GOVERNING LAW**33 COMPLIANCE****Health and Safety**

33.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Goods) in accordance with:

33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Health and Safety Policy whilst at the Authority Premises.

33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

33.3 The Supplier shall:

33.3.1 perform its obligations under this Agreement (including those in relation to the Goods) in accordance with:

(a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) the Authority's equality and diversity policy as provided to the Supplier from time to time and provide evidence of its compliance upon reasonable request from the Authority; and

(c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

33.3.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

- 33.3.3 provide copies upon request of the Supplier's equality and diversity policy, and notify the Authority of any update to such policy

Modern Slavery

33.4 The Supplier shall, and procure that each of its Sub-contractors shall, comply with:

- 33.4.1 the Modern Slavery Act 2015 ("Slavery Act"); and
- 33.4.2 the Authority's anti-slavery policy as provided to the Supplier from time to time ("Anti-slavery Policy").

33.5 The Supplier shall:

- 33.5.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
- 33.5.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- 33.5.3 prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- 33.5.4 maintain a complete set of records to trace the supply chain of all Goods provided to the Authority regarding the Agreement; and
- 33.5.5 implement a system of training for its employees to ensure compliance with the Slavery Act.

33.6 The Supplier represents, warrants and undertakes throughout the Term that:

- 33.6.1 It conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;
- 33.6.2 Its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and

- 33.6.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it:
- (a) has been convicted of any offence involving slavery and trafficking; or
 - (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.
- 33.7 The Supplier shall notify the Authority as soon as it becomes aware or:
- 33.7.1 any breach, or potential breach, of the Anti-Slavery Policy; or
 - 33.7.2 any actual or suspected slavery or trafficking in a supply chain which relates to the Agreement.
- 33.8 If the Supplier notifies the Authority pursuant to Clause 33.7, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
- 33.9 If the Supplier is in Default under Clauses 33.5 or 33.6 the Authority may by notice:
- 33.9.1 require the Supplier to remove from performance of the Agreement any Sub-contractor or other persons associated with it whose acts or omissions have caused the Default; or
 - 33.9.2 immediately terminate the Agreement.

Environment and Sustainability

- 33.10 The Supplier shall at all times comply with the environmental and sustainability requirements set out in the Specification and in any Authority policy from time to time.

Official Secrets Act and Finance Act

- 33.11 The Supplier shall comply with the provisions of:
- 33.11.1 the Official Secrets Acts 1911 to 1989; and
 - 33.11.2 section 182 of the Finance Act 1989.

34 ASSIGNMENT AND NOVATION

- 34.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 34.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 34.2.1 any Central Government Body; or
 - 34.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,
- and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.
- 34.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 34.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

35 WAIVER AND CUMULATIVE REMEDIES

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

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

36 RELATIONSHIP OF THE PARTIES

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

37 PREVENTION OF FRAUD AND BRIBERY

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

- 37.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 37.3.3 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request; and
 - 37.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 37.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 14 (*Records, Reports, Audits, Assurances and Open Book Data*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:
- 37.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - 37.6.2 immediately terminate this Agreement.
-

- 37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

38 SEVERANCE

- 38.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 38.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 38.3.

39 FURTHER ASSURANCES

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

40 ENTIRE AGREEMENT

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

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

- 40.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 THIRD PARTY RIGHTS

- 41.1 The provisions of Clause 18.7 (*IPRs Indemnity*), and the provisions of Paragraph 6 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 41.2 Subject to Clause 41.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 41.4 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42 NOTICES

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

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

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

	Supplier	Authority
Contact	REDACTED	REDACTED
Address	REDACTED	REDACTED
Email	REDACTED	REDACTED

- 42.4 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (*Dispute Resolution Procedure*)).

43 DISPUTES

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

44 GOVERNING LAW AND JURISDICTION

- 44.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 44.2 Subject to Clause 43 (*Disputes*) and Schedule 8.3 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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

SIGNED for and on behalf of Eurofins

Forensic Services Limited)

by a director:)

)

)

Signature: **REDACTED**

Name (block capitals): **REDACTED**

Director

SIGNED for and on behalf of)

Ministry of Justice)

)

)

Signature: **REDACTED**

Name (block capitals): **REDACTED**

Position: **REDACTED**

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 1

DEFINITIONS

Definitions

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

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

produce a proforma figure for a 12 month period; and

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

“Approve”

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

“Approved Premises”

means the establishments further described at Probation Finder – GOV.UK (www.gov.uk) as updated from time to time;

“Approved User”

means any body which the Authority notifies to the Supplier from time to time may wish to directly enter into agreements for the provision of Goods with the Supplier which at the date of this Agreement shall include any Private Prison;

“Associated Person”

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

“Associates”

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

“Assurance”

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

“Audit”

means any exercise by the Authority of its Audit Rights pursuant to Clause 14 (*Records, Reports,*

Audits, Assurance and Open Book Data) and
Schedule 7.5 (*Financial Reports and Audit Rights*);

“Audit Agents”

means:

- (c) the Authority’s internal and external auditors;
- (d) the Authority’s statutory or regulatory auditors;
- (e) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (f) HM Treasury or the Cabinet Office;
- (g) any Authority Quality Assurance Provider;
- (h) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (i) successors or assigns of any of the above;

“Audit Rights”

means the audit and access rights referred to in
Schedule 7.5 (*Financial Reports and Audit Rights*);

“Authority Data”

means:

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

“Authority Financial Year”

means the consecutive twelve (12) month period
from the beginning of 1 April of one calendar year

to the end of 31 March of the following calendar year;

“Authority Premises”

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

“Authority Quality Assurance Provider”

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

“Authority Requirements”

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

“Board”

means the Supplier’s board of directors;

“Board Confirmation”

means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (*Financial Distress*);

“Cabinet Office Markets and Suppliers Team”

means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

“CE Marking”

means a marking of the letters ‘C’ and ‘E’, or such updated conformity marking as is adopted by the UK from time to time, by which the manufacturer indicates that the Goods are in conformity with all legal requirements to achieve a CE Marking and “CE” shall be construed accordingly;

“Central Government Body”

means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as

published and amended from time to time by the Office for National Statistics:

- (l) Government Department;
- (m) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (n) Non-Ministerial Department; or
- (o) Executive Agency;

“Change”

means any change to this Agreement;

“Change Authorisation Note”

means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (*Change Control Procedure*);

“Change Control Procedure”

means the procedure for changing this Agreement set out in Schedule 8.2 (*Change Control Procedure*);

“Change in Law”

means any change in Law which impacts on the provision of the Goods which comes into force after the Effective Date;

“Change Request”

means a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (*Change Control Procedure*);

“Charges”

means the charges for the provision of the Goods (and any ancillary services) set out in or otherwise calculated in accordance with Schedule 7.1 (*Charges and Invoicing*);

“Class 1 Transaction”

has the meaning set out in the listing rules issued by the UK Listing Authority;

“CNI”

means Critical National Infrastructure;

“Commencement Date”	means [16 July 2025] or such other date as agreed between the Parties in the event that the Mobilisation Period is extended;
“Commercially Sensitive Information”	<p>means the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (p) the pricing of the Goods; (q) details of the Supplier’s IPRs; and (r) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Complaints”	means communication of any issue, Incident, service failure or grievance by the Authority and/or an Approved User or their employees which the Authority and/or an Approved User or their employees come across as part of its receipt of the Goods and/or any ancillary services where the provision of such Goods and/or services deviates from the terms of the Agreement;
“Condition Precedent”	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);
“Confidential Information”	<p>means:</p> <ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property

rights, trade secrets, know-how
and/or personnel of the Disclosing
Party Group;

- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;

- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (A) performance under this Agreement; or
 - (B) failure to pay any Sub-contractor as required pursuant to Clause 17.14 (*Supply Chain Protection*);

“Continuity Plan” means any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (*Continuity Plan and Corporate Resolution Planning*) as may be amended from time to time;

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

“Contract Finder” means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;

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

“Contract Year” means:

- (e) the period commencing on the Effective Date until 31st March 2026 (the first Contract Year); or
- (f) the period 1st April 2026 until 31st March 2027 (the second Contract Year); or
- (g) thereafter a period of 12 months commencing on each anniversary of the 1 April 2025;

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

“Control” means the possession by person, directly or indirectly, of the power to direct or cause the

direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Controller”

has the meaning given in the UK GDPR;

“Corporate Change Event”

means:

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

- (o) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (p) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (q) any process or events with an effect analogous to those in paragraphs (l) to (n) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Resolution Planning Information”

means, together, the:

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

“Credit Note”

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

“Critical National Infrastructure”

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

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

- (u) significant impact on the national security, national defence, or the functioning of the UK;

“Critical Performance Failure”

means:

- (v) the Supplier accruing in aggregate **10** or more Service Points (in terms of the number of points allocated) in any period of 12 months; and/or
- (w) save where otherwise agreed between the Parties, a delay in Delivery of the Goods in excess of 20 Working Days from the initial Delivery Date specified in an Order or determined in accordance with Clause 5.12.2;

“CRP Information”

means the Corporate Resolution Planning Information;

“CRTPA”

means the Contracts (Rights of Third Parties) Act 1999;

“Cut-Off Level”

means the level (measured in nanograms per ml (or such other unit as may be set out in the Supplier Solution) of any Drug to be present in a Sample to deliver a positive test result and as further defined in the European Guidelines for Workplace Drug Testing. The Cut-Off Levels for each of the Drugs shall be as set out in the Supplier Solution;

“Data Loss Event”

means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

“Data Protection Impact Assessment”

means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation”	<p>means, to the extent applicable:</p> <ul style="list-style-type: none"> (x) the EU GDPR, the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time; (y) the DPA to the extent that it relates to processing of personal data and privacy; and (z) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data or any other request made by or on behalf of a Data Subject in relation to Personal Data processed about that Data Subject;
“Deductions”	means any deduction which is paid or payable to the Authority under this Agreement;
“Default”	<p>means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (aa) in the case of the Authority, of its employees, servants, agents; or (bb) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Defect”	<p>means:</p> <ul style="list-style-type: none"> (cc) any error, damage or defect in the manufacturing of the Goods; or

- (dd) any failure of the Goods to provide the performance, features and functionality specified in the Agreement, the Authority Requirements, the Supplier Solution or the Documentation (including any adverse effect on response times);

“Defective Goods”

has the meaning given in Clause 7.6 (*Inspection, Rejection, Returns and Recall*);

“Delay”

means:

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of the Goods by the relevant date set out in the Agreed Transition Management Plan;

“Delay Payment”

means the payment due and payable by the Supplier in accordance with Schedule 7.1, in circumstances described at Clause 5.15.2;

“Delivery”

means the delivery of the Goods in accordance with Clauses 5.15 - 5.20 and **“Deliver”** and **“Delivered”** shall be construed accordingly;

“Delivery Date”

means the delivery date specified on the Order for Goods, or where no such delivery date is so specified shall be a date no later than 5 Working Days after the date of the Order;

“Delivery Locations”

means any one of the nominated locations as set out on the Effective Date in Paragraph 10 of Schedule 2.1 (*Specification*) and such list is updated from time to time by the Authority and notified to the Supplier.

“Dependent Parent Undertaking”

means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial,

trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Goods in accordance with the terms of this Agreement;

“Disclosing Party”

has the meaning given in Clause 20.1 (*Confidentiality*);

“Disclosing Party Group”

means:

- (ee) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (ff) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;

“Dispute”

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

“Dispute Notice”

means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute, to contain the detail as set out in paragraph 2.2 of Schedule 8.3 (*Dispute Resolution Procedure*);

“Dispute Resolution Procedure”

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

“Documentation”

means detailed specification, descriptions, design and technical information, user manuals, instructions for use relating to the Goods and all such other documentation as:

- (gg) is required to be supplied by the Supplier to the Authority under this Agreement;
- (hh) would reasonably be required by a competent person to administer tests using the Test Devices or otherwise use the Goods;
- (ii) has been or shall be generated for the purpose of providing the Goods;

“DOTAS”

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA”

means the Data Protection Act 2018;

“Drugs”

means any of the drugs listed in the Drugs Panel;

“Drugs Change”

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

“Drugs Panel”

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

“Due Diligence Information”

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

“Effective Date”

means the later of:

(jj) the date on which this Agreement is signed by both Parties; and

(kk) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

“EIRs”

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

“Employee Liabilities”

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

(ll) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(mm) unfair, wrongful or constructive dismissal compensation;

(nn) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

- (oo) compensation for less favourable treatment of part-time workers or fixed term employees;
- (pp) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (qq) employment claims whether in tort, contract or statute or otherwise;
- (rr) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“End Users”

means any persons in receipt of the Goods and/or administering the Tests using the Test Devices;

“EU GDPR”

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

“Euro Compliant”

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

- (ss) be able to perform all such functions in any number of currencies and/or in euros;
- (tt) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the

relevant part(s) of the UK, dual denominations;

- (uu) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
- (vv) incorporate protocols for dealing with rounding and currency conversion;
- (ww) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (xx) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

“Exit Management”

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

“Exit Plan”

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

“Expedited Dispute Timetable”

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

“Expert”

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

“Expert Determination”

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

“Extension Period”	means a period or periods each of not less than 12 months up to a total maximum of 24 months from the end of the Initial Term;
“Financial Distress Event”	means the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Remediation Plan”	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Goods in accordance with this Agreement in the event that a Financial Distress Event occurs;
“Financial Model”	has the meaning given to it in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the

	Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Forecast Threshold"	means the level of Goods forecasted by the Authority in any Goods Delivery Period in accordance with Clause 5, plus 20%;
"General Anti-Abuse Rule"	means: <ul style="list-style-type: none"> (yy) the legislation in Part 5 of the Finance Act 2013; and (zz) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods Delivery Period"	means a Quarter, save that: <ul style="list-style-type: none"> (aaa) the first goods delivery period shall begin on the Commencement Date and shall expire at the end of the Quarter in which the Commencement Date falls; and (bbb) the final goods delivery period shall commence on the first day of the Quarter in which the Term expires or terminates and shall end on the expiry or termination of the Term;
"Good Industry Practice"	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of goods similar to the Goods to a customer like the Authority, such supplier seeking to comply with its

contractual obligations in full and complying with applicable Laws and Guidance;

“Goods”

means any goods to be provided by the Supplier to the Authority meeting the requirements of the Specification (including without limitation any Test Devices) together with any Documentation;

“Group Structure Information and Resolution Commentary”

means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 1 of Part B of Schedule 8.6 (*Continuity Plan and Corporate Resolution Planning*);

“Guarantee”

means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (*Guarantee*)), or any guarantee acceptable to the Authority that replaces it from time to time;

“Guarantor”

Eurofins Forensics Lux Holding SARL a company incorporated under the laws of Grand-Duchy of Luxembourg 23, Val Fleuri L-1526 Luxembourg, registered with the Registre de Commerce et des Sociétés (RCS) of Luxembourg under number B154225 represented by Florian Heupel (Director, Chairman of the Board of Directors) and Ludovic Vilain (Director);

“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 any applicable regulator or competent body;

“Halifax Abuse Principle”

means the principle explained in the CJEU Case C-255/02 Halifax and others;

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

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

(hhh) where that person is a company, a LLP or a partnership:

- (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
- (iii) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Intellectual Property Rights” or “IPRs” means:

- (jjj) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and

website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

- (kkk) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (III) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPRs Claim”

means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any IPRs, , in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Specification or the provisions of this Agreement;

“Key Performance Indicator”

means the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 2.2 (*Performance Levels*);

“Key Sub-contractor”

means any Sub-contractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of the Goods; and/or
- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

“Know-How”

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the

	Goods but excluding know how already in the other Party's possession before this Agreement;
"KPI Failure"	means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"KPI Performance Threshold"	means as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
"Law"	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"LED"	means the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
"Losses"	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Low Volume"	means the volume of the Goods in any Contract Year that would attract Rates applicable to such low volumes as set out in Annex B of the Specification;
"Management Information"	means the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7 (<i>Charges and Invoicing</i>) and Schedule 8 (<i>Governance</i>) to be provided by the Supplier to the Authority;
"Material KPI Failure"	means: <ul style="list-style-type: none"> (c) a Serious KPI Failure;

- (d) a Severe KPI Failure; or
- (e) a failure by the Supplier to meet a KPI Service Threshold;

“Measurement Period”	means, in relation to a Key Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Goods Delivery Period if measured Quarterly or a 12-month period if measured annually etc.);
“Medium Volume”	means the volume of Goods in any Contract Year that would attract the Rates applicable to such medium volumes as set out in Annex B of the Specification;
“Milestone”	means an event or task described in the Agreed Mobilisation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Date”	means the target date set out against the relevant Milestone in the Agreed Mobilisation Plan by which the Milestone must be Achieved;
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Mobilisation Activity”	means the mobilisation activity further described in the Agreed Mobilisation Plan and Supplier Tender to be delivered in accordance with the Agreed Mobilisation Plan;
“Mobilisation Costs”	means the Charges payable in relation to the delivery of the Agreed Mobilisation Plan calculated in accordance with [paragraph X of Schedule 7.1 (<i>Charges and Invoicing</i>)];
“Mobilisation Period”	means the period from the Effective Date to the Commencement Date (or such other date Approved by the Authority upon which the final Milestone is

Achieved in line with the Agreement Mobilisation Plan);

“Month”	means a calendar month and “ monthly ” shall be interpreted accordingly;
“Monthly Average Charge”	means the average of the first Contract Year charges (as set out in the Financial Model submitted with the Supplier Tender) and thereafter shall be the average of the contract value incurred in the immediately preceding 12 months for each subsequent Contract Year;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Notifiable Default”	shall have the meaning given in Clause 27.1 (<i>Rectification Plan Process</i>);
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none">(f) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:<ul style="list-style-type: none">(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been,

notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

- (g) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

“Operating Environment”

means the Authority Site, Authority System, Equipment and operational processes and procedures of the Authority;

