

## NATIONAL MICROBIOLOGY FRAMEWORK AGREEMENT FOR THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES

<b>The Authority</b>	The Secretary of State for Health and Social Care acting through Public Health England (including its successors in title), Wellington House, 133-155 Waterloo Road, London, SE1 8UG
<b>The Supplier</b>	[REDACTED]
<b>Date</b>	<b>22 March 2021</b>
<b>Type of Goods and Services</b>	<p>The Framework Agreement relates to Lot 4:</p> <ul style="list-style-type: none"> <li>i. the supply of diagnostics Goods for the qualitative / quantitative examination of specimens / samples and the development or manufacturing of assays / kits / medication and related Services.</li> <li>ii. the supply of diagnostics Services for the qualitative / quantitative examination of specimens / samples or the development or manufacturing of assays / kits / medication including end to end testing Services.</li> </ul>

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

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

### **Schedules**

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information and Data Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Specification and Tender Response Document
<b>Schedule 6</b>	Commercial Schedule
<b>Schedule 7</b>	Ordering Procedure, Award Criteria and Order Form
<b>Schedule 8</b>	Supplier Relationship Management
<b>Appendix A</b>	Call-off Terms and Conditions for the Supply of Goods and the Provision of Services

<b>Appendix B</b>	Optional Additional Call-off Terms and Conditions for Installation and Commissioning Services
<b>Appendix C</b>	Optional Additional Call-off Terms and Conditions for Maintenance Services
<b>Appendix D</b>	Optional Additional Call-off Terms and Conditions for Bespoke Research, Development and Manufacturing Requirements
<b>Appendix E</b>	Optional Additional Call-off Terms and Conditions for Reagent Rental
<b>Appendix F</b>	Optional Additional Call-off Terms and Conditions for Managed Equipment Services
<b>Appendix G</b>	Optional Additional Call-off Terms and Conditions for Clinical Laboratory Diagnostic Testing Services
<b>Appendix H</b>	Further Optional Additional Call-off Terms and Conditions

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

Name:	.....	Signature:	.....
Position:	.....		

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

Name:	.....	Signature:	.....
Position:	.....		

**Schedule 1****Key Provisions****Standard Key Provisions****1 Application of the Key Provisions**

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

**2 Term**

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

**3 Contract Managers**

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

**4 Names and addresses for notices**

- 4.1 Notices served under this Framework Agreement are to be delivered to:
- 4.1.1 for the Authority:  
[ ]  
[ ]
- Any correspondence sent to the above mailbox must reference within the subject line: "Notice – National Microbiology Framework"
- 4.1.2 for the Supplier:  
[ ]

## 5 Management levels for escalation and dispute resolution

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

Level	Authority representative	Supplier representative
1	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]

## 6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Framework Agreement the order of priority for construction purposes shall be:

- 6.1.1 the provisions on the front page of this NHS Framework Agreement for the Supply of Goods and the Provision of Services;
- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 6: Commercial Schedule;
- 6.1.6 Schedule 3: Information Governance Provisions;
- 6.1.7 Schedule 4: Definitions and Interpretations;
- 6.1.8 the order in which all subsequent schedules, if any, appear; and
- 6.1.9 any other documentation forming part of the Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

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

## 7 Participating Authorities

7.1 The following Contracting Authorities and other organisations are entitled to place Orders:

- 7.1.1 Public Health England;
- 7.1.2 the Department of Health and Social Care;
- 7.1.3 Public Health Wales;
- 7.1.4 Public Health Scotland;
- 7.1.5 the Department for Health for Northern Ireland;
- 7.1.6 Health and Social Care Northern Ireland;
- 7.1.7 NHS Authorities, NHS Trusts, NHS Foundation Trusts, Special Health Authorities, NHS Scotland Health Boards, NHS Wales Health Boards, NHS Northern Ireland Health Boards, Special NHS Boards and any other NHS entity;
- 7.1.8 Local Authorities;
- 7.1.9 any other bodies governed by public law (as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended); and
- 7.1.10 academic or charitable institutions (including any such institutions that are not Contracting Authorities).

