

Schedule 2

**General Terms and Conditions**

1.

Contents

1. Supply of Goods
2. Delivery
3. Passing of risk and ownership
4. Inspection, rejection, return and recall
5. The Authority's obligations
6. Price and payment
7. Warranties
8. Intellectual property
9. Indemnity
10. Limitation of liability
11. Insurance
12. Term and termination
13. Consequences of expiry or early termination of this Contract
14. Packaging, identification and end of use
15. Dispute resolution
16. Coding requirements
17. Change management
18. Force majeure
19. Contacts data
20. Records retention and right of audit
21. Equality and Human Rights
22. Notice
23. Assignment, novation and sub-contracting
24. Prohibited Acts
25. Conflict of interest and prevention of fraud
26. General

Supply of Goods

- 1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:
  - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 using reasonable skill and care in their delivery and supply;
  - 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
  - 1.1.5 in accordance with any quality assurance standards as set out in the Key Provisions and/or in the Order Form.
  - 1.1.6 in accordance with the Law and with Guidance;
  - 1.1.7 in accordance with Good Industry Practice;
  - 1.1.8 in accordance with the Policies; and
  - 1.1.9 in a professional and courteous manner.

- 1.2 The Supplier shall comply fully with its obligations set out in the Specification and any Proposal Document and/or the Order Form (to include, without limitation, all obligations in relation to the quality standards, performance characteristics, supply, delivery and training in relation to use of the Goods).
- 1.3 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Order Form and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.
- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.
- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.8 The Supplier's supply of the Goods may depending on the nature of the Goods in question be subject to Clause 1 of Schedule 4.

**2** Delivery

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

Delivery and collection
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the

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

#### Delivery note

- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information, or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description, the quantity and specific storage instructions (if any) of the Goods, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the manufactured on and use by dates, the ASN number (where required) and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.

#### Part deliveries

- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.

#### Transport and other related costs

- 2.5 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Order Form.

#### Use of third party carriers

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

### **3 Passing of risk and ownership**

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

- 3.2 Ownership of the Goods shall pass to the Authority on the earlier of:

3.2.1 full payment for such Goods; or

3.2.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3 of this Schedule 2, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.

- 3.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

### **4 Inspection, rejection, return and recall**

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

- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 and subject to Clause 4.7 of this Schedule 2, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("Rejected Goods"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.

- 4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 4.2 Schedule 2, the Supplier shall at the Authority's written request:

4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and

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

	If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.	4.9.1	promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
4.4	Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.	4.9.2	from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 2;
4.5	Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.	4.9.3	consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and
4.6	Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("Defective Goods"), the Supplier shall, at the Authority's discretion:	4.9.4	indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.
4.6.1	upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or		
4.6.2	upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2.		
4.7	The Supplier shall be relieved of its liabilities under Clauses 4.2 and/or Clause 4.5 of this Schedule 2 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.		
4.8	The Authority's rights and remedies under Clause 4.6 of this Schedule 2 shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out in the Key Provisions, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Order Form.		
4.9	Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("Requirement to Recall") in respect of the Goods, the Supplier shall:		
		5.	<b><u>The Authority's obligations</u></b>
		5.1	Subject to the Supplier supplying the Goods in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 6 of this Schedule 2.
		5.2	The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods.
		5.3	The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
		5.4	The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.
		6.	<b><u>Price and payment</u></b>
			<b><u>Charges</u></b>
		6.1	The Charges shall be calculated as set out in the Order Form
		6.2	Unless otherwise stated in the Order Form the Charges:
		6.2.1	shall remain fixed during the Term; and
		6.2.2	is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
			(i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation

costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;

(ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority

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

#### Invoices

6.3 Unless stated otherwise in the Order Form:

6.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods supplied in compliance with this Contract in the preceding calendar month;

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

6.3.3 where Clauses 6.3.1 or 6.3.2 of this Schedule 2 do not apply, the Supplier shall invoice the Authority for Goods at any time following completion of the supply of the Goods in compliance with this Contract.

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

6.4 The Charges are exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

6.5 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.

6.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 6.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its

reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 6.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 6.6 after a reasonable time has passed.

6.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 6.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

6.8 The Authority reserves the right to set-off:

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

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

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

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

#### 7. Warranties

7.1 The Supplier warrants and undertakes that:

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

7.1.2 if confirmed by the Authority in writing (to include, without limitation, as part of the Order Form), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;

7.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and

	care and in accordance with Good Industry Practice;		Form, any such changes or substitute goods, if accepted, shall not lead to an increase in the Charges
7.1.4	without prejudice to the generality of the warranty at 7.1.3 of this Schedule 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 and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;	7.1.15	any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
7.1.5	it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;	7.1.16	where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
7.1.6	it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;	7.1.17	it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
7.1.7	it will ensure sufficient stock levels to comply with its obligations under this Contract;	7.1.18	receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
7.1.8	it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;	7.1.19	it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods;
7.1.9	where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;	7.1.20	it will promptly (and in any event within one (1) Business 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;
7.1.10	where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;	7.1.21	it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
7.1.11	all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Order Form;	7.1.22	it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 6.1.22 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.
7.1.12	it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;		
7.1.13	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);	7.1.23	it will fully and promptly respond to all requests for information regarding this Contract and the Goods at the frequency and in the format that the Authority may reasonably require;
7.1.14	it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, unless otherwise set out in the Order	7.1.24	all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Order Form) and all accompanying materials is accurate;