“Operational Change”

means any change in the Supplier's operational procedures which in all respects, when implemented:

- (h) will not affect the Charges and will not result in any other costs to the Authority;
- (i) may change the way in which the Goods are delivered but will not adversely affect the performance of the Goods or increase the risks in receiving and using the Goods; and
- (j) will not require a change to this Agreement;

“Operational Contract Manager”

means the individuals appointed as such by the Authority and the Supplier in accordance with Clauses 13.2 – 13.5 (*Representatives*);

“Order”

means an order for the purchase of Goods issued from time to time by the Authority in accordance with Clause 5.11 (Order Process);

“Other Supplier”

means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

“Outline Mobilisation Plan”

means the outline mobilisation plan set out in Schedule 4.1 (Supplier Solution);

“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Goods as further provided for in Clause 31.5 or 31.6 or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR;
“Personal Data Breach”	has the meaning given in the UK GDPR;
“Policies”	means any Authority policies in place from time to time available on https://www.gov.uk/government/organisations/her-majestys-prison-and-probation-service or otherwise notified to the Supplier from time to time.
“Prison(s)”	shall have the meaning given to it in the Specification;
“Private Prison(s) or Privately Managed Prisons”	means prisons which are operated by Private Suppliers, under Contract to the Ministry of Justice and are Contract Managed by HMPPS;
“Processor”	has the meaning given to it under the UK GDPR;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Supplier and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
“Prohibited Act”	means:

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

“Protective Measures”

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and

	evaluating the effectiveness of the such measures adopted by it;
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of Schedule 8.6 (<i>Continuity Plan and Corporate Resolution Planning</i>);
“Public Sector Prison”	shall have the meaning given to it in the Specification;
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Key Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;
“Quarter”	means the first three months of the Term and each subsequent three month period of the Term (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
“Rates”	means the rates of Charges applicable to the relevant Volumes as set out in Annex 1 of Schedule 7.1;
“Rebate”	means the discount applied to the Charges (and calculated in accordance with paragraph 3.4 of Schedule 7.1) which reflects the applicable Rates in relation to the actual Volumes incurred in a Contract Year;
“Recipient”	has the meaning given in Clause 20.1 (<i>Confidentiality</i>);

“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<p>means:</p> <ul style="list-style-type: none"> (o) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Agreement of the Rectification Plan</i>); (p) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (<i>Agreement of the Rectification Plan</i>); (q) the Supplier failing to rectify a material Default or a material failure to otherwise comply with the Authority Requirements within the later of: <ul style="list-style-type: none"> (i) 30 Working Days of a notification made pursuant to Clause 27.2 (<i>Notification</i>); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default (or where no such date is specified by the new Performance Management Meeting); (r) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in

	which the initial Material KPI Failure occurred;
	(s) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
“Rectification Plan Process”	means the process set out in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) to 27.9 (<i>Agreement of the Rectification Plan</i>);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Reimbursable Expenses”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Rejected Goods”	shall have the meaning given in Clause 7.2 (<i>Inspection, Rejection, Returns and Recalls</i>);
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Replacement Goods”	means any goods which are the same as or substantially similar to any of the Goods and which the Authority receives in substitution for any of the Goods following the expiry or termination or Partial Termination of this Agreement, whether those

	goods are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	means any third party provider of Replacement Goods appointed by the Authority from time to time (or where the Authority is providing replacement goods for its own account, the Authority);
“Retained Stock”	has the meaning given to it in Clause 5.9;
“Request For Information”	means a Request for Information under the FOIA or the EIRs;
“Requirement to Recall”	shall have the meaning given in Clause 7.7 (<i>Inspection, Rejection, Returns and Recall</i>);
“Sample”	means any urine or other sample provided by a Test Recipient for the purposes of conducting a Test;
“Security Management Plan”	means the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (<i>Security Management</i>) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 2.4 (<i>Security Management</i>);
“Senior Business Owner”	means the duly authorised senior representative of the Authority appointed from time to time;
“Service Points”	means, in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Severe KPI Failure”	shall have the meaning set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 2.2 (<i>Performance Levels</i>);
“Sites”	means any premises (including the Authority Premises, the Supplier’s premises or third party premises):

- (t) from, to or at which:
 - (i) the Goods are (or are to be) provided; or
 - (ii) the Supplier manages, organises or otherwise directs the manufacture, packaging or delivery of the Goods.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Social Value” means the social, economic or environmental benefits set out in the Authority’s Requirements;

“Specification” means the descriptions of the goods and any ancillary services set out in Schedule 2.1 (*Specification*);

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

“Standards” means the standards, policies and/or procedures identified in Schedule 2.3 (*Standards*);

“Strategic Supplier” means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

“Sub-contract” means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Goods or facilities or services or components which are material for the provision of the Goods or any part thereof;

“Sub-contractor”	means any third party with whom: (u) the Supplier enters into a Sub-contract; or (v) a third party under (u) above enters into a Sub-contract, or the servants or agents of that third party;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 34.4 (<i>Assignment and Novation</i>);
“Supplier Contract Liaison”	means the individual appointed by the Supplier pursuant to Clause 13.4 (<i>Representatives</i>) who at the Effective Date shall be the person named in Schedule 8.1 (Governance);
“Supplier Equipment”	means the hardware, computer, design, manufacturing, packaging or delivery equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision and delivery of the Goods;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);

“Supplier Profit Margin”	Has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Solution”	means the Supplier's solution for the provision of the Goods set out in Schedule 4 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier Tender”	means the Supplier’s tender response to the Authority’s advertisement on the Find a Tender service as further described in the Introduction to this Agreement (which includes without limitation the Supplier Solution and the Financial Model);
“Supplier Termination Event”	<p>means:</p> <ul style="list-style-type: none"> (w) the Supplier’s level of performance constituting a Critical Performance Failure; (x) the Supplier committing a material Default which is irremediable; (y) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 24.4.3 (<i>Financial and other Limits</i>); (z) a Rectification Plan Failure; (aa) where a right of termination is expressly reserved in this Agreement, including pursuant to: <ul style="list-style-type: none"> (i) Clause 18.7 (<i>IPRs Indemnity</i>); (ii) Clause 37 (<i>Prevention of Fraud and Bribery</i>); and/or (iii) Paragraph 6 of Schedule 7.4 (<i>Financial Distress</i>); (iv) Part B of Schedule 8.6 (<i>Continuity Plan and Corporate Resolution Planning</i>);

- (bb) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (*Warranties*) being materially untrue or misleading;
- (cc) the Supplier committing a material Default under Clause 12.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 12.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (dd) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 22 (*Protection of Personal Data*);
 - (ii) Clause (*Transparency and Freedom of Information*);
 - (iii) Clause 20 (*Confidentiality*); and
 - (iv) Clause 33 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2.1 (*Specification*), or otherwise notified to the Supply by the Authority; and/or
- (ee) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (ff) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (gg) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which

the Authority was given notice of the Change of Control;

- (hh) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 17.10 (*Appointment of Key Sub-contractors*);
- (ii) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;
- (jj) a failure by the Supplier to comply in the provision of the Goods with legal obligations in the fields of environmental, social or labour law; or
- (kk) a suspension of orders in accordance with Clause 28 of this Agreement (*Replacement Goods*) continues for a period of more than 3 months;

“Supply Chain Transparency Report”

means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.4 (*Reports and Records Provisions*);

“Target Performance Level”

means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (*Performance Levels*);

“Term”

means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	means, in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Goods as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
“Termination Notice”	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Test”	means a test administered by an End User to identify the presence of Drugs in a Sample using the Test Devices (and “Testing” shall be construed accordingly);
“Test Devices”	means those Goods comprising testing devices for the identification of Drugs within a Sample and any other consumables necessary to complete the Drug Test including without limitation any swabs, sample pots, tamper strips and any necessary guidance or instructions;
“Test Recipient”	means any prisoner or other individual who provides a Sample for the purposes of a Test;
“Test Report”	means a report prepared by the Supplier in the form stipulated by the Authority detailing the Test, Test Result and any further information as may be reasonably requested by the Authority from time to time;

“Test Result”	means the result of the Test of a Sample;
“Test Result Failure”	means a failure of the Goods during a validation exercise to identify a Drug in a Sample containing not less than the Cut-Off Level of such Drug at the time of Testing, based on the processes, procedures and designs for such Test as set out in the Supplier Solution;
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party Provisions”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Transferring Retained Stock”	has the meaning given in Paragraph 7.3.2 of Schedule 8.5 (<i>Exit Management</i>);
“Transparency Information”	has the meaning given in Clause 21.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“UK”	means the United Kingdom;
“UK GDPR”	has the meaning given to it in section 3(10) of the DPA, as supplemented by section 205(4) of the DPA;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Annex 2 of Part B of

Schedule 8.6 (*Continuity Plan and Corporate Resolution Planning*);

“Unconnected Sub-contract”	means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	means any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Valid”	means, in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part B to Schedule 8.6 (<i>Continuity Plan and Corporate Resolution Planning</i>);
“Value for Money”	<p>has the meaning given to it by the National Audit Office at the following link Assessing value for money- (nao.org.uk) (as updated or amended from time to time) namely:</p> <ul style="list-style-type: none">• Economy – minimising the cost of resources used or required (inputs) i.e. spending less;• Efficiency – the relationship between the output from goods or services and the resources to produce them must be efficient i.e. spending well; and• Effectiveness – the relationship between the intended and actual results of public spending (outcomes) must be effective i.e. spending wisely; as well as <p>Equity – the extent to which services are available to and reach all people that they are intended to i.e. spending fairly.</p>
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994;

“VCSE”

means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

“Volumes”

means the actual volumes of Goods and Services ordered by the Authority in any given Service Period during each Contract Year;

“Working Day”

means any day other than a Saturday, Sunday or public holiday in England and Wales.

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 2.1

SPECIFICATION

SPECIFICATION OF REQUIREMENTS:

Point of Care Testing Products and Associated Services

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Part 1 – Introduction

1 Definitions

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

Agreement	means the contract between the Authority and the Supplier for the provision of the Goods and Services
Approved Premises (Aps)	means the establishments further described at: Probation Finder – GOV.UK (www.gov.uk) as updated from time to time
Approved User	means any person or body which the Authority authorises and notifies to the Supplier to place orders with and take the benefit of this Agreement, which at the date of the Agreement shall include any Privately Managed Prison
Authority	means the Ministry of Justice
NDC Branston	means the Authority's warehouse facility as further described in Section 10 Logistics below
Complaint/Incident	means the communication of any issue, incident service failure or grievance by the Authority and/or an Approved User or their employees which the Authority and/or an Approved User or their employees come across as part of its receipt of the Goods and/or Services where the provision of such Goods and/or Services deviates from the terms of the Agreement
Cut-off Level	means the level (measured in nanograms per ml (or such other unit as may be set out in the Supplier Solution) at or above a drug/metabolite of a drug is detected to determine a Test Result is positive, to the standard of proof required for the relevant

testing scenario. Cut-off Levels are further defined in the European Guidelines for Workplace Drug Testing. The Cut-off Levels for each of the Drugs and testing methods shall be as set out in the Supplier Solution

Delivery Location

means the nominated location(s) as set out on the Commencement Date in Section 10 of this Specification, as updated from time to time by the Authority and notified to the Supplier

Drugs Panel

means the panel of Drugs listed within Annex A to this Specification, as the same may be updated from time to time in accordance with Paragraph 10 of Schedule 8.2 (*Change Control Procedure*)

Drug Recovery Wing

specialised wings in prisons to address drug addiction, including through promotion of abstinence

FRT

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

Goods

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

HMPPS

His Majesty's Prison and Probation Service (HMPPS) is an executive agency, sponsored by the [Ministry of Justice](#). HMPPS carry out sentences given by the courts, in custody and the community, and rehabilitate people in their care through education and employment.

HMPPS is an executive agency, sponsored by the Ministry of Justice

IAPs	Independent Approved Premises (IAPs) are APs operated by Private Suppliers, under contract to the Ministry of Justice
Incentivised Substance Free Living (ISFL)	areas within Prisons that allow prisoners who demonstrate, through regular voluntary testing, that they are not misusing Drugs to experience better living conditions
Operator/User	means the HMPPS member of staff collecting the sample to be tested
Prison	means all establishments listed and updated here . Some elements of this Specification apply equally to both publicly and Privately Managed Prisons, without differentiation
Private Suppliers	a private sector Supplier, charity or other operating entity providing a service to the Authority under contract
Privately Managed Prisons	means Prisons which are operated by Private Suppliers, under contract to the Authority
Point of Care Testing (POCT)	means testing to allow HMPPS staff to undertake effective screening of a person's potential drug use, using a single device at the point of care or contact with a person
Public Sector Prisons	means Prisons which are operated by the Authority
Sample	means any urine or oral fluid sample provided by a Test Recipient for the purposes of conducting a Test
Services	means any and all of the services to be provided by the Supplier under the Agreement, including those set out in this Specification

Specification	means this document setting out the detail of the Goods and Services
SOPs	standard operating procedures
Supplier	means the organisation who provides the Goods and Services under the Agreement
Supplier Solution	means the Supplier's solution for the provision of the Goods set out in Schedule 4.1 (Supplier Solution) including any Annexes of that Schedule
Tender Process	means the procurement procedure conducted by the Authority for the provision of the Goods and Services set out in this Specification
Tender Response	means a Bidder's response to the Tender Process
Test	means a test administered by an End User to identify the presence of Drugs in a Sample using the Test Devices (and “Testing” shall be construed accordingly)
Test Devices	means those Goods comprising testing devices for the identification of Drugs within a Sample and any other consumables necessary to complete the Drug Test including without limitation any swabs, sample pots, tamper strips and any necessary guidance or instructions
Test Recipient	means any offender or other individual who provides a Sample for the purposes of a Test

2 Scope of Specification

- 2.1 The scope of this Specification will cover testing for Drugs of abuse across HMPPS settings as detailed throughout this Specification.

- 2.2 The POCT equipment solution finalised throughout the Tender Process will also form the scope of the Goods and Services provided under the Agreement (the **Scope**).
- 2.3 The Scope is accurate at the time of publication of this Specification. However, the Authority reserves the right to change the Scope of the Agreement throughout the Term in accordance with the terms of the Agreement.
- 2.4 Any future amendments to the Scope must be undertaken in line with the Change Control Procedure.

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

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

4 Drug Testing in HMPPS

- 4.1 Drug Testing is a key strategic tool in tackling substance misuse in both custody and the community. The Testing of prisoners and people on probation for illicit use of substances are long standing instruments used to measure the prevalence of drug use within the criminal justice system and to help manage risk of harm and reoffending.
- 4.2 Drug Testing is also used as a tool in instigating therapeutic and rehabilitative interventions. This is often undertaken under a voluntary agreement with individuals.
- 4.3 Whilst the expectation is that the Scope of these requirements may evolve with changing legislation and operational requirements during the Term, the current necessary Drug Testing scenario for this Agreement is Voluntary Drug Testing (VDT) using oral fluid POCT.

Part 2 – Drug Testing in Prisons

5 Background and Introduction

- 5.1 As of April 2023, there are 122 Prisons in England and Wales; 107 Public Sector Prisons and 15 Privately Managed Prisons, with a total Prison population of around 84,000. The Authority intends to deliver 15,000 additional Prison places by 2027.
- 5.2 Substance misuse threatens the stability of Prisons, and results in greater incidence of violence, abuse and debt. The types of substances that are being misused within the offender population are changing rapidly. Drug Testing is a key tool for enabling the Authority to understand and respond to the changing nature of substance use within Prisons.
- 5.3 The Authority requires a service in place which delivers:
- 5.3.1 the ability to carry out Testing, to a high degree of sensitivity (as demonstrated by Cut-Off Levels), for a range of drugs;
 - 5.3.2 the ability to demonstrate innovative methods and practices to enhance the efficiency of Drug Testing and future-proof services;
 - 5.3.3 the ability to, where feasible, amend the products available and/or the panel of Drugs identified by Testing, to include but not limited to:
 - (a) any drug classified under the Misuse of Drugs Act 1971
 - (b) pharmacy and prescription medications; and
 - (c) psychoactive substances,
 - 5.3.4 the ability to provide a service that is highly flexible to both the operational needs of the Authority and changes in drug use trends and legislative requirements; and
 - 5.3.5 the ability to test for new and emerging substances, determined by substance misuse within Prisons.
- 5.4 The key scenario for Drug Testing in Prisons which are required by this Agreement is Voluntary Drug Testing (VDT).
- 5.5 The Authority intends to undertake an evidence review of drug testing programmes across prison and probation settings during the lifespan of this Agreement. This review will establish the extent to which drug testing supports the aims of "From Harm to Hope"¹, the Government's 10-year drug strategy. As such, Testing Volumes will be monitored throughout the lifetime of the Agreement. Volume forecasts will be provided by the Authority on a quarterly basis to assist planning.

¹ <https://www.gov.uk/government/publications/from-harm-to-hope-a-10-year-drugs-plan-to-cut-crime-and-save-lives>
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- 5.6 VDT is used to manage operational risks within prison regimes, including as part of Incentivised Substance Free Living (ISFL) units and Drug Recovery Wings (DRW), which aim to provide support and positive reinforcement to prisoners to support them becoming and/or remaining drug free.
- 5.7 It is expected that all Prisons in England and Wales will carry out VDT. As such, all prison sites must have access to any equipment, consumables or other items that are necessary for the POCT testing method proposed.
- 5.8 Engaging in VDT programmes involves prisoners agreeing to a set of rules, including submitting to drug testing on a regular basis. The prior consent of prisoners is obtained before VDT is carried out, and results are not used for evidential purposes.
- 5.9 The speed in which test results can be produced is key to the effectiveness of VDT programmes. Results must be obtained within 20 minutes or less of the test being administered.