For the avoidance of doubt, any successor bodies of any of the above entities shall be entitled to place Orders and shall be deemed Participating Authorities for the purposes of this Framework Agreement.

## Optional Key Provisions

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

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

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

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

Type of insurance required	Minimum cover
[Employer's liability insurance]	[ ]
[Public liability insurance]	[ ]
[Product liability]	[ ]

[Professional indemnity insurance]	[ ]
[Insert other types of insurance as appropriate]	[ ]

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

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

**Extra Key Provisions**

Not Applicable

**Schedule 2****General Terms and Conditions****Contents**

1. Supplier's appointment
2. Authority commitments
3. Ordering procedures
4. Reasonable assistance
5. Supplier Performance and Life Science Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Statutory compliance
12. Independence of Participating Authorities
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Framework Agreement
17. Suspension of Supplier's appointment
18. Complaints
19. Sustainable development
20. Electronic product and services information
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

**1 Supplier's appointment**

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

**2 Authority commitments**

- 2.1 Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:



- 2.1.1 there is no obligation on the Authority or on any other Participating Authority to purchase any Goods or Services from the Supplier during the Term;
- 2.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by the Authority and/or any other Participating Authority in respect of the total quantities or volumes or value of the Goods or Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;
- 2.1.3 in entering this Framework Agreement, no form of exclusivity has been granted by the Authority and/or other Participating Authority; and
- 2.1.4 the Authority and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods or services which are the same as or similar to the Goods or Services.

### **3 Ordering procedure**

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

### **4 Reasonable assistance**

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

### **5 Supplier Performance and Life Science Industry Accredited Credentialing Register**

- 5.1 The Supplier shall perform all Contracts entered into under this Framework Agreement by the Authority or any other Participating Authority in accordance with:
  - 5.1.1 the requirements of this Framework Agreement; and
  - 5.1.2 the provisions of the respective Contracts.
- 5.2 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Framework Agreement) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Life Science Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## **6 Business continuity**

- 6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.1.1 the criticality of this Framework Agreement to the Participating Authorities; and
  - 6.1.2 the size and scope of the Supplier's business operations,
- regarding continuity of the supply of Goods and/or the provision of the Services during and following a Business Continuity Event.
- 6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Participating Authorities and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.3 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.4 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.5 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

## **7 The Authority's obligations**

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

## **8 Contract management**

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

will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2.

- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods and/or the Services ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information, or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Framework Agreement and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.
- 8.9 The Parties shall comply with the supplier relationship management obligations set out in Schedule 8.

## **9 Price and payment**

- 9.1 The Contract Price for all Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Contracts shall be as set out in the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services.
- 9.2 Where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.

- 9.3 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Framework Agreement, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.4 If a Party fails to pay any undisputed sum properly due to the other Party under this Framework Agreement, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

## **10 Warranties**

### **10.1 The Supplier warrants and undertakes that:**

- 10.1.1 it will comply with the terms of all Contracts entered into by Participating Authorities under this Framework Agreement;
- 10.1.2 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Framework Agreement, any Contracts, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.3 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Framework Agreement (to include, without limitation, as referred to in Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.4 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Framework Agreement;
- 10.1.5 it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;
- 10.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Framework Agreement and the documents referred to in this Framework Agreement;
- 10.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;
- 10.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.9 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;

- 10.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement;
  - 10.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under this Framework Agreement and has gathered all information necessary to perform its obligations under this Framework Agreement and all other obligations assumed by it;
  - 10.1.12 it shall 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
  - 10.1.13 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.13 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.4 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.4.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
  - 10.4.2 promptly provide to the Authority:
    - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.6 Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.



**11 Statutory compliance**

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

**12 Independence of Participating Authorities**

- 12.1 The Supplier acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 12.1.1 the conduct of Participating Authorities other than the Authority in relation to the operation of this Framework Agreement; or
  - 12.1.2 the performance or non-performance of any Participating Authorities other than the Authority under any Contracts between the Supplier and such other Participating Authorities entered into under this Framework Agreement.