7.1.25	it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;	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 7.2 of this Schedule 2, 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
7.1.26	it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;	
7.1.27	all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;	
7.1.28	there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;	
7.1.29	there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;	
7.1.30	it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and	7.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
7.1.31	it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.	
7.2	Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:	7.3 If the Supplier is in breach of Clause 7.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 10.2 of this Schedule 2, 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.
7.2.1	at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance (or be subject to a Product Authorisation, as such term is defined in Schedule 4) and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 7.1 and 7.2 of this Schedule 2, 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;	7.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
7.2.2	at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling,	7.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Order Form shall be submitted to the Authority in the format and in accordance with any timescales set out in the Order Form.
		7.6 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
		7.7 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it is not and throughout the Term of this Contract it will not be, involved in any Occasion of Tax Non-Compliance.
		7.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
		7.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

8.	<b><u>Intellectual property</u></b>	10.1.2	for fraud or fraudulent misrepresentation; or
8.1	Unless specified otherwise in the Order Form, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.	10.1.3	in any other circumstances where liability may not be limited or excluded under any applicable law.
9.	<b><u>Indemnity</u></b>	10.2	Subject to Clauses 9.2, 10.1, 10.3 and 10.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.
9.1	The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:	10.3	There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
9.1.1	any injury or allegation of injury to any person, including injury resulting in death;	10.3.1	extra costs incurred purchasing replacement or alternative goods;
9.1.2	any loss of or damage to property (whether real or personal); and/or	10.3.2	costs incurred in relation to any product recall;
9.1.3	any breach of Clause 7.1.18 and/or Clause 8 of this Schedule 2;	10.3.3	costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
	that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the supply of the Goods, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.	10.3.4	the costs of extra management time; and/or
9.2	Liability under Clauses 9.1.1 and 9.1.3 of this Schedule 2 shall be unlimited. Liability under Clauses 4.9.4, 7.3 and 9.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 9 of this Schedule 2.	10.3.5	loss of income due to an inability to provide health care services,
9.3	In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:		in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
9.3.1	relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or	10.4	Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
9.3.2	relating to the Authority's membership of any indemnity and/or risk pooling arrangements.	10.5	If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
	Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).	10.5.1	is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 9.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
10.	<b><u>Limitation of liability</u></b>	10.5.2	is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 9.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
10.1	Nothing in this Contract shall exclude or restrict the liability of either Party:		
10.1.1	for death or personal injury resulting from its negligence;		

- 10.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 9.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 9.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 10.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 9.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 9.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 10.6 Clause 10 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
- 11. Insurance**
- 11.1 Subject to Clauses 11.2 and of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law, however, the Supplier shall have responsibility for ensuring that it is adequately insured to cover all potential liability under this Contract.
- 11.2 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 11.1 and of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 11.3 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 11.4 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 11.5 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 11 of this Schedule 2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 11.6 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.
- 12. Term and termination**
- 12.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 12.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than one (1) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
- 12.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including and not limited to any breach of any payment obligations, under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("Remedial Proposal") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 12.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 12.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be ten (10) days unless otherwise agreed between the Parties); and/or
- 12.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 12.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or

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

with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

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

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

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

12.5.3 the warranty given by the Supplier pursuant to Clause 7.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 7.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 7.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.

12.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:

12.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;

12.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 12.6 of this Schedule 2 in accordance

**13. Consequences of expiry or early termination of this Contract**

13.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.

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

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

**14. Packaging, identification and end of use**

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

14.2 Unless otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom. and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation.

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

14.4 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.

**15. Dispute resolution**

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

15.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow

the procedure set out in Clause 15.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.

15.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels (if applicable) as set out in the Order Form. Respective representatives at each level, as set out in the Order Form shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

15.4 If the procedure set out in Clause 15.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 15.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

15.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 15.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.

15.6 Nothing in this Contract shall prevent:

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

15.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.

15.7 Clause 15 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

## 16. Coding requirements

16.1 Unless otherwise confirmed and/or agreed by the Authority in writing the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and PEPOL standards (to include, without limitation, any supplier compliance timeline and

other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPOL standards for master data provision and exchange, barcode labelling and purchase to pay transacting).

16.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to the Order Form, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.

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

## 17. Change Management

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

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

## 18. Force majeure

18.1 Subject to Clause 18.2 of this Schedule 2 Neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

18.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 18 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:

18.2.1 the Supplier has fulfilled its obligations pursuant to the Order Form;

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

18.2.3 the Supplier has complied with the procedural requirements set out in Clause 18 of this Schedule 2.

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

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

18.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the