Part 3 – General Product (Goods) and Service Requirements

6 Summary of Requirements

- 6.1 Table 1 summarises the Goods required under this Agreement for POCT oral fluid testing.
- 6.2 The Goods supplied as part of this Agreement must satisfy all requirements with a single Test Device.
- 6.3 A summary of expected Test Volumes has been provided in Annex B. These figures are estimates and are subject to variation in line with factors beyond the Authority's control. All Volume data provided is for illustrative purposes only and should be treated as best estimates at the time of publication of this Specification.

Table 1		
Test Type	Location	Public Sector Prisons Privately Managed Prisons (PMPs)
Oral Fluid	Collection Type	The Test Device must allow the user to collect a sufficient volume of oral fluid for an effective and accurate screen to take place.
	Test Results	Results must be in a format that is simple to interpret by Users and Test Recipients. Accurate results must be obtained within 20 minutes or less of the Test being administrated. It must be possible for HMPPS staff to create a record of the results in a simple manner.
	Ordering	45 The Supplier must provide a nominated email address for receiving orders. 46 Orders must be confirmed as received and accepted by the Supplier within 48 hours, via return of email. The maximum lead time the Authority will accept for products into NDC Branstion is 12-weeks from acceptance of order. In exceptional circumstances the Authority may agree a specific delivery date with the Supplier, where a forward order is placed.

		<p>47 The authority reserves the right to change the ordering process, ensuring that the Supplier is given sufficient notice.</p> <p>48 Delivery to nominated Sites by exception.</p>
	Invoicing	The Supplier will invoice the Authority on a monthly in arrears basis for Goods and Services provided and submit the required data to verify the invoiced amount.
	Delivery	Direct to NDC Branston (and to nominated Sites by exception)
	Estimated Volumes*	<p>In line with forecasts provided by the Authority.</p> <p>Volumes will vary locally depending on need.</p> <p>A summary of expected Test Volumes is provided in Annex B</p>
	Frequency	Ordered in line with the Supplier's Solution, Supply Stability Report (as contained in Annex E) and forecasts.

7 Constitution and Quality of Products

- 7.1 The Goods must be safe for the Test Recipient (individual taking the Test) and operator (HMPPS member of staff administering the Test).
- 7.2 All Goods must consist of material(s) sensitive to cultural and religious needs.
- 7.3 The Goods must be able to collect a sufficient measured volume of a permitted Sample in line with the requirements of Table 1.
- 7.4 All Goods used must not change or influence the Test Result of Drug Testing.
- 7.5 Any Goods maintenance must be made clear to the Authority and must be at no additional cost to the Authority.
- 7.6 Where faults with Goods are identified, the Supplier must replace the faulty Goods within a maximum of five (5) Working Days
- 7.7 All costs must be included in the Financial Response Template (FRT).
- 7.8 All Test Devices must be CE marked or equivalent. The Supplier must provide evidence of this upon request.

8 Product Guidance

8.1 The Supplier must provide guidance documents in plain English to enable effective use of the Test Devices. As a minimum, the guidance must cover:

- 8.1.1 The process for administering the Test.
- 8.1.2 Timescales for receiving the result.
- 8.1.3 Disposal of the used Goods and consumables.
- 8.1.4 Any limitations of the Test Devices and process.

9 Ordering

- 9.1 A process to enable the Authority to order Goods, including instructions for use and Services must be made available by the Supplier.
- 9.2 Orders for Goods may be placed centrally by the Authority for delivery to individual Prisons, Approved Premises or probation sites, or to NDC Branston. A solution that enables these products to be ordered via the Authority's procurement catalogue or via email is required. Orders must be receipted within two full Working Days of being placed.
- 9.3 The Supplier must be able to supply Orders in bulk to a single HMPPS storage and distribution centre, as detailed at 10.3.
- 9.4 The Authority will set out an ordering schedule based on expected Volumes.
- 9.5 Delivery Dates and quantities must be agreed at the point of order.
- 9.6 The Supplier must ensure that the Authority and Approved Users are able to order any Goods and Services, as agreed between the Authority and Supplier as being part of this Agreement in the instances that direct order and delivery is required by the Authority and Approved Users.
- 9.7 Such Goods and Services may be listed on a catalogue where necessary.
- 9.8 The Authority reserves the right to change the ordering process, ensuring that the Supplier is given sufficient notice.

10 Logistics

- 10.1 The Supplier must supply and Deliver all materials necessary for Drug Testing to take place, including but not limited to:
 - 10.1.1 Test Devices (and any associated paperwork)
 - 10.1.2 Product guidance

- 10.2 The Supplier must deliver bulk volumes of Goods, when required and as per forecasting requirements, to a single HMPPS storage and distribution centre currently located at the following address:

NDC Branston
Burton Road
Branston
Burton upon Trent
DE14 3EG

herein referred to as "**NDC Branston**".

- 10.3 All deliveries to NDC Branston must meet the requirements explained in Annex D.
- 10.4 All deliveries must reach NDC Branston by the Delivery Date agreed at the point of order.
- 10.5 Also required, by exception, is delivery directly to Delivery Locations ([Prisons in England and Wales - GOV.UK](#)).
- 10.6 Where 10.5 is exercised, Goods must be supplied to Delivery Locations within five (5) Working Days of an order being received.
- 10.7 Costs for both must be included in the FRT. A combination of both approaches may be required at points throughout the Term.

11 Stockholding and Storage

- 11.1 The Supplier must provide advice to the Authority and Approved Premises on the recommended storage conditions of all Goods required, for example, but not limited to, temperatures and use-by dates. It should be assumed that the Authority will not have access to a specialist storage environment or equipment, for example temperature-controlled storage rooms or fridges.
- 11.2 The Supplier must assist the Authority to maintain stock levels held by the Authority based on those set by the Supply Stability Report (as set out at Annex E), which must be updated and provided to the Authority on a monthly basis or when otherwise requested.
- 11.3 The Supplier is also expected to hold a level of stock at their own storage facilities, or at that of a sub-contracted Supplier, which equates to a minimum of one month of Volume in line with the Supply Stability Report. This must be at no additional cost to the Authority.
- 11.4 The Authority also commits to provide forecasted demand on a regular basis.

Part 4 – Technical Requirements

12 Drugs Range

- 12.1 The Goods supplied by the Supplier must test for the full range of essential Drugs detailed in Annex A.
- 12.2 The Supplier must have the ability to amend the Drugs range identified by the Test Device used as part of this Agreement, throughout the Term, using the desirable Drugs listed in Annex A as a guide.
- 12.3 In addition to 12.1 and 12.2, the Supplier must strive to ensure that any changes to the range of Drugs identifiable by the POCT Device are achieved using a single POCT methodology. Any additions to approved POCT Devices and types to identify additional Drugs throughout the lifetime of the Agreement, must be agreed by the Authority through the Change Control Procedure. The Goods must be able to unambiguously display a result that shows that an individual has consumed a Drug.
- 12.4 The Supplier must ensure the analysis methods and the Cut-Off Levels used allow consistent detection of the use of all Drugs in Annex A within a detection window of at least 24 hours.
- 12.5 In so doing, the Supplier must ensure that passive inhalation or ingestion cannot provide mitigation for a positive Test Result.
- 12.6 The Supplier is required to provide evidence in support of the levels of assurance claimed for each Testing method used at periods throughout the Term. The Supplier must ensure that analysis proves the exact substance(s) that were present when the sample was collected.
- 12.7 Analysis methods used must be supported by robust chain of custody procedures that support the integrity of analysis.
- 12.8 On a six-monthly basis the Supplier and the Authority may want to review the range of Drugs in Annex A.
- 12.9 The Authority will agree any required changes with the Supplier and follow the formal Change Control Procedure.
- 12.10 Once the Supplier obtains reference materials and pricing has been agreed with the Authority, the Supplier will be required to implement any changes to the panel in accordance with the Agreement or within such other timescale agreed with the Authority.
- 12.11 For each Drug tested for, the Supplier is required to demonstrate that they have undertaken research and validation testing to determine if there are any known interactions with medications, drugs or any other substances that can reasonably be consumed.

13 Quality Assurance

- 13.1 The Supplier must be prepared to submit on an annual basis, all the validation data for the Test Devices used, accuracy and precision data and any scientific evidence that provides an evidence base in support of the Test Devices.
- 13.2 At its discretion, the Authority will undertake or commission quality assurance of the Supplier and/or Test Devices throughout the Term.
- 13.3 The Supplier must make available all Documentation and data, as reasonably requested by the Authority, to allow an effective independent quality assurance process to take place.
- 13.4 The Supplier must make Samples available to any independent quality assurance provider appointed by the Authority, within 14 days of a request being made by the Authority.
- 13.5 In the interests of transparency, the Supplier agrees to make the Authority aware of any other public sector contracts of which they are party to during the Term. Thus, allowing the Authority to undertake adequate due diligence throughout the Term.

14 Standard and Accreditation Requirements

- 14.1 The relevant Supplier personnel must hold a Home Office Controlled Drug Licence unless exempt under the Misuse of Drugs Act 1971 or Misuse of Drugs Regulations 2001.
- 14.2 All Goods provided to fulfil this Specification must be manufactured to CE standards, evidence of which must be provided to the Authority upon request.
- 14.3 The Supplier must maintain all relevant accreditations and Standards throughout the Term.

Part 5 – Other Requirements

15 Performance Management Reporting

- 15.1 The Supplier shall provide, within 7 Working Days of the end of the month, and in line with the requirements detailed in Schedule 2.2 of the Agreement:
 - 15.1.1 KPI performance report dashboard and underlying management information data;
 - 15.1.2 any foreseen risks/issues with capacity or ability to deliver the Goods and/or Services in accordance with the Agreement; and
 - 15.1.3 report in full on all Complaints and Incidents that are discovered by or notified to it as per Section 16 of this Specification.
- 15.2 The Supplier shall provide by the 31st May each Contract Year an Annual Performance Report. At mobilisation the Authority will agree with the Supplier the contents of the Annual Performance Report (as defined in Schedule 8.4, *Reports and Records Provisions*) which will contain but not be limited to:
 - 15.2.1 Testing Products and Method Efficacy Assurance Report (the detail of which will be agreed between the Parties);
 - 15.2.2 Evidence of compliance with the requirements of Section 21 of this Specification;
 - 15.2.3 Innovations and Efficiencies Report (the detail of which will be agreed between the Parties);
 - 15.2.4 Exit Plan review;
 - 15.2.5 Business Continuity Plan (as defined in Schedule 8.6) and Disaster Recovery Plan (as defined in Schedule 8.6) review.
- 15.3 The Supplier must also, upon request, provide the following to the Authority:
 - 15.3.1 guidance relating to the Goods and Services (as referred to in Section 8);
 - 15.3.2 any additional information required by the Authority in relation to any part of the operation of the Services or provision of the Goods.
- 15.4 The Supplier must provide performance management data in line with the Authority's requirements as outlined throughout the Term.
- 15.5 As part of performance monitoring and management throughout the Term, the Authority may request feedback from users of the POCT Devices and any associated material, such as guidance and training documents.
- 15.6 The Authority reserves the right to introduce a new Authority reporting system throughout the Term which may encompass performance data for the Agreement.

- 15.7 By adhering to the minimum requirements contained in Section 15 and Annex C, the Supplier commits to work with the Authority to ensure that any changes in the Authority reporting system do not impact the provision of the Goods or Service and cost in relation to this Specification.

16 Customer Support, Issues and Complaints

- 16.1 Customer service support must be available to Sites at no additional cost within working hours (9am-5pm), Monday to Friday, excluding bank holidays.
- 16.2 The customer service support must be accessible to people with differing communication needs.
- 16.3 The Supplier shall ensure that it has a comprehensive and efficient Complaints procedure that allows the Authority and all Approved Users to process Complaints in respect of the Goods and/or Services ("Complaints Procedure").
- 16.4 The Complaints Procedure shall be clearly signposted to the Authority and all Approved Users to ensure that they are clear on how to process a Complaint and report an Incident.
- 16.5 The Supplier shall notify the Authority of all Complaints promptly and within 24 hours and shall process and seek to resolve all Complaints and Incidents within 5 Working Days of becoming aware or being notified of such Complaint or Incident.
- 16.6 The Supplier shall report in full on all Complaints and Incidents that are discovered by or notified to it (whether they have been resolved or otherwise) during any Service as part of the Performance Management and Contract Review Meetings. Such reporting shall include, without limitation:
- 16.6.1 The details of the Complaints received and Incidents identified;
 - 16.6.2 The status of the Complaints received, and Incidents identified along with details of what the Supplier plans to do to rectify any unresolved Complaints or Incidents.
- 16.7 Where a Complaint remains unresolved for more than 10 Working Days, the Authority may require the Supplier to undergo the Rectification Plan Process (as set out in the Agreement).
- 16.8 Where necessary, Complaints will be investigated by the Authority at a level and to an extent proportionate to their nature and perceived seriousness of impact. The Authority may require the Supplier to undergo the Rectification Plan Process should the outcome of any investigation require it.
- 16.9 If required by the Authority, the Supplier shall within 10 Working Days of request provide further detail on any Complaints or Incident(s) identified by the Authority, including if required by the preparation of an Incident report.

- 16.10 The Supplier must, at no additional cost to the Authority, make available the services of expert technical witnesses who, on rare occasions, may be required to attend legal challenges to provide technical defence of the Supplier's equipment and processes used to fulfil this Agreement.

17 IT Considerations

- 17.1 If using an IT system to interact with the Authority, for example, but not limited to performance monitoring and reporting, the Supplier must ensure that the system/s meet the minimum requirements outlined in Annex C.

18 Innovation, Efficiencies and Continuous Improvement

- 18.1 The Authority welcomes innovative approaches in relation to testing contained within this Specification throughout the Term.
- 18.2 The Supplier must make the Authority team responsible for managing this Agreement aware of any innovative approaches, that could positively impact the Goods and Services provided within this Specification, at the earliest possible opportunity and, at a minimum, in line with contract management requirements set out in the Agreement.
- 18.3 The Supplier is required to ensure that any efficiencies and cost benefits obtained from (without limitation) emerging technologies and/or newly available and/or updated POCT Devices, during the term, are reflected in pricing structures offered to the Authority.
- 18.4 During the Term of the Agreement the Supplier is required to propose innovative solutions and newly available technologies to meet emerging drug trends.
- 18.5 The Supplier is required to provide an Innovations and Efficiencies Report to the Authority providing details and evidence relating to Section 18 of this Specification.
- 18.6 The Supplier must participate in expert level forums relevant to the Drug Testing and drug identification fields. The Supplier must also attend information sharing forums and strategic meetings at the request of the Authority including those with other drug testing providers, public agencies and government departments.

19 Social Value

- 19.1 With the introduction of PPN 06/20 the Government has mandated the application of its Social Value Model for all procurements above threshold. The Authority in compliance with the PPN have selected a theme and a policy outcome that are relevant and proportionate to this Tender Process. The Authority is looking for Bidders to review and respond to the evaluation question for social value in the ITT. Tender Responses should ensure they address the various elements of the evaluation question and provide a response detailing how they will deliver additional environmental benefits in the performance of the Agreement. Suppliers must

ensure that any benefit offered as social value in submissions is over and above the core deliverable/s of the Tender.

- 19.2 Therefore, the supplier must consider how they can best offer and implement social value throughout the term.
- 19.3 A KPI for social value will be developed with the successful Bidder based on a combination of the model award criteria and the reporting metric(s).
- 19.4 The Authority will review and may amend the social value performance indicator throughout the Term.
- 19.5 Initially, the Authority will adopt the Government's policy outcome: Fighting Climate Change (Theme 3). The selected Model Award Criteria (MAC) is MAC 4.1: "Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions".
- 19.6 This is a priority because benefits that can be driven through social value are an important tool in fighting climate change.
- 19.7 The Government's 25 Year Environment Plan sets out goals for improving the environment within a generation and details how it will work with communities and businesses to do this. To meet the goals and targets it has set, government has identified six key areas in the plan through which it will focus action.
- 19.8 Activities in support of additional environmental improvements form the Model Award Criteria for this policy outcome in the model. The Reporting Metrics are based around the reduction of three of the target areas in the Greening Government Commitments: greenhouse gases, waste and water. In addition there are Reporting Metrics relating to protecting and improving the environment, and creating green spaces.
- 19.9 United Nations Sustainable Development Goals this policy supports:
 - 19.9.1 Goal 1: No poverty;
 - 19.9.2 Goal 2: Zero hunger;
 - 19.9.3 Goal 3: Good health and wellbeing;
 - 19.9.4 Goal 6: Clean water and sanitation;
 - 19.9.5 Goal 7: Affordable and clean energy;
 - 19.9.6 Goal 9: Industry, innovation and infrastructure;
 - 19.9.7 Goal 10: Reduced inequalities;
 - 19.9.8 Goal 11: Sustainable cities and communities;
 - 19.9.9 Goal 12: Responsible consumption and production;
 - 19.9.10 Goal 13: Climate action;

- 19.9.11 Goal 14: Life below water; and
- 19.9.12 Goal 15: Life on land.
- 19.10 The Reporting Metrics for MAC4.1 are:
 - 19.10.1 "Number of people-hours spent protecting and improving the environment under the contract, by UK region";
 - 19.10.2 "Number of green spaces created under the contract, by UK region";
 - 19.10.3 "Annual:
 - (a) Reduction in emissions of greenhouse gases arising from the performance of the contract, measured in metric tonnes carbon dioxide equivalents (MTCDE);
 - (b) Reduction in water use arising from the performance of the contract, measured in litres;
 - (c) Waste reduction in packaging;
 - (d) Reduction in incineration emissions of clinical waste;
 - (e) Increase in use of recycled product packaging".
- 19.11 Suppliers are asked to select the relevant reporting metric(s) that apply to the social value being offered and identify a quantifiable commitment.
- 19.12 The Authority reserves the right to change the Social Value theme.