**13 Limitation of liability**

- 13.1 Nothing in this Framework Agreement shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
  - 13.1.2 for fraud or fraudulent misrepresentation;
  - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law;
  - 13.1.4 to make any payments agreed in accordance with Clause 9.2 of this Schedule 2; or
  - 13.1.5 pursuant to 2.5 of Schedule 3.
- 13.2 Subject to Clause 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Framework Agreement.

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

#### **14 Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Framework Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Framework Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Framework Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.



**15 Term and termination**

- 15.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term.
- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.
- 15.3 In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay any sums due under this Framework Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this Framework Agreement, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Framework Agreement in accordance with Clause 15.4(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
  - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
  - 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2, a material breach of this Framework Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 15.4 Either Party may terminate this Framework Agreement by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Framework Agreement which is:
- (i) not capable of remedy; or
  - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier if:

- 15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Framework Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
- 15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of the Authority;
- 15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 28.1 of this Schedule 2;
- 15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
- 15.5.5 the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Framework Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any

such notice issued by the Authority shall be deemed a breach of this Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Framework Agreement in accordance with Clause 15.4(i) of this Schedule 2.

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

- 15.7 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- 15.7.1 the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Framework Agreement;
- 15.7.3 the Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
- 15.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Framework Agreement under this Clause 15.7.4.

- 15.8 If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Framework Agreement in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Framework Agreement by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

## **16 Consequences of expiry or early termination of this Framework Agreement**

- 16.1 Upon expiry or earlier termination of this Framework Agreement, the Authority and the Supplier agree that all Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.

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

## **17 Suspension of Supplier's appointment**

- 17.1 Without prejudice to the Authority's rights to terminate this Framework Agreement, if a right for the Authority to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 15 of this Schedule 2, the Authority may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Participating Authorities.
- 17.2 If the Authority provides notice to the Supplier in accordance with Clause 17.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time provided that such suspension shall be lifted where:
- 17.2.1 the circumstances leading to the Authority's right to terminate this Framework Agreement have been remedied;
- 17.2.2 the Authority has satisfied itself that the risk and/or impact of the circumstances giving rise to the Authority's right to terminate this Framework Agreement no longer requires such suspension; or
- 17.2.3 the Authority exercises its rights to terminate this Framework Agreement in accordance with Clause 15 of this Schedule 2.

## **18 Complaints**

- 18.1 The Supplier shall notify the Authority of any formal written complaints made by other Participating Authorities relating to the Supplier's noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
- 18.2 Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or the Authority may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

- 18.3 Within two (2) Business Days of a written request by the Authority, the Supplier shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

## **19 Sustainable development**

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

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

19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and

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

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

## **20 Electronic product and services information**

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

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

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

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



the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.

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

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the requirements for the Goods and/or Services (to include related operational and other requirements) may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to this Framework Agreement including the Specification and Tender Response Document (to include, without limitation, where any relevant matters comparable to any of the matters referred to in paragraph 4.7.2 of Schedule 7 of this Framework Agreement necessitate a change to such requirements and amendments to this Framework Agreement during the Term), as may be requested by the Authority from time to time at its option. As set out as part of the OJEU contract notice relating to the award of this Framework Agreement, during the Term the Supplier may propose new and/or updated Goods and/or Services to be added to a Supplier's range under the Framework Agreement.
- 21.2 Subject to Clause 21.3 of this this Schedule 2, any change to the Goods and/or Services or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties. For the avoidance of doubt, any processes set out as part of the Commercial Schedule dealing with certain changes / variations to this Framework Agreement shall apply in relation to such changes / variations.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

## **22 Dispute resolution**

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

- 22.2 In the case of a Dispute arising out of or in connection with this Framework Agreement the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any Dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Framework Agreement shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of Goods and/or provision of the Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.

## **23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Framework Agreement nor

liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Framework Agreement if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
  - 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
  - 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Framework Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.



- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.