20 Environmental Sustainability

- 20.1 The Authority is committed to putting environmental sustainability at the heart of their operations and decision-making by embedding sustainability principles into everything they do.
- 20.2 Therefore, all goods and services encompassed within this Specification must consider any detrimental environmental impact and the Supplier must minimise the impact where possible.

21 Mobilisation and Exit Planning

- 21.1 The Supplier must produce a robust Mobilisation Plan and work in conjunction with the Authority to ensure that mobilisation is successfully completed. The mobilisation of the Agreement will be at the sole cost of the Supplier.
- 21.2 The Mobilisation Plan must address the requirements set out in the framework shown in Annex F.
- 21.3 The Supplier must produce an Exit Plan in line with the Agreement.

ANNEX A

Drugs of Detection – POCT

Table A

Essential	Desirable
Cannabis	Psychoactive Substances (PS)
Cocaine or its metabolite benzoylecgonine	Synthetic cannabinoid receptor agonists (SCRA)
Δ^9 -Tetrahydrocannabinol (cannabis)	Benzodiazepines
Amphetamines	Barbiturates
Heroin/Diacetylmorphine	Buprenorphine
	LSD
	Tramadol
	Pregabalin
	Gabapentin
	Ketamine
	Steroids (controlled)
	Methadone
	Morphine
	Fentanyl
	Nitizenes
	Synthetic Opioids

ANNEX B

Estimated POCT volumes

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

Given the uncertainty around volume requirements, the following scenarios are set out, to enable completion of the FRT. The volume estimates corresponding to these bandings, and the weightings applied are set out in the FRT.

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

Year 1 (16 July 2025 – 31 March 2026)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	33,027	33,028	99,080	99,081	132,107

Year 2 (1 April 2026 - 31 March 2027)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 3 (1 April 2027 - 31 March 2028)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 4 (1 April 2028 - 31 March 2029)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 5 (1 April 2029 - 31 March 2030)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 6 (1 April 2030 - 31 March 2031)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 7 (1 April 2031 - 31 March 2032)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	46,626	46,627	139,878	139,879	186,504

Year 8 (1 Apr 2032 – 30 Jun 2032)

Lo t	Sites	Kit Require d	Sample Type	Testing Type	Low Minimu m	Low Maximu m	Medium Minimu m	Medium Maximu m	High Minimu m	High Maximu m
2	Prisons	N/A	Oral Fluid	Voluntary Point of Care Tests	0	11,657	11,658	34,970	34,971	46,626

ANNEX C

IT System Considerations

IT System Considerations

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

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

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

products or services. If the tool chosen is cloud based, HMPPS would also be looking for alignment with NCSC Cloud Security Principles
<https://www.ncsc.gov.uk/collection/cloud-security>

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

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

49. As far as possible, the Supplier must provide upfront costs of exit at the conclusion of the Agreement.
50. The Supplier must provide a documented method for data extraction at the conclusion of the Agreement and data deletion using an NCSC approved standards (<https://ministryofjustice.github.io/security-guidance/#data-destruction>).

ANNEX D

Deliveries into Branston

DELIVERY ADDRESS

**MoJ NDC Branston Burton Road, Branston Burton Upon Trent Staffordshire DE14 3EG,
United Kingdom Booking and pre-delivery**

- 50.1** The booking line number at NDC Branston is 01283 496004.
 - 50.2** All deliveries to NDC Branston must be booked at least 3 Working Days ahead of the Delivery Date, using the booking line.
 - 50.3** Suppliers should quote the purchase order (PO) number when booking in. The PO number is available from the person who placed the order with the Supplier.
 - 50.4** Provided there is a valid PO on the WMS (warehouse management system) then the caller will be given an advance shipping notice (ASN) number which must be quoted on all delivery notes; a date and time for delivery will also be given.
 - 50.5** If there is no valid PO, NDC Branston cannot accept the booking. In these circumstances the Supplier should contact the individual placing the order to obtain the PO number.
 - 50.6** Where Goods are to be delivered in sealed shipping containers originating from outside the UK, a packing list and shipping progress must be supplied (attached to an e-mail) to NDC Branston within one week of the goods leaving the country of origin. As a minimum, the container number, seal number, supplier name, expected date of arrival, PO number, item numbers and quantities must be quoted. This information will be used to make a pre-booking and allow necessary checks to be carried out in advance of delivery. On arrival in the UK, the shipping agents must contact NDC Branston, by e-mail, quoting the container number and the latest date by which the container must be received to avoid demurrage charges, in order to arrange a date and time for the container to be received. NDC Branston receipts team will respond with the booking details. Details of the relevant NDC Branston staff's e-mail addresses will be supplied upon request.
- 51. Pallets/stillages**
- 51.1** All deliveries to NDC Branston must be made on/in non-returnable pallets or stillages.
 - 51.2** No loose loads will be accepted. NDC Branston will not accept goods delivered on Chep or other returnable pallets.
 - 51.3** Wooden pallets should be sound and of good quality. Pallets must be four-way entry and not exceed 1420mm x 1050mm in size.
 - 51.4** The maximum overall height including the pallet is 1240mm.

51.5 The pallet must be suitable for use with pallet trucks, not just forklift trucks, i.e., the bottom stringers must be chamfered and the gap between top and bottom stringers must be sufficient to facilitate pallet truck entry.

51.6 The overall weight of each pallet must not exceed 600kgs (inc. pallet). Cartons/rolls, etc. should be securely banded or stretch wrapped to the pallet.

51.7 The top of each pallet when loaded shall be flat and level to enable safe stacking.

52. Labelling

52.1 All cartons shall be labelled with the below details.

52.2 Labels must be legible (preferably not handwritten), properly fixed, and easily accessible.

52.3 Cartons should be labelled on four sides (top and bottom excluded), Rolls of textiles etc, should be labelled at both ends. (See below)

52.3.1 Full Supplier details

52.3.2 HMPPS product number

52.3.3 HMPPS product description.

52.3.4 Product size

52.3.5 Total carton or roll quantity or length

52.3.6 Total carton or roll weight

52.3.7 Batch number

52.3.8 Date manufactured

52.3.9 HMPPS purchase order number and contract number

52.3.10 Number and qty of internal packs

52.3.11 Full details of any special storage instructions

53. Internal packs and single products

53.1 The Tender Response shall include packaging specifications that include details of units of issue and HMPPS unit pack quantities.

53.2 All individual products (unless included in a sealed pack) and all unit packs shall be labelled with the following information.

53.2.1 Full Supplier details

53.2.2 HMPPS product number (Human readable bar code)

53.2.3 Total quantity per pack (Human readable bar code)

- 53.2.4** HMPPS product description.
- 53.2.5** Product size
- 53.2.6** Batch number
- 53.2.7** Date manufactured
- 53.2.8** HMPPS purchase order number and contract number.

54. Packaging – products packed in cardboard cartons

- 54.1** The Authority uses three sizes of carton, which are standard to its operation.
- 54.2** Suppliers must seek Authority approval to use any other carton size.
- 54.3** Suppliers shall pack Goods according to Authority packing specifications.
- 54.4** Cardboard carton sizes are shown at annex 1.
- 54.5** The overall weight of cartons must not exceed 15Kg.

55. Delivery to NDC Branston

- 55.1** All vehicles must be booked in.
- 55.2** Vehicles must arrive no more than 30 minutes before or after the time allocated.
- 55.3** Vehicles that arrive before the scheduled "window" may be asked to wait until they are called to a loading bay. Industry standard loading docks are in use, delivery vehicles must be appropriately sized and have flooring suitable for this type of operation.
- 55.4** Delivery drivers will be expected to follow site health and safety procedures. There must be no persons under the age of 18 years accompanying drivers in the vehicle. Drivers shall wear hi-visibility clothing and are expected to surrender their vehicle keys once parked on a loading dock.
- 55.5** Staff at NDC Branston will not sign for an exact quantity on delivery, only for a number of cartons, rolls, pallets, etc.
- 55.6** Any discrepancies or damage found at the initial checking stage will be noted on the delivery paperwork/drivers copy.
- 55.7** Any discrepancies found following a more thorough check will be notified to the procurement authority.
- 55.8** Failed deliveries and shortages must be re-booked; a new autonomous system number (ASN) will be given.
- 55.9** When querying bookings/collections the Supplier must quote the ASN. NDC Branston is unable to deal with queries without this number.
- 55.10** Approach map is attached at Annex 2.

56. Delivery paperwork

56.1 All deliveries to NDC Branston shall be accompanied by the appropriate paperwork.

56.2 Supplier paperwork shall include detail of PO number, ASN or SOC number, consignment quantity and Supplier contact details.

57. Refused deliveries and rejected loads

57.1 Deliveries will be refused and or rejected if:

57.1.1 Staff at NDC Branston feel that the load is poorly stacked or unsafe

57.1.2 Loads are loose and not palletised

57.1.3 Delivery pallets are unsuitable and or damaged

57.1.4 Pallet dimensions are exceeded

57.1.5 Documentation is incorrect or insufficient including Certificate of Conformity not supplied where required

57.1.6 Goods are not booked or are in excess of the quantity expected.

57.1.7 Carton size or pack quantities are incorrect and do not meet the Authority's packaging specification

57.1.8 Goods are incorrectly labelled or do not detail the required information

57.1.9 Pallets weigh in excess of 600kgs.

57.1.10 Vehicle is not booked in or arrives after appointed time (allowing for the 30-minute delivery "window").

58. Exceptions

58.1 Under certain circumstances the above rules may be amended to suit particular products and/or suppliers.

58.2 All amendments must be agreed with NDC Branston in advance; they cannot be amended to suit consignments already en-route.

58.3 Proposed amendments must be submitted to NDC Branston with full details of the required changes, along with explanations as to why the standard rules cannot be applied.

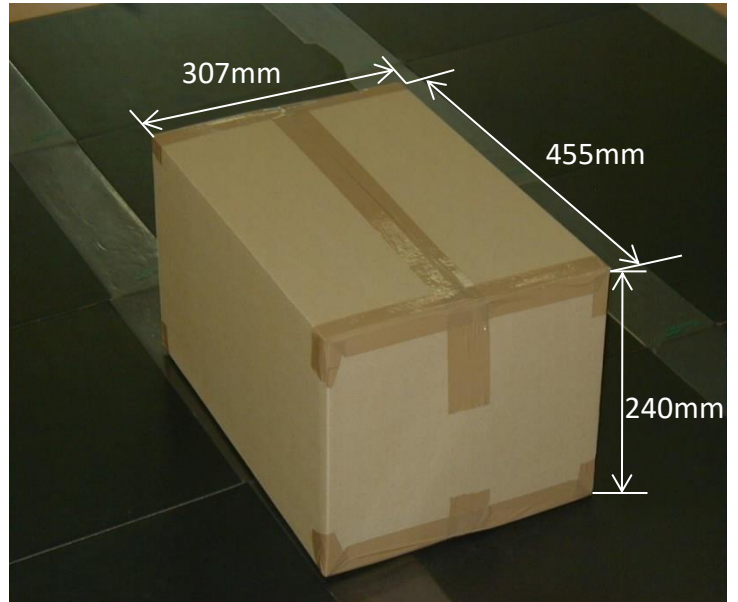
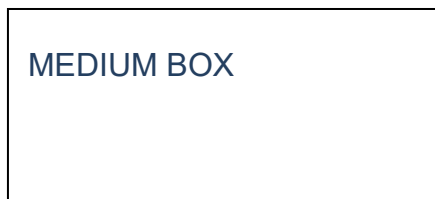
58.4 Only goods where amendments have been agreed by NDC Branston in writing will be accepted.

NDC Branston Annex 1



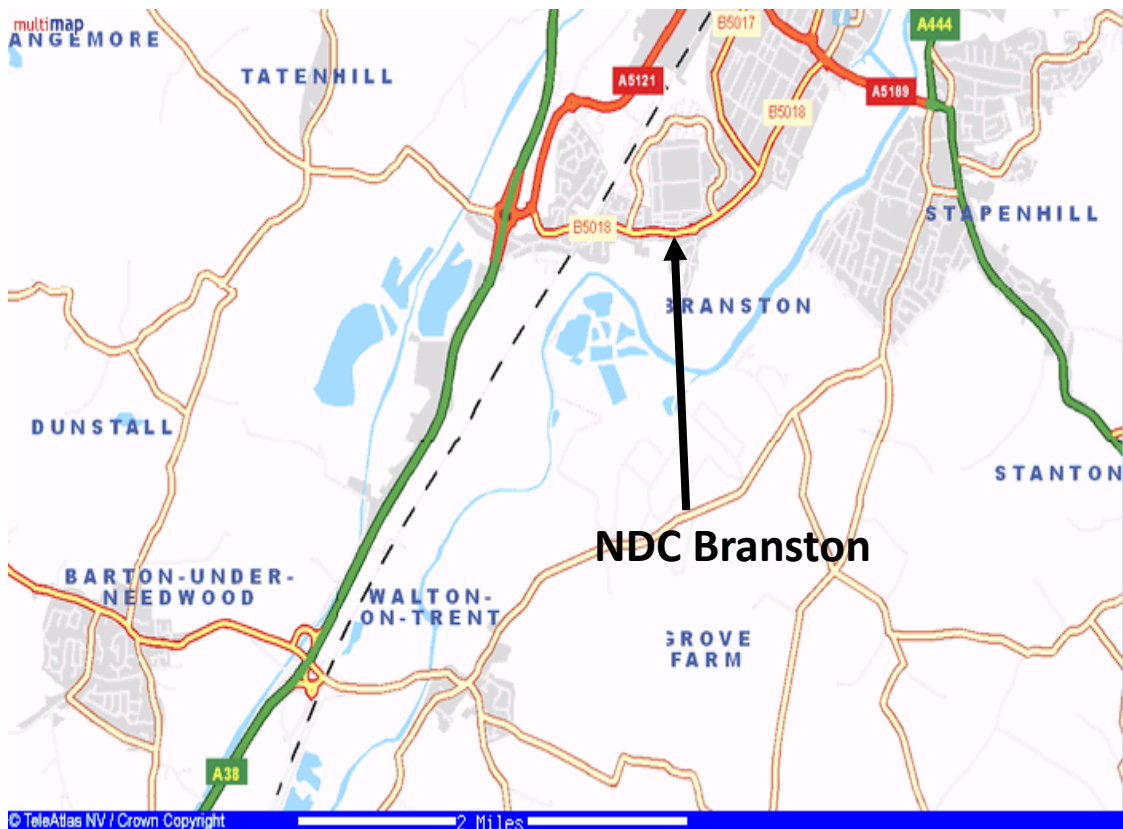
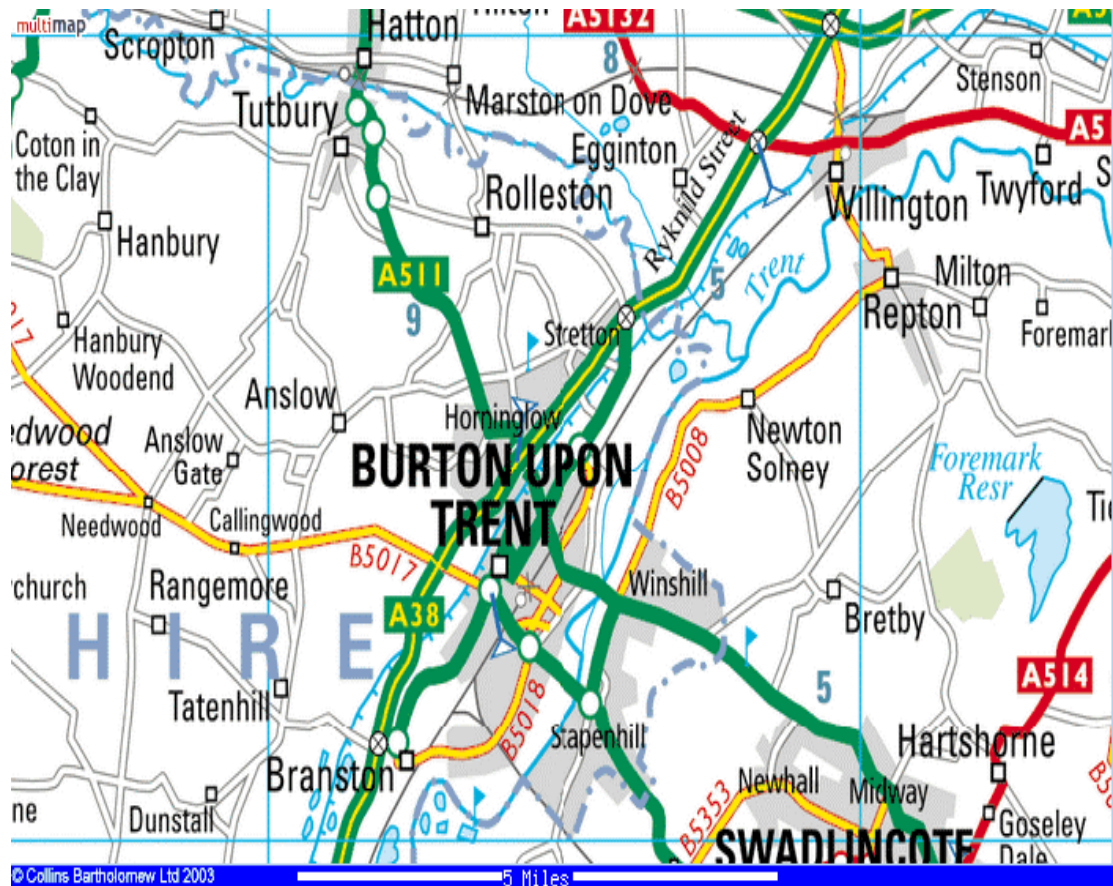
All measurements are internal measurements, and board thickness is 3mm

LARGE BOX



SMALL BOX

NDC Branston Annex 2



ANNEX E

Supply Stability Report

The Supply Stability Report may change throughout the Term.

DRAFT - FOR ILLUSTRATIVE PURPOSES ONLY

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

ANNEX F

DTSP Mobilisation Plan Outputs and Milestones

Mobilisation

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

Mobilisation Period

Following the award of the Agreement there will be a five-month Mobilisation Period to allow the Supplier to effectively demonstrate that they are able to provide the Goods needed. The current Mobilisation Period is: 29 January 2025 – 15 July 2025.

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

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

Table A: Milestones

No	Milestone	Estimated Dates
1.	Award of Agreement and commencement of Mobilisation	January - February 25
2.	Go-live readiness assessment/Gateway approval	By mid-March 25
3.	Go-live	Mid-July 25

The current drug testing contract ends on 15 July 2025 at which point the Supplier will deliver all Goods (i.e., the Commencement Date).

Table B below outlines a list of the outputs that the Bidder will be expected to deliver during the Mobilisation Period. The Outline Mobilisation Plan should set out (without limitation) how the Bidder intends to deliver these outputs including duration of tasks and resources required to ensure success (delivery of the Goods from the Commencement Date).

Table B: Output requirements

No	Output area	Output	Specification reference point
1.	Stock distribution and order fulfilment	Demonstrate that the forecasted Volumes can be met.	Lot 2: Section 6, Annex B
		Demonstrate that Test Device content, packaging, documentation and procedure requirements can be met.	Lot 2: Section 7, 8
		Demonstrate that ordering and Delivery requirements for Goods can be met.	Lot 2: Section 6, 9, 10, 11, Annex D
		Demonstrate that a smooth transition for the transfer of responsibilities from the existing supplier can be achieved to ensure continuity of service to End Users.	
2.	Supply Chain	Demonstrate that subcontractors can meet the stock distribution and order fulfilment requirements within the specified Milestone timescales and that contingencies are in place to ensure service continuity.	
3.	Testing	Demonstrate that analysis, testing, recording and reporting capability requirements can be met.	Lot 2: Section 6, 7, 12, 18, Annex A
4.	Quality Assurance	Demonstrate accuracy precision of Testing and maintenance of Standards.	Lot 2: Section 13, 14.
5.	Performance Management Reporting	Demonstrate the KPI performance reporting approach.	Lot 2: Section 15

6.	IT integration and set up	Demonstrate that IT systems meet specification requirements.	Lot 2: Section 17, Annex C
7.	Roles, Responsibilities and Resource	Demonstrate leadership, accountability, resource capacity and capability of the mobilisation team and outline respective roles and responsibilities during the Mobilisation Period.	
8.	Risk Management	Outline risk management plan to identify, monitor, mitigate and report risks and issues.	
9.	Knowledge and Documentation Transfer	Outline information/knowledge required from the existing supplier and timescales.	
10.	Guidance	Outline guidance documentation approach, standards and proposed timescales during the Mobilisation Period.	
11.	Contingency plans	Outline approach to business continuity and exit planning to guarantee continuity of service.	
12.	Stakeholder Communication and Engagement	Outline stakeholder engagement and communication plan for End Users, partners and other services including contact points ensuring continuity of service during transition from the existing supplier.	Lot 2: Section 16.
13.	Readiness for service delivery	Demonstrate readiness for delivery ensuring continuity of service for service users.	

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 2.2

PERFORMANCE LEVELS

Performance Levels

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Performance Monitoring Report” has the meaning given in Paragraph 1.1 of Part B;

“Performance Management Meeting” the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Schedule 8.1 (Governance);

“Repeat KPI Failure” has the meaning given in Paragraph 3.1 of Part A;

PART A: PERFORMANCE INDICATORS

1 PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators which the Parties have agreed shall be used to measure the delivery of Goods by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Key Performance Indicator and shall send the Authority a report detailing the performance actually achieved in accordance with Part B.
- 1.3 Service Points shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2 and 3.

2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Goods Delivery Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Goods Delivery Period is below the Target Performance Level in respect of a Key Performance Indicator, subject to paragraph 2.4 below, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.
- 2.4 Service Points shall not accrue for KPI1 and KPI2 in respect of Delivery of Goods in any Goods Delivery Period which are in excess of the Forecast Threshold.
- 2.5 In the event that Volume requirement of the Authority decreases significantly, the Authority may, at its absolute discretion revise the severity levels of the KPIs set out in Annex 1 and/or revise the delivery timescales (in relation to KPI 1 and KPI 2) applicable to such KPIs as it deems necessary to reflect a fair adjustment proportionate to the decrease in volumes.

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

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

$$\mathbf{SP = P \times 2}$$

where:

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

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Performance Threshold.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within 10 Working Days of the end of each Goods Delivery Period, the Supplier shall provide a report to the Authority Operational Contract Manager which summarises the performance by the Supplier against each of the Key Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”). The Performance Monitoring Report must be submitted using the Custodial Contract Directorate Key Performance Indicators template as appended in Annex 3.

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information and the reporting requirements set out in Annex 2 (Performance Reporting Requirements):

Information in respect of the Goods Delivery Period just ended

- (a) for each Key Performance Indicators, the actual performance achieved over the Goods Delivery Period, and that achieved over the previous 3 Goods Delivery Periods;
- (b) a summary of all KPI Failures that occurred during the Goods Delivery Period;
- (c) the severity level of each KPI Failure which occurred during the Goods Delivery Period and whether each KPI Failure which occurred during the Goods Delivery Period fell below the KPI Performance Threshold;
- (d) which KPI Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures occurring during the Goods Delivery Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Business Continuity Plan;

- (j) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (k) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Goods Delivery Periods

- (l) a rolling total of the number of KPI Failures that have occurred over the past six Goods Delivery Periods; and
- (m) the conduct and performance of any agreed periodic tests that have occurred in such Goods Delivery Period such as the annual failover test of the Business Continuity Plan.

2 PERFORMANCE RECORDS

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Goods being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after the commencement of each Contract Year.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, (as well as historic Performance Monitoring Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

ANNEX 1: KEY PERFORMANCE INDICATORS

PART A: KEY PERFORMANCE INDICATORS TABLE

The Key Performance Indicators that shall apply to the delivery of the Goods are set out below:

59. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Calculation	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information
KPI 1	Delivery of Stock into Branston on time	Delivery made by the Supplier by date and time agreed with the Authority	Date and time of delivery made is equal to the delivery date and time agreed with the Authority.	Quarterly deliveries so performance recorded and reported Quarterly (By Goods Delivery Period)	Target Performance Level: 100% Minor KPI Failure: 98.0 to 99.9% Severe KPI Failure:	0 1	YES

					97.0 to 97.9%	2	
					KPI Service Threshold: below 97%	3	
KPI 2	Delivery of Stock into Branston in full	Delivery in full of all items ordered by the Authority	Amount delivered to Branston in the Quarter shown as a % of the amount ordered by the Authority for Delivery in the Quarter	Quarterly deliveries so performance recorded and reported Quarterly (By Goods Delivery Period)	Target Performance Level: 100% Minor KPI Failure: 98.0 to 99.9% Severe KPI Failure:	0 1	YES

					97.0 to 97.9%	2	
					KPI Service Threshold: below 97%	3	

KPI4	Social Value <i>[Drafting Note to Bidders: Targets to reflect Supplier responses]</i>	Fighting Climate Change	[To align to Supplier Response]	By [Contract Year]	[To align to Supplier Response]	NA	[TBC]
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ANNEX 2: PERFORMANCE REPORTING REQUIREMENTS

Obligation	Title	Definition	Frequency of Measurement	Records Required	Performance Reporting Method	Performance Reporting Frequency
KPI 1	Delivery of Stock into Branston on time	Delivery made by the Supplier by the date and time agreed with the Authority	Quarterly deliveries so performance recorded and reported Quarterly	Line data detailing PO/order details, agreed date and time of delivery slot and ACTUAL date and time of delivery	KPI MI Report – performance against the target Reasons for failure if applicable	Quarterly
KPI 2	Delivery of Stock into Branston in full	Delivery in full of all items ordered by the Authority	Quarterly deliveries so performance recorded and reported Quarterly	Line data detailing PO/order details, items ordered vs items delivered.	KPI MI Report – performance against the target Reasons for failure if applicable	Quarterly

KPI 3	Product Quality – Replacement of Faulty Items	All items declared to the Supplier as being faulty are replaced within 5 working days of the Supplier being made aware	Performance recorded by month and reported Quarterly.	Line data detailing all items identified as faulty, dates notified, faults, dates of replacements sent and any comments needed around context of fault.	KPI MI Report – performance against the target Reasons for failure if applicable	Quarterly
NO KPI – obligation, issues raised by exception by either supplier or HMPPS via complaints process and addressed by exception	Direct Delivery	Spec Paragraph 10.6 references delivery within 5 working days		Line data INCLUDED WITH OTHER DELIVERY INFO detailing PO/order details, HMPPS location agreed date and time of delivery slot and ACTUAL date and time of delivery	No SEPARATE reporting necessary as it shouldn't generally be taking place but in the event it does and there is an issue we will want to look into the data to compare any complaints detail with	Included in Quarterly MI data set

					and raise with the supplier by exception	
No KPI - obligation Supply Stability	Supply Stability	Referenced in Specification	Record and report Monthly	Detailed in Specification	Supply Stability Report	

ANNEX 3 KPI REPORTING TEMPLATE



Copy of KPI
Template.xlsx

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 2.3

STANDARDS

Standards

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

2 GENERAL

2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Goods. Any changes to the Standards reasonably required by the Authority, including the adoption of any such new or emergent standard, shall be at no additional cost to the Authority and shall be adopted as soon as reasonably practicable by the Supplier provided that Clause 15 of the Agreement shall apply to the extent that such change is a Change in Law.

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

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

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

4 OPEN DATA STANDARDS

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

- 4.2 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5 ENVIRONMENTAL REQUIREMENTS

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

6 HARDWARE SAFETY STANDARDS

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

7 ACCREDITATION REQUIREMENTS

- 7.1 If the Test Devices require the use of controlled drugs as defined under the Misuse of Drugs Act 1971 or the Misuse of Drugs Regulations 2001, then the Bidder would be required to request and hold an appropriate Home Office Controlled Drug Licence.
- 7.2 Laboratory practices must comply with all relevant legislation for the duration of the Term.

ANNEX 1: ENVIRONMENTAL REQUIREMENTS

8 DEFINITIONS

8.1 In this Annex, the following definitions shall apply:

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

9 ENVIRONMENTAL REQUIREMENTS

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

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

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

TABLE A – Prohibited Items

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

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

TABLE B – Permitted Items

Permitted Items	<i>Any laboratory equipment or hardware equipment which is required for the delivery of the Goods.</i>
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CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 2.5

INSURANCE REQUIREMENTS

1 OBLIGATION TO MAINTAIN INSURANCES

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

2 GENERAL OBLIGATIONS

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

3 FAILURE TO INSURE

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

4 EVIDENCE OF INSURANCES

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

5 CANCELLATION

- 5.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

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

of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 2: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

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

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

1.1 The Supplier

2 Interest

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

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

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

3 Limit of indemnity

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

4 Territorial limits

United Kingdom

5 Period of insurance

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

6 Cover features and extensions

- 6.1 Indemnity to principals clause.
- 6.2 Legal defence costs in addition to the limit of indemnity.
- 6.3 Data protection legislation clause.

7 Principal exclusions

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

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

PART C: UNITED KINGDOM COMPULSORY INSURANCES

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

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 4.1 - **REDACTED**

SUPPLIER SOLUTION

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 4.2 - *REDACTED*

COMMERCIALLY SENSITIVE INFORMATION

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

Notified Key Sub-Contractors

- 1 In accordance with Clause 17.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Goods.

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

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 6.1

MOBILISATION PLAN

MOBILISATION PLAN

1 INTRODUCTION

1.1 This Schedule:

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

2 OUTLINE MOBILISATION PLAN

- 2.1 The Outline Mobilisation Plan is set out in Schedule 4.1 (Supplier Solution) and reflects the requirements as detailed in Section 21 of the Specification.
- 2.2 All changes to the Outline Mobilisation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise.

3 APPROVAL OF THE AGREED MOBILISATION PLAN

- 3.1 The Supplier shall submit an updated Outline Mobilisation Plan to the Authority for approval within 10 Working Days of the Effective Date.
- 3.2 The Supplier shall ensure that the updated Outline Mobilisation Plan:
 - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Mobilisation Plan;
 - 3.2.2 clearly outlines all the steps required to implement the Milestones to be Achieved, together with a high-level plan for the rest of the programme, in conformity with the Authority Requirements;
 - 3.2.3 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements with proposed engagement timelines;
 - 3.2.4 clearly outlines the proposed Mobilisation Costs; and
 - 3.2.5 is produced using a software tool as specified or agreed by the Authority.
- 3.3 Prior to the submission of the updated Outline Mobilisation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
 - 3.3.1 to review any documentation produced by the Supplier in relation to the development of the updated Outline Mobilisation Plan, including:
 - (a) details of the Supplier's intended approach to the updated Outline Mobilisation Plan and its development;

- (b) copies of any drafts of the updated Outline Mobilisation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Outline Mobilisation Plan; and
 - (d) to request complete and accurate financial and non-financial information in relation to the proposed Mobilisation Costs to enable the Authority to verify the Mobilisation Costs, including details and all assumptions relating to:
 - (i) the Supplier's costs against each line in the Outline Mobilisation Plan, including total actual costs;
 - (ii) operating expenditure relating to the provision of the Mobilisation Activity, including resources, personnel, unit costs and overheads;
 - (iii) the actual cost profile for each Month; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the updated Outline Mobilisation Plan.
- 3.4 Following receipt of the updated Outline Mobilisation Plan from the Supplier, the Authority shall:
- 3.4.1 review and comment on the updated Outline Mobilisation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it Approves or rejects the updated Outline Mobilisation Plan no later than 10 Working Days after the date on which the updated Outline Mobilisation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the updated Outline Mobilisation Plan:
- 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the updated Outline Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised updated Outline Mobilisation Plan to the Authority for the Authority's Approval within 5 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.3 and this Paragraph 3.3.1(d) shall apply again to any resubmitted updated Outline Mobilisation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority Approves the updates to the Outline Mobilisation Plan, it will become the Agreed Mobilisation Plan and replace the Outline Mobilisation Plan from the date of the Authority's notice of Approval.

4 MOBILISATION COSTS

- 4.1 The Supplier shall include its expected Mobilisation Costs within the Outline Mobilisation Plan for Approval by the Authority.
- 4.2 The Authority shall only permit Mobilisation Costs which form actual spend wholly and reasonably incurred by the Supplier for delivering the Mobilisation Activity and do not include Excluded Costs as set out in Schedule 7.1 (Charges).
- 4.3 As part of the Approval process set out at Paragraph 3 above, the Authority may request evidence and such further information as the Authority may reasonably request for, and test the proposed Mobilisation Costs, and where the Authority is not satisfied that the Mobilisation Costs represent actual anticipated spend, or a reasonable sum for the Mobilisation Activity, the Authority may reject the Mobilisation Costs by rejecting the Outline Mobilisation Plan as set out above.
- 4.4 All evidence and information requested by the Authority in respect of Paragraph 4.3 above shall be provided promptly by the Supplier.

5 UPDATES TO AND MAINTENANCE OF THE AGREED MOBILISATION PLAN

- 5.1 Following the Approval of the Agreed Mobilisation Plan by the Authority:
 - 5.1.1 the Supplier shall submit any revisions to the Agreed Mobilisation Plan to the Authority from the Effective Date and when any changes are made to the Agreed Mobilisation Plan or at such a frequency as requested by the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - 5.1.2 any revised Agreed Mobilisation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for Approval in accordance with the procedure set out in Paragraph 3; and
 - 5.1.3 the Supplier's performance against the Agreed Mobilisation Plan shall be monitored at meetings of the Project Board (as defined in Schedule 8.1 (Governance)). In preparation for such meetings, the current Agreed Mobilisation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Project Board.
- 5.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Agreed Transition Management Plan shall be subject to Schedule 8.2 (Change Control Procedure) provided that:
 - 5.2.1 any amendments to elements of the Agreed Mobilisation Plan which are based on the contents of the Outline Mobilisation Plan shall be deemed to be material amendments; and

5.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date.

5.3 Notwithstanding Paragraph 5.2 above, any proposed amendments to the Agreed Mobilisation Plan shall not come into force until they have been Approved in writing by the Authority.

6 GOVERNMENT REVIEWS

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

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“European Standard”	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 3 of Part F;
“Supplier Profit Margin”	means the profit margin (expressed as a percentage) applied by the Supplier to the provision of the Goods as set out in the Financial Model in the Supplier Solution;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable;

PART D: PRICING

2 APPLICABLE PRICING MECHANISM

- 2.1 The Charges for the Goods shall be fixed and calculated on the basis of the price per unit set out in Annex 1 of this Schedule 7.1.
- 2.2 The Charges shall include the Mobilisation Costs as follows:
- 2.2.1 all Approved cost elements of the provision of the Mobilisation Activity and implementation of the Agreed Mobilisation Plan (including without limitation the transitioning of the Goods from the incumbent supplier to the Supplier in readiness for the delivery of the Goods to commence).
- 2.3 Any changes to the Charges shall be in accordance with paragraph 6 below.
- 2.4 The Charges include all packaging, labelling, transport, travel, accommodation, subsistence and other expenses incurred in connection with the provision of the Goods (including without limitation, any courier expenses).