**24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Framework Agreement.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Framework Agreement. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Framework Agreement.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Framework Agreement, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Framework Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Framework Agreement for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Framework Agreement.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Framework Agreement.

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

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

**26 Equality and human rights**

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

**27 Notice**

- 27.1 Subject to Clause 22.5 of this Schedule 2, any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:
- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
  - 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
  - 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

**28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Framework Agreement, every act or omission of the Sub-contractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Framework Agreement shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Framework Agreement.
- 28.3 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.3.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
  - 28.3.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.

- 28.4 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Supply of Goods and/or the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.
- 28.5 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## 29 **Prohibited Acts**

- 29.1 The Supplier warrants and represents that:

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

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

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

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

29.2.1 the Authority shall be entitled:

- (i) to terminate this Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 29.2.3 notwithstanding Clause 22 of this Schedule 2, any Dispute relating to:
  - (i) the interpretation of Clause 29 of this Schedule 2; or
  - (ii) the amount or value of any gift, consideration or commission,shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Framework Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Framework Agreement.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Framework Agreement shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Framework Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Framework Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.

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



### **Schedule 3**

#### **Information and Data Provisions**

##### **1 Confidentiality**

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Framework Agreement or other act or omissions of the Recipient;
  - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
  - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
  - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
  - 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
  - 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;

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

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

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

## **2 Data protection**

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



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

### **3 Freedom of Information and Transparency**

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Framework Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
  - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
  - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Framework Agreement; and

- 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.
- 3.4 Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Framework Agreement for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

#### **4 Information Security**

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 4.2 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

**Schedule 3 Annex 1****Data Protection Protocol****Table A – Processing, Personal Data and Data Subjects**

This Table shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Table shall be with the Authority at its absolute discretion.

1. The contact details of the Authority's Data Protection Officer are:

Name: [ ]

Post: [ ]

Email: [ ]

2. The contact details of the Supplier's Data Protection Officer are:

[ ]

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that they are independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>Contact details of any employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under the Framework Agreement for which the Authority is the Controller;</li> <li>Contact details of Supplier Personnel for which the Supplier is the Controller.</li> </ul> <p>In respect of Personal Data shared under the Framework Agreement in circumstances where the Authority and the Supplier are independent Controllers, Clause 3 of this Protocol will apply.</p>
Subject matter of the Processing	Personal data such as names, addresses, contact details and associated data in relation to management and operation of the Framework Agreement.
Duration of the Processing	For the duration of the Framework Agreement.

Nature and purposes of the Processing	<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).</p> <p>The purpose of the Processing is to facilitate the potential supply of goods and provision of services by the Supplier to Participating Authorities under the Framework Agreement.</p>
Type of Personal Data being Processed	Personal data such as names, addresses, contact details, etc.
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers) as well as suppliers and sub-contractors at the Framework Agreement.
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p>	Retention should only be for the duration of the Framework Agreement and upon expiry of the Framework Agreement, all data should be destroyed unless required otherwise by Law.

### **Definitions**

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Framework Agreement shall also apply to this Protocol. For example, the following terms are defined in Schedule 4 of the Framework Agreement: “**Authority**”, “**Controller**”, “**Data Protection Legislation**”, “**GDPR**”, “**Process**” and “**Processor**” and “**Supplier**”.

Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

“ <b>Data Loss Event</b> ”	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;
“ <b>Data Protection Impact Assessment</b> ”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“ <b>Data Protection Officer</b> ”	shall have the same meaning as set out in the GDPR;
“ <b>Data Recipient</b> ”	means that Controller who receives the relevant Personal Data;
“ <b>Data Subject</b> ”	shall have the same meaning as set out in the GDPR;

<b>“Data Subject Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Data Transferor”</b>	means that Controller who transfers the relevant Personal Data;
<b>“Joint Controllers”</b>	means where two or more Controllers jointly determine the purposes and means of Processing;
<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the GDPR;
<b>“Protective Measures”</b>	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, putting in place appropriate training of staff involved in the processing of Personal Data and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
<b>“Protocol” or “Data Protection Protocol”</b>	means this Data Protection Protocol;
<b>“Sub-processor”</b>	means any third Party appointed to Process Personal Data on behalf of that Processor related to this Framework Agreement.

## 1. **SUPPLIER AS DATA PROCESSOR**

- 1.1. Where, in Table A, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor for the relevant purposes specified in Table A this Clause 1 shall apply. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.
- 1.2. The Supplier shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation.
- 1.3. The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
  - 1.3.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 1.3.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Supplier’s obligations under the Framework Agreement;
  - 1.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 1.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4. The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under the Framework Agreement:

- 1.4.1. Process that Personal Data only in accordance with Table A, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
- 1.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
  - i. nature of the data to be protected;
  - ii. harm that might result from a Data Loss Event;
  - iii. state of technological development; and
  - iv. cost of implementing any measures;
- 1.4.3. ensure that:
  - i. the Staff do not Process Personal Data except in accordance with the Framework Agreement (and in particular Table A);
  - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - (a) are aware of and comply with the Supplier's duties under this Protocol;
    - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Framework Agreement; and
    - (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - i. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - ii. (the Data Subject has enforceable rights and effective legal remedies;
  - iii. 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 endeavors to assist the Authority in meeting its obligations); and
  - iv. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data; and
- 1.4.5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Framework Agreement unless the Supplier is required by Law to retain the Personal Data.



- 1.5. Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if in relation to any Personal Data Processed in connection with its obligations under the Framework Agreement it:
  - 1.5.1. receives a Data Subject Request (or purported Data Subject Request);
  - 1.5.2. receives a request to rectify, block or erase any Personal Data;
  - 1.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 1.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Framework Agreement;
  - 1.5.5. 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
  - 1.5.6. becomes aware of a Data Loss Event.
- 1.6. The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.
- 1.7. Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data Processed in connection with its obligations under the Framework Agreement and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - 1.7.1. the Authority with full details and copies of the complaint, communication or request;
  - 1.7.2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.7.3. the Authority, at its request, with any Personal Data it holds in connection with its obligations under the Framework Agreement in relation to a Data Subject;
  - 1.7.4. assistance as requested by the Authority following any Data Loss Event;
  - 1.7.5. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
  - 1.8.1. the Authority determines that the Processing is not occasional;
  - 1.8.2. the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 1.8.3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9. The Supplier shall allow for audits of its data Processing activity by the Authority or the Authority's designated auditor in relation to any Personal Data Processed in connection with its obligations under the Framework Agreement.

- 1.10. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 1.11. Before allowing any Sub-processor to Process any Personal Data related to the Framework Agreement, the Supplier must:
- 1.11.1. notify the Authority in writing of the intended Sub-processor and Processing;
  - 1.11.2. obtain the written consent of the Authority;
  - 1.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
  - 1.11.4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.12. The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13. The Authority may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Framework Agreement).
- 1.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15. The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into Table A from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Framework Agreement.

## **2. PARTIES AS JOINT CONTROLLERS**

- 2.1. Where in, Table A, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority and the Supplier are Joint Controllers this Clause 2 shall apply. The only Processing that a Joint Controller is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.
- 2.2. The Parties shall in accordance with GDPR Article 26 enter into a Joint Controller Agreement based on the terms outlined in Schedule 1 to this Protocol.

## **3. BOTH DATA CONTROLLERS**

- 3.1. To the extent that the nature of the Supplier's obligations under the Framework Agreement means that the Parties are acting both as Controllers (as may be referred to in Table A), each Party undertakes to comply at all times with its obligations under the Data Protection Legislation and shall:
- 3.1.1. implement such measures and perform its obligations (as applicable) in compliance with the Data Protection Legislation;
  - 3.1.2. be responsible for determining its data security obligations taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and



severity for the rights and freedoms of the Data Subjects, and implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and accidental destruction or loss and ensure the protection of the rights of the Data Subject, in such a manner that Processing will meet the requirements of the Data Protection Legislation where Personal Data has been transmitted by it, or while the Personal Data is in its possession or control;