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

PART E: CHARGING MECHANISMS

3 MOBILISATION COSTS

- 3.1 The Mobilisation Costs shall comprise the actual costs to the Supplier of delivering any Mobilisation Activity to the extent that:
- 3.1.1 they are directly, properly, and wholly incurred for the provision of delivery of the Agreed Mobilisation Plan;
 - 3.1.2 they do not include any Excluded Cost;
 - 3.1.3 such costs are Approved and set out in the Agreed Mobilisation Plan, or are otherwise Approved by the Authority;
 - 3.1.4 such costs are evidenced to the Authority's reasonable satisfaction.
- 3.2 The Supplier shall be entitled to invoice the Authority for the Mobilisation Costs Monthly in arrears or as otherwise Approved by the Authority and set out in the Agreed Mobilisation Plan.
- 3.3 For the avoidance of doubt, where the actual Mobilisation Costs are lower than the Mobilisation Costs set out in the Agreed Mobilisation Plan, the Supplier may only invoice for the actual Mobilisation Costs. Mobilisation Costs which are in excess of those set out in the Agreed Mobilisation Plan shall not be payable by the Authority unless they have been Approved.

4 GOODS CHARGES

- 4.1 Charges shall be invoiced by the Supplier for each Month in arrears and following Delivery of the relevant Goods in accordance with the requirements of Part D.
- 4.2 Any Service Credits that accrue during a Goods Delivery Period shall be deducted from the Charges payable in the first invoice for the next Goods Delivery Period or such subsequent invoices where the deductions exceed the value of the first invoice in that Goods Delivery Period. An invoice for a Charge shall not be payable by the Authority unless all applicable adjustments (including Service Credits) relating to the Charges for the immediately preceding Goods Delivery Period have been agreed.
- 4.3 When calculating the Charges for each Month, the Supplier shall apply the Rates applicable to the Low Volumes (as set out in Annex 1 to this Schedule 7.1).
- 4.4 At the end of each Contract Year, the Supplier shall calculate any Rebate payable to the Authority to reflect any overpayment by the Authority of Charges throughout the Contract Year based on actual Volumes, which shall be calculated as follows:

$$\text{Pre-Reconciled Charges} - \text{Volume Reconciled Charges} = \text{Rebate}$$

(the **Rebate Calculation**)

Where:

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

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

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

5 EXCLUDED COSTS

- 5.1 The Supplier shall not be entitled to include within the Mobilisation Costs any of the following (which together shall be referred to as “**Excluded Costs**”):
- 5.1.1 any part of any cost which exceeds what would be incurred by the Supplier on an arm's length commercial basis; or
 - 5.1.2 any part of those sums which exceeds what is fair and reasonable; or
 - 5.1.3 any sums described above which are not supported by appropriate evidence; or
 - 5.1.4 any sums that are not considered as Value for Money for the Authority; or
 - 5.1.5 any sums that have already been recovered by the Supplier from the Authority under any other Charge or payment under this Agreement; or
 - 5.1.6 any sums incurred by the Supplier as a result of:

- (a) any failure of the Supplier or its Sub-Contractors to comply with the terms of this Agreement;
- (b) any failure of the Supplier or its Sub-Contractors to maintain any equipment or software in accordance with the terms of this Agreement;
- (c) any negligent or irresponsible action of the Supplier or its Sub-Contractors;
- (d) any sums incurred in the implementation of any Rectification Plan.

PART F: ADJUSTMENTS TO THE CHARGES

6 DELAY PAYMENTS

6.1 In accordance with the provisions of Clause 5.15.2, in the event that the Supplier fails to deliver the Goods by the Delivery Date, and thereafter fails to re-deliver such Goods (the “**Delayed Goods**”) by an updated Delivery Date (to be agreed between the Parties and to be no later than 5 Working Days from the initial Delivery Date) (the “**Updated Delivery Date**”), the Supplier shall (where the Authority opts to accept such Delayed Goods) apply a credit to its next invoice to the Authority which shall be calculated as follows:

6.1.1 where the Delayed Goods are delivered on a day which is between 1-5 Working Days (inclusive), of the Updated Delivery Date, a sum equal to 10% of the total Charges payable in respect of the Delayed Goods; and

6.1.2 where the Delayed Goods are delivered on a day which is 6 or more Working Days of the Updated Delivery Date, a sum equal to 20% of the total Charges payable in respect of the Delayed Goods

7 CHANGES TO CHARGES

7.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Financial Model set out in the Supplier Tender).

7.2 The Charges shall remain fixed for the first Contract Year from the Commencement Date as set out in the Financial Model set out in the Supplier Tender.

7.3 Any changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and shall only be permitted in line with Indexation as set out in paragraph 7.6 and 7.7 below.

7.4 In the event that the Parties are unable to agree in good faith any adjustment to the Charges in accordance with paragraph 7, then either Party may terminate the supply of the relevant Goods to which the Charges review relates upon giving not less than twelve (12) months’ prior written notice, and for the avoidance of doubt, no increase to the Charges shall apply in relation to any such Goods during the period up to the date of termination.

7.5 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

Indexation

- 7.6 Any amounts or sums in this Agreement which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 7 to reflect the effects of inflation.
- 7.7 Where Indexation applies, the relevant adjustment shall be:
- (a) calculated at the first day of the Authority Financial Year but in the first year shall not take effect until after the first anniversary of the Commencement Date and shall be applied on the first day of the Authority Financial Year in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ending on the 31 January immediately preceding the relevant adjustment date.
- 7.8 Except as set out in Paragraph 7, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

PART G: INVOICING AND PAYMENT TERMS

8 SUPPLIER INVOICES

- 8.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 8.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall:
- (a) comply with the requirements of the Authority's e-invoicing system;
 - (b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 8.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 8.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Month or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (Purchase Order (PO) numbers are mandatory on all invoices and supplier must have one on all invoices. The Authority may decline to pay without a recognised PO number);
 - (f) the dates between which the Goods subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Goods;
 - (h) the applicable Volumes for that Month;
 - (i) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, the amount of any Rebate to be afforded to the Authority by way of Credit Note, and, separately, any VAT or other sales tax payable in respect of each of the same;

- (j) details of any deductions that shall apply to the Charges detailed on the invoice;
- (k) reference to any reports required by the Authority in respect of the Goods to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Goods);
- (l) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (m) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (n) where the Goods have been structured into separate service lines, the information at (a) to (m) of this Paragraph 5.3 shall be broken down in each invoice per service line.

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

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

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

REDACTED

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

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

8.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part G. Where any invoice does not conform to the Authority's requirements set out in this Part G, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

- 8.9 If the Authority fails to consider and dispute an invoice in accordance with paragraphs 8.4 and 8.8, within 10 Working Days the invoice shall be regarded as valid and undisputed for the purpose of paragraph 9.1.

9 PAYMENT TERMS

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

ANNEX 3: PRICING MECHANISM

REDACTED

ANNEX 4: REBATE WORKED EXAMPLE

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

Contract Year April 2025 – March 2026

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

Service Period	Volumes deliver per Service Period	Cumulative Volumes delivered (2025/26)	Rates applicable to Low Volumes – Pre-Reconciled Charges (£10 per unit)	Rates applicable to High Volumes – Volume Reconciled Charges (£6 per unit)
Test Devices: April	87	87	£870	£522
Test Devices: May	127	214	£1,270	£762
Test Devices: June	218	432	£2,180	£1,308
Test Devices: July	179	611	£1,790	£1,074
Test Devices: August	321	932	£3,210	£1,926
Test Devices: September	244	1,176	£2,440	£1,464
Test Devices: October	136	1,312	£1,360	£816
Test Devices: November	202	1,514	£2,020	£1,212
Test Devices: December	237	1,751	£2,370	£1,422
Test Devices: January	151	1,902	£1,510	£906
Test Devices: February	350	2,252	£3,500	£2,100

Test Devices: March	424	2,676	£4,240	£2,544
Total Paid			£26,760	£16,056

2. The Rates applicable to the Low Volumes are invoiced each month from April 2025 to March 2026 (the Pre-Reconciled Charges).
3. The Volumes hit Medium Volumes in September and High Volumes in February. As such, in calculating the Rebate for this Contract Year, the Authority will apply the Rate applicable to High Volumes, retrospectively to the Volumes for the entire Contract Year and calculate the difference in the Charges it has paid each Month throughout the Contract Year, and the Rates that apply to the Volumes actually incurred.
4. Therefore, in preparing the invoice for April 2026, the Supplier must carry out the Rebate Calculation, being *Pre-Reconciled Charges – Volume Reconciled Charges = Rebate*. For the above figures, this would be £26,760 - £16,056 = **£10,704**. As such, £10,704 would be the Rebate amount to be included in the Credit Note and deducted from the invoice for April 2026 (and such future invoices as applicable until the Credit Note has been fully redeemed).
5. The above calculation must be carried out by the Supplier and provided to the Authority for Approval before it is applied to the April 2026 invoice.
6. In the event that the value of the Credit Note exceeds the value of the April 2026 invoice Paragraph 4.5 shall apply.

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 7.4

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

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

2 WARRANTIES AND DUTY TO NOTIFY

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

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

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

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

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

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

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

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

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

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

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

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

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

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

making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

- 5.1 Subject to the calculation methodology set out at Table 1 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Table 1 Financial Indicators

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

(Net Debt to EBITDA Ratio)	(Net Debt to EBITDA ratio = Net Debt / EBITDA)	< (2.5x) times	Tested and reported yearly in arrears within 90 days of each accounting reference date based upon Net Debt and EBITDA, for the 12 months ending on the relevant accounting reference date.
3 Acid Ratio	Acid Ratio = (Current Assets – inventories) / Current Liabilities	> (1.0x) times	Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date.

4			
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Gearing	<p>Long Term Liabilities / Capital Employed (%)</p> <p>Or</p> <p>(Debt / Equity)</p>	< (X) %	<p>Tested and reported yearly</p> <p>in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.</p>
<p>5</p> <p>Turnover Ratio</p>	<p>Turnover Ratio = Bidder Annual Revenue / Expected Annual Contract Value</p>	> (2 times)	<p>Tested and reported yearly</p> <p>in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.</p>

Key: ¹ – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Guarantor (Parent Company)	<p>Eurofins Forensics Lux Holding SARL a company incorporated under the laws of Grand-Duchy of Luxembourg 23, Val Fleuri L-1526 Luxembourg, registered with the Registre de Commerce et des Sociétés (RCS) of Luxembourg under number B154225 represented by Florian Heupel (Director, Chairman of the Board of Directors) and Ludovic Vilain (Director)</p> <p>All Financial Indicators identified in the table at Paragraph 5.1</p>
Key Sub-Contractor (s)	<p>See Schedule 4.3 - Notified Key Sub-contractors</p> <p>All Financial Indicators identified in the table at Paragraph 5.1</p>

6 TERMINATION RIGHTS

6.1 The Authority shall be entitled to terminate this Agreement under Clause 31.2.2 (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7 PRIMACY OF CREDIT RATINGS

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

ANNEX 5: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

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

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

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

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

□ Rating Agency 2 (e.g Moodys)

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

- o Credit Rating Level 10 = Baa3
- o Etc.

□ Rating Agency 3 (Equifax)

- o Credit Rating Level 1 = A+, A, A- Excellent Risk
- o Credit Rating Level 2 = B+, B, B- Very Good
- o Credit Rating Level 3 = C+, C, C- Above Average
- o Credit Rating Level 4 = D+, D, D- Average Risk
- o Credit Rating Level 5 = E+, E, E- Below Risk
- o Credit Rating Level 6 = F+, F, F- Very High Risk
- o Credit Rating Level 9 = G Gazette Data Filed
- o Credit Rating Level 10 = I Insolvent Code
- o Credit Rating Level 11 = O Out of Date Accounts
- o Credit Rating Level 12 = N/A No Accounts have been filed

- Rating Agency 4 (Dun & Bradstreet). The following tables summarises financials strength and risks based of tangible net worth and assessment of failure.

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

D	70,000	99,999
E	35,000	69,999
F	20,000	34,999
G	8,000	19,999
H	0	7999

Alternate Symbols Used

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

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

NB New Business (less than 12 months old)

NQ Out of Business: Business has ceased to trade

Risk Indicator (Dun & Bradstreet Indicator)

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

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

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

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

Possible Fraudulent Activity - Our team of Severe Risk Specialists identify potential and actual fraudulent businesses and individuals. Customers are then warned and Scores / Risk Indicators are removed or shown as High Risk

Manual Overrides - Scores and Risk Indicators can be adjusted by authorised experts to reflect non statistical / catastrophic events

The following table shows the relationship between the Risk Indicator and level of risk, and provides a guide to interpretation:

D&B Risk Indicator

Indicator	Meaning	Probability of Failure
1	Minimal risk	Proceed with transaction. Offer extended terms if required
2	Low risk	Proceed with transaction
3	Slightly greater than average risk	Proceed with transaction but monitor closely
4	Significant level of risk	Take suitable assurances before extending credit
-	Insufficient information to assign a risk indicator.	
-	- e.g. personal guarantees	

ANNEX 6: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Note to Bidders: The table below has been constructed using Equifax if this is to change to an agreed Credit Rating and Credit Rating Thresholds then the Credit rating and Threshold has to be agreed before contract signature

Entity	Credit Rating (long term) (insert credit rating issued for the entity at the Effective Date)	Credit Rating Threshold (insert the actual rating (e.g AA-) or the Credit Rating Level (e.g Credit Rating Level 3))
Supplier	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 -C and above
Relevant Parent Company	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above
Guarantor (if different from Relevant Parent Company)	Rating Agency 3 – Credit Rating - C and above	Rating Agency 3 – Credit Rating 3 - C and above
Key Sub-contractors	Rating Agency 3 – Credit Rating 3 -C and above	Rating Agency 3 – Credit Rating 3 -C and above

ANNEX 7: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

[Note to Bidders: This Annex may be amended to reflect the calculation methodology for those Financial Indicators that are selected for inclusion in Paragraph 5.1 of this Schedule]

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. Terminology: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate (Bank of England Spot rate) in force at the relevant date for which the Financial Indicator is being calculated.
4. Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
<p>1</p> <p>Operating Margin</p>	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (that is, where the operating profit is negative), Operating Profit should be taken to be zero.</p>

<p>2</p> <p>Net Debt to EBITDA Ratio</p>	<p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <ul style="list-style-type: none"> • <u>Net Debt:</u> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest-bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.
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	<p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <ul style="list-style-type: none"> • <u>EBITDA:</u> <p>Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</p> <p>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</p>
3 (Acid Ratio)	<p>All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>

4	<p>Gearing focuses on the capital structure of the business – that means the proportion of finance that</p>
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<p>Gearing %</p> <p>Also known as “leverage”</p>	<p>is provided by debt relative to the finance provided by equity (or shareholders). Its focuses on the long-term financial stability of a business.</p> <p>All elements that are used to calculate Gearing % are available on the face of the Balance Sheet in a standard set of financial statements.</p> <p>Gearing % = (long term liabilities/Capital employed) * 100</p> <p>Long-term liabilities include loans due more than one year + preference shares + mortgages</p> <p>Capital employed = Share capital + retained earnings + long-term liabilities</p> <p>Or,</p> <p>Total Debt / Total Equity * 100%</p>
<p>5</p> <p>Turnover Ratio</p>	<p>Turnover Ratio = Annual Revenue / Expected Annual Contract Value</p> <p>The Turnover Ratio is used to understand how large the contract is compared to the annual revenue of a bidder for the contract.</p>

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 4 of Part I;
“Audit Agents”	<p>(qq) the Authority’s internal and external auditors;</p> <p>(rr) the Authority’s statutory or regulatory auditors;</p> <p>(ss) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>(tt) HM Treasury or the Cabinet Office;</p> <p>(uu) any Authority Quality Assurance Provider;</p> <p>(vv) any party formally appointed by the Authority to carry out audit or similar review functions; and</p> <p>(ww) successors or assigns of any of the above;</p>
“Authority Financial Year”	the period running from 1 April to 31 March in each year;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 4 of Part I;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods:</p> <p>(xx) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:</p> <p>(i) base salary paid to the Supplier Personnel;</p>

- (ii) employer's national insurance contributions;
 - (iii) employer pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation; and
 - (viii) reasonable recruitment costs, as agreed with the Authority;
- (yy) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (zz) operational costs which are not included within (xx) or (yy) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;

- (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 4 of Part I;
“Financial Model”	the financial response template submitted by the Supplier as part of the Supplier Tender (and known as the financial response template) and as updated from time to time through the Change Control Procedure or otherwise by agreement between the Parties;
“Financial Reports”	the Financial Model and the reports listed in the table in Paragraph 4.1 of Part I;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data, Charges and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 2 of Part H;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (aaa) the Supplier’s Costs broken down against each Good, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and component parts;

- (bbb) operating expenditure relating to the provision of the Goods including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
 - (iv) Reimbursable Expenses;
- (ccc) Overheads;
- (ddd) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Goods;
- (eee) the Supplier Profit achieved over the Term and on an annual basis;
- (fff) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (ggg) an explanation of the type and value of risk and contingencies associated with the provision of the Goods, including the amount of money attributed to each risk and/or contingency; and
- (hhh) the actual Costs profile for each Month.

“Open Book Profit Margin”

in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period;

“Overhead”

means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub contractor's

(as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;

“Reimbursable Expenses” reasonable out of pocket expenses that are not covered by the Charges, properly and necessarily incurred in the delivery of the Goods, calculated at the rates and in accordance with the Authority's expenses policy current from time to time and agreed in advance;

“Supplier Profit” for the purposes of this Schedule 7.5, in relation to a Month (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant Month;

“Supplier Profit Margin” for the purposes of this Schedule 7.5, in relation to a Month (as the context requires), the Supplier Profit for the relevant Month divided by the total Charges over the same Month and expressed as a percentage;

PART H: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

2 FINANCIAL TRANSPARENCY OBJECTIVES

2.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

(a) **Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Charges, Financial Reports and the Supplier Profit Margin and the Open Book Data;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

(b) **Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Goods;

(c) **Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements;
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices, and
- (iii) for the Parties to identify cost efficiencies in the event that forecasted volumes of Goods required by the Authority increase.