- 3.1.3. where appropriate, promptly refer to the other Party any requests, from (i) Data Subjects in regards to the right of access to Personal Data by that Data Subject in accordance with the Data Protection Legislation; (ii) the Information Commissioner; or (iii) any other law enforcement authority and to the extent it is reasonable and practical to do so consult with the other Party (for the avoidance of doubt at no additional cost) before responding to such request.
- 3.2. Where Personal Data is shared between the Parties, each acting as Controller:
  - 3.2.1. the Data Transferor warrants and undertakes to the Data Recipient that such Personal Data have been collected, Processed and transferred in accordance with the Data Protection Legislation and this Clause 3;
  - 3.2.2. the Data Recipient will Process the Personal Data in accordance with the Data Protection Legislation and this Clause 3; and
  - 3.2.3. where the Data Recipient is in breach of its obligations under this Protocol and the Data Protection Legislation, the Data Transferor may temporarily suspend the transfer of the Personal Data to the Data Recipient until the breach is repaired.

#### **4. CHANGES TO THIS PROTOCOL**

- 4.1. Subject to Clauses 1.13, 1.14 and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

**Schedule 4****Definitions and Interpretations****1 Definitions**

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

<b>“Authority”</b>	means the authority named on the form of Framework Agreement on the first page;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Framework Agreement;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including a pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of Goods and provision Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Call-off Terms and Conditions for the Supply of Goods and the Provision of Services”</b>	means the call-off terms and conditions for Contracts as set out at the appendices of this Framework Agreement forming part of the Contracts placed under this Framework Agreement;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Commencement Date”</b>	means 22 March 2021;
<b>“Commercial Schedule”</b>	means the document set out at Schedule 6;

<b>“Confidential Information”</b>	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is:  (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;  (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or  (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
<b>“Contract”</b>	means any contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services;
<b>“Contracting Authority”</b>	means any contracting authority as defined in Regulation 2(1) of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Framework Agreement;

<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Framework Agreement, any matters of contractual construction and interpretation relating to the Framework Agreement, or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“eProcurement Guidance”</b>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a> together with any further Guidance issued by the Department of Health and Social Care in connection with it;
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;

<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Framework Agreement;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> <li>(i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</li> </ul> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>“Framework Agreement”</b>	<p>means the form of framework agreement at the front of this document and all schedules and appendices attached to the form of framework agreement;</p>
<b>“Fraud”</b>	<p>means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;</p>

<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679) whilst it is in force in England and Wales and, after that, GDPR means the Data Protection Act 2018, as amended, replaced or superseded from time to time;
<b>“General Anti-Abuse Rule”</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Framework Agreement, including without limitation in accordance with good manufacturing practice, good clinical practice, good laboratory practice, good distribution practice, good warehousing practice, good quality practice, good pharmacovigilance practice, good scientific practice, with any relevant ISO or similar standards and with any codes of practice published by relevant trade associations;
<b>“Goods”</b>	means all goods, materials or items that the Supplier is required to supply to Participating Authorities under Contracts placed under this Framework Agreement, details of such Goods, materials or other items being set out in the Specification and Tender Response Document and any Order;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, NHS England and NHS Improvement, the Medicines & Healthcare products Regulatory Agency, the European Medicines Agency, the European Commission, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;



<b>"HM Government Cyber Essentials Scheme"</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>"Intellectual Property Rights"</b>	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
<b>"Key Provisions"</b>	means the key provisions set out in Schedule 1;
<b>"KPI"</b>	means the key performance indicators as set out in Schedule 5;
<b>"Law"</b>	means any applicable legal requirements including, without limitation,,: <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> <li>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</li> </ul>
<b>"NHS"</b>	means the National Health Service;
<b>"Occasion of Tax Non-Compliance"</b>	means: <ul style="list-style-type: none"> <li>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</li> </ul>