(together the "**Financial Transparency Objectives**").

3 OPEN BOOK DATA

3.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

3.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and

- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

PART I: FINANCIAL REPORTS

4 PROVISION OF THE FINANCIAL REPORTS

4.1 The Supplier shall provide

- (a) the Financial Model provided with the Supplier's Tender on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	An updated Financial Model updated in accordance with the Change Control Procedure and agreement between the Parties in the course of agreeing a Change (other than an Operational Change)
Monthly Financial Report	Monthly reports – Invoice produced with relevant backing document/statement supporting invoice. Within the last 5 days of the end of the previous month.
Quarterly Financial Report	<ul style="list-style-type: none">• reconciliation report• ad hoc change request reports Within 5 days of the end of the previous Quarter.
Annual Financial reconciliation Report	Within 1 month after the end of the Term
Quarterly Contract Report	Within 1 month of the end of each Quarter

Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 4.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 4.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 4.4 Each Financial Report shall:
- (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Agreement;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges exclusive of VAT and based on current prices.
- 4.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 4.6.
- 4.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Financial Model;

- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) not have any other internal financial model in relation to the Goods inconsistent with the Financial Model.
- 4.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports, Open Book Data and the Charges.
- 4.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - (b) any other part of the Financial Model,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 4.8 shall not have the effect of amending any provisions of this Agreement.

5 FINANCIAL MODEL

- 5.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the immediately preceding Financial Model (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
 - (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 5.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such

supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

(ii) the Authority has approved the relevant Financial Report.

5.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 5.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

5.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

6 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

6.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

6.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

7 KEY SUB CONTRACTORS

7.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

7.2 Without prejudice to Paragraph 7.3 of Part J, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

- (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART J: AUDIT RIGHTS

1 AUDIT RIGHTS

7.3 Without prejudice to the rights under the Agreement at clause 10 (*Continuous Improvement and Validation*), the Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- (d) to verify the Open Book Data;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Goods;
- (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Goods and to verify that these reflect the Supplier's own internal reports and records;
 - (n) to review the accuracy and completeness of the Registers;
 - (o) to review the Supplier's compliance with the Standards;
 - (p) to review the integrity, confidentiality and security of the Authority Data.
- 7.4 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 7.5 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

8 CONDUCT OF AUDITS

- 8.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods.
- 8.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any systems, equipment used (whether exclusively or non-exclusively) in the performance of the Goods;
 - (c) access to Supplier Personnel.
- 8.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Goods against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 8.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 8.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 8, unless the audit identifies a material Default by the Supplier in which case the

Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

9 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 9.1 As an alternative to the Authority's right pursuant to Paragraph 7.3 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 7.3.
- 9.2 Following the receipt of a request from the Authority under Paragraph 9.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

10 RESPONSE TO AUDITS

- 10.1 If an audit undertaken pursuant to Paragraphs 1 or 9 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
 - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.1

GOVERNANCE

Governance

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority’s Commercial Contracts Manager”	the individual appointed as such by the Authority to perform such role from time to time;
“Authority’s Drug Strategy Representative”	the individual appointed as such by the Authority to perform such role from time to time;
“Authority’s Senior Contract Manager”	the individual appointed as such by the Authority to perform such role from time to time;
“Contract Review Meeting”	means the Meeting as described in Paragraph 5 to this Schedule;
“Drug Panel Review Meeting”	means the Meeting as described in Paragraph 6 to this Schedule;
“Meetings”	the Performance Review Meeting, Contract Review Meeting and Drug Panel Review Meeting and “Meeting” shall mean any of them;
“Meeting Member”	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 8 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Performance Management Meeting”	means the Meeting as described in Paragraph 4 to this Schedule.
“Senior Supplier Contract Manager”	means the individual appointed as such by the Supplier, which at the Effective Date shall be as named in Annex 1;

2 MANAGEMENT OF THE AGREEMENT

2.1 The Supplier and the Authority shall each appoint an Operational Contract Manager for the purposes of this Agreement through whom the provision of the Goods shall be managed at a day-to-day.

- 2.2 The Supplier shall appoint a suitably qualified Supplier Contract Liaison in accordance with Clause 12.4 who will act as a technical interface between the Supplier and the Authority and be capable and qualified to provide technical expertise in relation to the Goods.
- 2.3 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 MEETINGS

Establishment and structure of the Meetings

- 3.1 The Meetings shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Meeting, the:
- (a) Authority Meeting Members;
 - (b) Supplier Meeting Members;
 - (c) frequency that the Meeting shall meet (unless otherwise agreed between the Parties);
 - (d) location; and
 - (e) planned start date by which the Meeting shall be established,
- shall be as set out in Annex 8.
- 3.3 In the event that either Party wishes to replace any of its appointed Meeting Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Meeting Member has at all times a counterpart Supplier Meeting Member of equivalent seniority and expertise.

Meetings

- 3.4 Each Party shall (at their own cost) ensure that its Meeting Members shall make all reasonable efforts to attend Meetings at which that Meeting Member's attendance is required. If any Meeting Member is not able to attend a Meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Meeting as identified in Annex 8. The chairperson shall be responsible for:

- (a) scheduling Meetings;
 - (b) setting the agenda for Meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the Meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Meetings;
 - (e) ensuring that minutes for Meetings are recorded and disseminated electronically to the appropriate persons and to all Meeting participants within ten Working Days after the Meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Meeting is given effect in the appropriate manner.
- 3.6 Meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 Meetings shall be conducted in person (at a reasonable venue nominated by the Authority), or at the Authority's option, using a virtual meeting platform nominated by the Authority.
- 3.8 The Parties shall ensure, as far as reasonably practicable, that all Meetings shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Meeting Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 PERFORMANCE MANAGEMENT MEETING

- 4.1 The chairperson for the Performance Management Meeting will be the Authority's Operational Contract Manager.
- 4.2 The purpose of the Performance Management Meeting is to:
- 4.2.1 review the performance of this Agreement from an operational and commercial perspective;
 - 4.2.2 review how the commitments and obligations of the Supplier under this Agreement are being delivered;
 - 4.2.3 review opportunities to improve the Goods;
 - 4.2.4 escalate key issues to the Contract Review Meeting.
- 4.3 The objectives of the Performance Management Meeting are to:
- 4.3.1 review Goods to ensure that they are being supplied in accordance with the terms of this Agreement and that the fulfilment rate is sufficient or, if not sufficient, that actions are in place to improve it;

- 4.3.2 ensure Goods are of good quality, Delivered in a timely manner and are appropriately priced;
- 4.3.3 review performance against KPIs and monitor key risks and issues;
- 4.3.4 review commitments and obligations under this Agreement and rectification activity;
- 4.3.5 review the way in which the Agreement meets any evolving business needs; and
- 4.3.6 provide an open forum of discussion and idea sharing around best practice.
- 4.4 The Performance Management Meeting shall be held quarterly (or at such other frequency as the Authority may determine) during the Term.
- 4.5 The Performance Management Meeting agenda shall include, but is not limited to, the following:
 - 4.5.1 reviewing performance, which shall include:
 - (a) Supplier delivery against KPIs;
 - (b) incidents; and
 - (c) social responsibility requirements;
 - 4.5.2 reviewing delivery against contractual obligations
 - 4.5.3 reviewing the contractual risks, issues and opportunities and opportunities for improvement; and
 - 4.5.4 reviewing payment performance;
 - 4.5.5 reviewing Authority stakeholder feedback, including:
 - (a) customer satisfaction;
 - (b) complaints; and
 - (c) lessons learned;
 - 4.5.6 any required commercial interventions, including:
 - (a) changes; and
 - (b) performance remedies (including but not limited to reviewing the performance of Rectification Plans); and
 - 4.5.7 agreeing on necessity for escalations and their subsequent outcomes once concluded.

5 CONTRACT REVIEW MEETING

- 5.1 This meeting brings together key stakeholders from the Parties who are responsible for the successful performance of the Agreement.
- 5.2 All Meeting Members to the Contract Review Meeting must assume a collective responsibility for ensuring a successful outcome to the Meeting.
- 5.3 The Contract Review Meeting shall be held once every six (6) months (or at such other frequency as the Authority may determine) during the Term.
- 5.4 The chairperson of the Contract Review Meeting shall be the Authority's Senior Contract Manager.
- 5.5 The purpose of the Contract Review Meeting is to:
 - 5.5.1 review performance and obligations under the Agreement;
 - 5.5.2 consider risks, issues and opportunities;
 - 5.5.3 review payment performance;
 - 5.5.4 discuss stakeholder feedback;
 - 5.5.5 agree escalations; and
 - 5.5.6 agree any commercial interventions required, including any Contract Change or rectification.
- 5.6 Where a Contract Review Meeting has been organised to take place in a month, a Performance Management Meeting will not take place during the same month.
- 5.7 The Contract Review Meeting agenda shall include, but is not limited to, the following:
 - 5.7.1 reviewing performance, which shall include:
 - (a) Supplier delivery against KPIs;
 - (b) incidents;
 - (c) social responsibility requirements;
 - 5.7.2 reviewing delivery against contractual obligations
 - 5.7.3 reviewing the contractual risks, issues and opportunities for improvement; and
 - 5.7.4 reviewing payment performance;
 - 5.7.5 reviewing Authority stakeholder feedback, including:
 - (a) customer satisfaction;

- (b) complaints; and
 - (c) lessons learned;
 - (d) reviewing Supplier contingency plans;
- 5.7.6 any required commercial interventions, including:
 - (a) changes; and
 - (b) performance remedies (including but not limited to reviewing the performance of Rectification Plans); and
- 5.7.7 agreeing escalations.
- 5.8 Where risks and issues cannot be resolved at the Contract Review Meeting level, the chairperson will ensure actions are created for escalation to the appropriate governance body or individual within their organisation.
- 6 DRUG PANEL REVIEW MEETING**
- 6.1 The Drug Panel Review Meeting shall be held once every six (6) months during the Term.
- 6.2 The chairperson of the Drug Panel Review Meeting shall be the Authority's Operational Contract Manager.
- 6.3 The Drug Panel Review Meeting is an opportunity for the Authority and the Supplier to work collaboratively to ensure the evolving drug identification needs of the Authority are met by:
 - 6.3.1 reviewing the suitability of the Drugs Panel by utilising:
 - (a) information arising from market developments, Guidance and Good Industry Practice (including that notified by the Supplier to the Authority in accordance with Clause 7); and
 - (b) any information, materials or other data developed or obtained by the Supplier in connection with its continuous improvement and validation obligations at Clause 11; and
 - 6.3.2 agreeing and recording requirements for necessary amendments to the Drug Panel and process, including any required actions and completion dates.
- 6.4 The Supplier must ensure that all information required to evidence any proposed amendments to the Drugs Panel is provided to the required Authority's Operational Contract Manager at least two (2) weeks before the Drug Panel Review Meeting.
- 6.5 Any decisions reached in the Drug Panel Review Meeting shall be escalated to the Contract Review Meeting for sign off.

6.6 Any Drugs Change is subject to Paragraph 10 of Schedule 8.2 (*Change Control Procedure*).

7 CONTRACT MANAGEMENT MECHANISMS

7.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.

7.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

- (a) the identification and management of risks;
- (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

8 GOVERNANCE AND ESCALATION

8.1 Where risks and issues cannot be resolved at Meeting level, the Authority's Operational Contract Manager and Authority's Commercial Contracts Manager are responsible for escalation to the appropriate governance body or individual within the Authority.

8.2 In the event of escalation in line with Paragraph 8.1 above, the Authority's Operational Contract Manager will also refer to the manner in which the current relevant policy defines the need and process for commissioning detailed performance review, quality assessments and/or root cause analysis in the event of:

- 8.2.1 any performance issues identified;
- 8.2.2 any improvement activity required; and
- 8.2.3 analysis of best practice.

ANNEX 8: REPRESENTATION AND STRUCTURE OF BOARDS

Performance Management Meeting

Authority members of Performance Management Meeting	Chairperson - Authority's Operational Contract Manager Authority's Commercial Contracts Manager
Supplier members of Performance Management Board	TBC [Supplier Operational Contract Manager]
Start date for Performance Management Board meetings	TBC during mobilisation
Frequency of Performance Management Board meetings	Quarterly
Location of Performance Management Meetings	Virtually via Microsoft Teams or, if essential, in person

Contract Review Meeting

Authority Members of Contract Review Meeting	Chairperson - Authority's Senior Contract Manager Authority's Operational Contract Manager Authority's Commercial Contracts Manager
Supplier Members of Contract Review Meeting	TBC [Supplier Senior Contract Manager] [Supplier Operational Contract Manager]
Start Date for Contract Review Meetings	TBC during mobilisation
Frequency of Contract Review Meetings	Once every six (6) months

Location of Contract Review Meetings	Virtually via Microsoft Teams or, if essential, in person
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Drug Panel Review Meeting

Authority Members of Drug Panel Review Meeting	Chairperson - Authority's Operational Contract Manager Authority's Commercial Contracts Manager Authority's Drug Strategy Representative
Supplier Members of Drug Panel Review Meeting	TBC [Supplier Senior Contract Manager] [Supplier Contract Liaison] [Supplier Operational Contract Manager]
Start Date for Drug Panel Review Meeting	TBC during mobilisation
Frequency of Drug Panel Review Meetings	Once every six (6) months
Location of Drug Panel Review Meetings	Virtually via Microsoft Teams or, if essential, in person

Supplier Initial Appointments

Supplier Operational Contracts Manager	REDACTED
Supplier Contract Liaison	REDACTED
Supplier Senior Contract Manager	REDACTED

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

Change Control Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority's Operational Contract Manager;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 9;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Desirable Drug”	means a drug listed in Annex A to the Specification or as otherwise listed in the Supplier Solution or agreed between the Parties;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Operational Contract Manager.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 9 and Drugs Changes shall be processed in accordance with Paragraph 10. If either Party is in doubt about whether a change falls within the definition of an Operational Change or Drugs Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Goods in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.5 The Supplier shall:

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Supplier (unless agreed otherwise).

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges or change any cost of any Contract Change only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any charge for any Contract Change or any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Goods as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 9 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) The nature of the request for clarification; and
- (b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
 - (b) details of the impact of the proposed Contract Change on the Goods and the Supplier's ability to meet its other obligations under this Agreement;
 - (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Specification, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Specification;
 - (iii) other goods provided by third party contractors to the Authority;
 - (d) details of the cost of implementing the proposed Contract Change;
 - (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 22 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or to the Goods to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
- 6.2 The Authority may where it deems reasonably necessary seek independent advice in its consideration and evaluation of any Impact Assessment from the Supplier. Any Change Request issued by the Supplier shall be in clear, comprehensive English with any technical language explained. Where the Authority reasonably believes that the Supplier has failed in doing this and therefore deems it reasonably necessary to seek independent advice in accordance with this paragraph 6.2, then the Supplier shall

pay the reasonable costs incurred by the Authority in obtaining such independent advice.

- 6.3 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.4 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Goods to be provided in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Specification state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 5.

8 FAST-TRACK CHANGES

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any Termination Assistance Period may be required does not exceed 10% of the annual Charges and the proposed Contract Change is not significant (as determined by the Authority acting reasonably); and
- (c) where the Change is anticipated in paragraph 10.5 below,

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9 OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the provision of the Goods may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Authority;
 - (b) require a change to this Agreement;
 - (c) have a direct impact on delivery, receipt or use of the Goods; or
 - (d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Operational Contract Manager.
- 9.3 The RFOC shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Goods that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 DRUGS CHANGE PROCEDURE

- 10.1 The Authority may request a Drugs Change by submitting a written request for Drugs Change (“**RFDC**”) to the Supplier’s Operational Contract Manager.
- 10.2 The RFDC shall include the following details:
- (a) the proposed Drugs Change; and
 - (b) the time-scale for completion of the Drugs Change.
- 10.3 Where the proposed Drugs Change is to incorporate a Desirable Drug:
- 10.3.1 the Parties agree that the Supplier may not reject such RFDC;
 - 10.3.2 any change to the Charges shall reflect the charges (if any) set out for the Desirable Drugs in the Financial Model; and
 - 10.3.3 the parties shall document such change in accordance with the Fast Track Change Procedure above.
- 10.4 Where the proposed RFDC is to incorporate a new drug which is not a Desirable Drug, the Supplier shall, within 5 Working Days inform the Authority if:
- 10.4.1 the existing Goods are capable of identifying the new proposed drug; and
 - 10.4.2 where the Supplier confirms that the new proposed Drug can be incorporated without the need for any material change to the processes and procedures then the parties’ shall document such change in accordance with the Fast Track Change Procedure above.
- 10.5 In the event that the RFDC is to incorporate a new drug which is not a Desirable Drug and either the processes, or Goods would require material amendment in order to identify the proposed drug, the Supplier shall within 5 Working Days of receiving the RFDC provide details of any impact on the Goods or Charges that may arise from the proposed Drugs Change and the Drugs Change shall be made in accordance with the Change Control Procedure set out in paragraphs 4, 5, 6 and 7 above.

11 COMMUNICATIONS

- 11.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 9: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 10: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____	Signature: _____	
Name: _____	Name: _____	
Position: _____	Position: _____	
Date: _____	Date: _____	

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (iii) another contract with the Authority or the Supplier which is relevant to this Agreement; or (jjj) a Sub-contract;
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the

Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority's Operational Contract Manager and the Supplier's Operational Contract Manager Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - (b) if it is served by the Supplier it shall be treated as a Supplier Request,
- and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
 - (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute,

the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Senior Contract Manager and/or Senior Business Owner and the Supplier's Head of Group Tendering.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods or otherwise relates to a technical matter of a manufacturing, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request

(agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (b) if the Dispute relates to a matter of a technical nature relating to the design or manufacture of the Goods on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are

commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

10 TRANSPARENCY REPORTS

- 10.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 11 (once approved, the “**Transparency Reports**”).
- 10.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 10.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 11.
- 10.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 10.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 10.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

11 OTHER REPORTS

- 11.1 The Authority may require any or all of the following reports:
- (a) reports relating to tests carried out under and Schedule 8.6 (*Continuity Plan and Corporate Resolution Planning*);
 - (b) reports which the Supplier is required to supply as part of the Management Information;
 - (c) annual reports on the Insurances;
 - (d) security reports; and
 - (e) Force Majeure Event reports.
- 11.2 Annual Performance Report
- 11.2.1 The Supplier shall prepare and submit to the Authority by no later than 31st May in each Contract Year a report summarising the Supplier’s performance over the immediately preceding Contract Year, which should include (without limitation):
- (a) Summary of accuracy of Test Results;
 - (b) Demonstration of suitability and adequacy of Goods:

- (i) for safe and effective use by Test Recipient and any individual administering a Test;
 - (ii) for the purposes of collecting samples without adverse impact on accuracy of Test Results;
 - (iii) to meet any cultural and religious needs of Test Recipients and any individual administering a Test; and
 - (iv) to prevent any change or influence in Test Results.
- (c) Confirmation that the Supplier:
- (i) holds any necessary accreditations as required by Law, Good Industry Practice or this Agreement;
 - (i) is fully compliant with any applicable Law in the delivery of the Goods;
 - (ii) evidence of continued participation in an external quality assessment scheme which is fit for purposes in accordance with Good Industry Practice;
- (d) Review of operating procedures including validation data for each method, proposed accuracy and precision data and any published scientific papers to support the functionality of the Goods;
- (e) Reports relating to Testing and tests carried out under Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (f) Summary of review of the Exit Plan prepared in accordance with Schedule 8.5 (*Exit Management*), along with any proposed amendments to such Exit Plan;
- (g) Summary of review and updates to the Carbon Reduction Plan as further described in the Specification;
- (h) Payment performance to Sub-contractors in accordance with Clause 16 of the Agreement;
- (i) Report on the Supplier's performance on delivering social value including in accordance with KPI 4 as set out in Schedule 2.2 (*Performance Levels*);
- (j) Evidence of compliance with the requirements of Section 21 of the Specification;
- (k) Innovations and Efficiencies Report (the detail of which shall be agreed between the Parties);
- (l) Testing Products and Method Efficacy Assurance Report (the detail of which shall be agreed between the Parties);

12 RECORDS

- 12.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 10, Annex 11 and Annex 2 (together “**Records**”):
- (a) in accordance with the requirements of The National Archives and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 12.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 12.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 12.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Goods including but not limited to all Records.
- 12.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 12.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

13 Contract information to be maintained by the Supplier

13.1 The Supplier shall, at no cost to the Authority maintain and update the information listed at Annex 3 from the date of initial upload (updated in accordance with the requirements at Annex 3):

13.1.1 in a central database, in format which is accessible to the Authority (in accordance with any format requirements set out in Annex 3);

13.1.2 and in accordance with any applicable legislation governing the use or processing of personal data;

13.1.3 securely and backed up in accordance with Good Industry Practice

and make such information available to the Authority in accordance with the terms of this Agreement and in any case promptly upon request by the Authority. The Supplier warrants that any information so maintained is complete and accurate at the time it is created and updated.

14 Risk Register

14.1 The Supplier shall prepare and maintain a register of risks and contingencies applicable to the delivery of the Goods and shall provide a copy of such risk register as updated from time to time to the Authority not less than once per year, or when updated.

ANNEX 11: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>KPI Performance</i>	Percentage performance feedback against KPIs and explanatory commentary	To be determined by the Authority	As required by Schedule 2.2
<i>The Terms and Conditions</i>	As set out in these Terms and Conditions	Reasonably redacted by the Authority	At contract signature

ANNEX 12: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Operational Contract Manager and Supplier Contract Liaison.
4. Notices, reports and other documentation submitted by any Expert.
5. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
6. All formal notices, reports or submissions made by the Supplier to the Authority's Operational Contract Manager in connection with the provision of the Goods.
7. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Goods.
8. Documents prepared by the Supplier in support of claims for the Charges.
9. Documents submitted by the Supplier pursuant to the Change Control Procedure.
10. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
11. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
12. Invoices and records related to VAT sought to be recovered by the Supplier.
13. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
14. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
15. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
16. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

ANNEX 13: CONTRACT INFORMATION TO BE MAINTAINED BY THE SUPPLIER

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 2.2, Part B Para 2.3	Performance Monitoring Report	Sch 2.2, Part B	Commencement Date	Within ten (10) Working Days of the end of each Goods Delivery Period
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within fifteen (15) days after policy renewal or replacement
CI 20	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information
CI 15.11	Notified Key Sub-contractors	Sch 4.3	Effective Date	On replacement of key subcontractor
CI 15.10	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
CI 15.28	Supply chain Transparency Information Reports	Sch 8.4, Annex 14	thirty days prior to the of the end of each financial year	Every twelve (12) months
Sch 7.1, Part D, Para 4.2	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4
Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 7.5, Part B, Para 1.1	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed	-
Sch 7.5, Part B, Para 1.1	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter	-
Sch 7.5, Part B, para 1.1	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates	-
Sch 7.5 Part B, para 1.1	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term	-
Sch 8.1, Para 3.3	Representation and Structure of boards	Sch 8 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 8.1, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson	-
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.2 Part 5.4
Sch 8.2, Para 2.5	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation
Sch 8.4, Para 10	Reports and Records Provisions	Sch 8.4, Annex 11	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 11
Sch 8.5, Para 2.1(a)	Register of All, Sub-contracts and Retained Stock	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 8.5, Para 5.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	<p>In the first month of each Contract Year; and</p> <p>Within 14 days if requested by the Authority following a Financial Distress Event</p> <p>Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement</p>
Sch 8.5, Para 6.5(b)	Authority Data (handback)	Sch 8.5, Para 2.1 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-
Sch 8.6, Part A	Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement
Sch 8.6, Para 7.2	Continuity Plan Review Report	Sch 8.6, Para 7.2	Within 20 Working Days of the conclusion of each review of the Continuity Plan.	-
Sch 11, Para 1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority

ANNEX 14: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.5

EXIT MANAGEMENT

Exit Management

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Ethical Wall Agreement”** an ethical wall agreement in a form similar to the draft ethical wall agreement set out at 0;
- “Exit Information”** has the meaning given in Paragraph 3.1;
- “Exit Manager”** the person appointed by each Party pursuant to Paragraph 2.2 for managing the Parties' respective obligations under this Schedule;
- “Transferable Contracts”** the Sub-contracts, or other agreements which are required for the manufacture and delivery of the Goods and are identified as Transferable Contracts in the Exit Plan; and
- “Transferring Contracts** has the meaning given in Paragraph 7.3; and
- “Transferring Retained Stock”** shall be as further described in Paragraph 7.3.2

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all sub-contracts in place with any Key Sub-contractor and any key manufacturer in relation to the Goods.
- (b) create and maintain a list of Retained Stock maintained by the Supplier.
- (c) create and maintain any other registers as the Parties' may agree to be provided as part of the Exit Plan.

together the **“Registers”**

2.2 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the

requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF GOODS

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- (a) details of the Goods and Cut-Off Levels;
- (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
- (c) an inventory of Authority Data in the Supplier's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the manufacture and provision of the Goods;
- (f) such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the provision of the Goods and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects.

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF GOODS

4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Goods.

4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5 EXIT PLAN

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the provision of the Goods from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Goods under this Agreement;
- (c) a detailed description of both the transfer and cessation processes;
- (d) proposals for the transfer of Retained Stock to either the Authority or a Replacement Supplier.
- (e) proposals for the reduction in Retained Stock in the period of three (3) months (or such other period as the Parties' may agree) up to the end of the term of this Agreement;

- (f) any charges that would be payable for the provision of the Goods during any Termination Assistance Period (calculated in accordance with the charges in Schedule 7.1 (Charging and Invoicing); and
- (g) how the Goods would be provided (if required) during any Termination Assistance Period.

5.4 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Goods that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.5 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Goods that have occurred since the Exit Plan was last agreed.
- 5.6 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Goods during any Termination Assistance Period in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION ASSISTANCE

Notification of Requirements for Termination Assistance

- 6.1 The Authority shall be entitled to require the provision of Goods or other support during a Termination Assistance Period at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the Goods and or other support (such as training or helpdesk support) required; and
- (b) the period during which it is anticipated that Goods or other support will be required, which shall continue no longer than 24 months after the termination or expiry of this Agreement.

Termination Assistance Period

6.2 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Goods, and other support (such as helpdesk or training support) (as applicable);
- (b) provide the Goods at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.3; and
- (c) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.3 If the Supplier demonstrates to the Authority's reasonable satisfaction that continued provision of the Goods during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) to take account of such adverse effect.

Termination Obligations

6.4 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.

6.5 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's delivery of the Goods and its compliance with the other provisions of this Schedule) in respect of the Goods that have been terminated, the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:

- (i) all materials provided by the Authority to the Supplier under this Agreement;
 - (ii) any Goods or other items which have been paid for by the Authority;
 - (e) vacate any Authority Premises;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:
 - (i) such information relating to the Goods as remains in the possession or control of the Supplier; and
 - (ii) recover any Goods which have been paid for by the Authority (or any Retained Stock to be transferred to the Authority in accordance with paragraph 7.
- 6.6 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's delivery of the Goods and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Goods or for statutory compliance purposes.
- 6.7 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to this Agreement shall be terminated with effect from the end of the Termination Assistance Period.

7 SUB-CONTRACTS AND RETAINED STOCK

- 7.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Goods, without the Authority's prior written consent to terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Goods or the Charges;
- 7.2 Within 7 days of a Termination Notice (or if later no less than three (3) months prior to the end of the term), the Supplier shall provide a report (the “**Retained Stock Report**”) to the Authority detailing:
- 7.2.1 the amounts of Retained Stock in its control at the date of such report;
 - 7.2.2 its proposals for the gradual reduction of the Retained Stock during the period up to the date of termination or expiry (or if later the end of any Termination Assistance Period);

- 7.2.3 how much Retained Stock will be in its control at the date of termination or expiry (or if later the end of any Termination Assistance Period) and proposals for the sale or re-use of such Retained Stock to third parties.
- 7.3 Within 20 Working Days of receipt of the Retained Stock Report, the parties shall meet and work in good faith to agree:
- 7.3.1 how Retained Stock should be handled by the Supplier in the period up to the termination or expiry (or if later the end of any Termination Assistance Period); and
- 7.3.2 how much Retained Stock shall be purchased by the Authority at the termination or expiry (or if later the end of any Termination Assistance Period) (the “**Transferring Retained Stock**”); and
- 7.3.3 the Charges payable in respect of the Transferring Retained Stock (which shall be no greater than the applicable Charges at the date of the Retained Stock Report).
- Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.2(c), the Authority shall provide written notice to the Supplier setting out: which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “**Transferring Contracts**”).
- 7.4 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Retained Stock to the Authority and/or its nominated Replacement Supplier for the price agreed in accordance with paragraph 7.2.
- 7.5 Risk and title in the Transferring Retained Stock shall pass to the Authority or the Replacement Supplier (as appropriate) upon delivery and the terms of this Agreement shall apply to any such sale.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier’s failure to comply with Clause 18 (*Intellectual Property Rights*).

8 CHARGES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Goods), the Authority shall pay the Charges to the Supplier in respect of the Goods provided in accordance with the rates set out in the Schedule 7.1 (Charging and Invoicing)

9 APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 9.2 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 9.3 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 9.4 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.5 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) [INSERT NAME OF AUTHORITY] (the "Authority") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "Counterparty").

BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also provided goods for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Authority and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the

Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

"Parties" means the Authority and the Counterparty;

"Professional Advisor" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

"Purpose" has the meaning given to it in recital (B) to this Agreement;

"Representative" refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

"Third Party" means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms "associate", "holding company", "subsidiary", "subsidiary undertaking" and "wholly owned subsidiary" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act,

the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.

- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2. ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
 - (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
 - (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.
- 2.2 The Counterparty shall:
 - (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
 - (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
 - (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or

- (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
 - (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
 - (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
 - (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
 - (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
 - (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
 - (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
 - (j) comply with any other action as the Authority, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:
- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
 - (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
 - (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
 - (a) the Counterparty or any Affiliate or Representative; or
 - (b) any Other Bidder, Other Affiliate or Other Representative,
 as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
 - (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
 - (b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

3. SOLE RESPONSIBILITY

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

4. WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5. ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7. TRANSPARENCY

- 7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8. NOTICES

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Counterparty	Authority
Contact		
Address		
Email		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9. WAIVER AND CUMULATIVE REMEDIES

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

10. TERM

- 10.1 Each party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date.

11. GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 8.6

CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART K: BUSINESS CONTINUITY PLAN**1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;
“Department”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (kkk) Government Department; or (III) Non-Ministerial Department.
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Goods, or a material part of the Goods will be unavailable for a period of 1 month or which is reasonably anticipated will mean that the Goods or a material part of the Goods will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Recovery Services”	the goods embodied in the processes and procedures for restoring the Goods following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;

“Insolvency Continuity Plan” has the meaning given in Paragraph 2.2(a)(iv).

“Related Goods Provider” any person who provides goods to the Authority in relation to this Agreement from time to time;

“Review Report” has the meaning given in Paragraphs 7.2(a) to 7.2(c);

2 CONTINUITY PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Goods following any failure or disruption of any element of the Goods (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Goods in the event of a Disaster.

2.2 The Continuity Plan shall:

- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**);
 - (iii) Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

2.3 Following receipt of the draft Continuity Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Continuity Plan no later than 20 Working Days after the date on which the draft Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Continuity Plan may impact upon the operation of the Goods and any goods provided to the Authority by a Related Goods Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Goods Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Goods Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Goods and processes for managing the risks arising therefrom;

- (iii) identification of risks arising from the interaction of the Goods with the services provided by a Related Goods Provider;
- (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
- (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The Continuity Plan shall be designed so as to ensure that:

- (a) the Goods are provided in accordance with this Agreement at all times during and after the invocation of the Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Continuity Plan.

3.3 The Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods, to the business processes facilitated by and the business operations supported by the Goods, and/or changes to the Supplier Group structure.

- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4 CONTINUITY PLAN: PART B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Goods remain supported and to ensure continuity of the business operations supported by the Goods including, unless the Authority expressly states otherwise in writing:
- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Goods; and
 - (b) the steps to be taken by the Supplier upon resumption of the Goods in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- (a) address the various possible levels of failures of or disruptions to the Goods;
 - (b) set out the goods to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods (such services and steps, the “**Business Continuity Services**”);
 - (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Goods during any period of invocation of the Business Continuity Plan; and
 - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Goods following any Disaster or during any period of failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:

- (a) details of the procedures and processes to be put in place by the Supplier in relation to the disaster recovery processes:
 - (i) alternative locations of stock for the ongoing provision of Goods;
 - (ii) alternative manufacturers of goods and/or component parts;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning;
 - (viii) steps to be taken upon resumption of the Goods to address any prevailing effect of the failure or disruption of the Goods;
- (b) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Goods during any period of invocation of the Disaster Recovery Plan;
- (c) details of how the Supplier shall ensure compliance with Standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked; and
- (d) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule.

6 CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Goods through continued provision of the Goods following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - (a) communication strategies which are designed to minimise the potential disruption to the provision of the Goods, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

- (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Goods;
- (c) plans to manage and mitigate identified risks;
- (d) alternative manufacturers of goods and/or component parts;
- (e) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Goods;
- (f) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- (g) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE CONTINUITY PLAN

7.1 The Supplier shall review and update the Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Continuity Plan and shall assess their suitability having regard to any change to the Goods or any underlying business processes and operations facilitated by or supported by the Goods which have taken place since the later of the original approval of the Continuity Plan or the last review

of the Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Continuity Plan. The review shall be completed by the Supplier within the period required by the Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Continuity Plan, provide to the Authority a report (a **“Review Report”**) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Goods; and
- (c) the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures

necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods.

8 TESTING OF THE CONTINUITY PLAN

- 8.1 The Supplier shall test the Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Goods or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Continuity Plan.
- 8.2 If the Authority requires an additional test of the Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the Continuity Plan (including the Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Continuity Plan) to remedy any failures in the Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

- 8.7 For the avoidance of doubt, the carrying out of a test of the Continuity Plan (including a test of the Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.8 The Supplier shall also perform a test of the Continuity Plan in the event of any major reconfiguration of the Goods or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the provision or manufacture of the Goods or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Continuity Plan, including any linked elements in other parts of the Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Continuity Plans, including any linked elements in other parts of the Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Goods; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

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SCHEDULE 8.7

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the **"Indemnifier"**), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the **"Beneficiary"**).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a **"Claim"**), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice
-

from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

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SCHEDULE 10 - *REDACTED*

PARENT COMPANY GUARANTEE

CONTRACT FOR THE PROVISION OF DRUG POINT OF CARE TESTING EQUIPMENT

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

NOTE TO BIDDERS: We anticipate that this Schedule would be completed by the Authority and the Supplier following contract award. We expect that the Schedule will set out details of Personal Data processing activities in respect of which the Supplier acts as a processor on behalf of the Authority or Approved User or Probation Office as a controller.

- 1.1 The contact details of the Authority's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 1.3 The Supplier shall comply with any further written instructions with respect to processing by the relevant Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Categories of Personal Data	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority or the Approved User or Probation Office is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> • [Insert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the Authority]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.]</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p>

	<i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>