	<p>(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;</p> <p>(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</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Order Form”</b>	means the template order form on which Orders are to be placed, as set out in Schedule 7;
<b>“Ordering Procedure”</b>	means the procedure enabling Participating Authorities to call-off Goods and/or Services and enter into Contracts under this Framework Agreement, as set out in Schedule 7;
<b>“Orders”</b>	means orders for Goods and/or Services placed under this Framework Agreement by Participating Authorities;
<b>“Participating Authority”</b>	means a Contracting Authority entitled to place Orders under this Framework Agreement including the Authority and any other Contracting Authority as set out in the Key Provisions;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Product Information”</b>	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
<b>“Prohibited Acts”</b>	has the meaning given under 29.1.1 of Schedule 2;

<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Services”</b>	means the services that the Supplier is required to provide to Participating Authorities under Contracts placed under this Framework Agreement, details of such Services being set out in the Specification and Tender Response Document and any Order;
<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the document set out in Schedule 5 as amended and/or updated in accordance with this Framework Agreement;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement;
<b>“Sub-contractor”</b>	means a party to a Sub-contract other than the Supplier;
<b>“Supplier”</b>	means the supplier named on the form of Framework Agreement on the first page;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function dated February 2019, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Term”</b>	means the term as set out in the Key Provisions;
<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;

<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2; and
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Framework Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Framework Agreement.
- 1.5 References in this Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Framework Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Framework Agreement, such other part of this Framework Agreement shall prevail.
- 1.11 Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Any guidance notes in grey text do not form part of this Framework Agreement.
- 1.13 Any Breach Notice issued by a Party in connection with this Framework Agreement shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be

requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

- 1.14 Any terms defined as part of a Schedule or other document forming part of this Framework Agreement shall have the meaning as defined in such Schedule or document.
- 1.15 For the avoidance of doubt, and to the extent not prohibited by any Law, the term “expenses” (as referred to under any indemnity provisions forming part of this Contract) shall be deemed to include any fine and any related costs imposed by a commissioner, regulator or other competent body.

## **Schedule 5**

### **Specification**

#### **1. Background**

- 1.1. Public Health England (“PHE”) has received a mandate from the Cabinet Office to create a new National Microbiology Framework. PHE will lead on this work in collaboration with DHSC and the Cabinet Office.
- 1.2. The creation of the National Microbiology Framework will enable all diagnostic suppliers, regardless of size, the opportunity to showcase the goods and services that they are able to offer to a wider range of customers than currently possible through any other commercial vehicle. This will be crucial to the work of Pillar 5 of the UK Government’s strategy for scaling up of testing programmes. The availability through a framework of a wide and diverse range of diagnostic suppliers will improve competition, increase value for money and bolster the diagnostic capacity of the UK.

#### **2. Lot 1 – Diagnostic Goods and Services**

- 2.1. Lot 1 is for the supply of in vitro diagnostic medical devices and associated services including equipment, consumables, maintenance, and peripheral equipment and associated services. All Goods supplied must comply with the European Directive 98/79/EC on In Vitro Diagnostic Medical Devices (IVDMD) (1998) or Regulation (EU) 2017/746 (IVDR) as applicable and as updated and amended from time to time. All reagents and consumables must be marked in accordance with current CE regulations (UKCA regulations when applicable). The Goods must retain the CE mark (or, once superseded, the UKCA mark) for the duration of the contract and any potential extensions. Goods should be intended by the manufacturer to be used in vitro for the examination of specimens, including but not limited to clinical specimens, blood and tissue donations, food, water and environmental samples, solely or principally for the purpose of providing information including but not limited to:
  - a physiological or pathological state, or
  - identification of infectious diseases, or
  - the host response to disease, or
  - pathogenic indicators or markers of infection, or
  - microbial identification, characterisation and classification, or
  - antimicrobial chemotherapy, or
  - to monitor therapeutic measures; or
  - to monitor clusters and outbreaks for epidemiological analysis, or
  - to measure food, water and environmental samples, or
  - to measure clinical samples.
- 2.2. The Framework Agreement is for the supply of equipment and peripheral technology required to enter, process, analyse, store and transmit diagnostic testing information. The agreement will cover instrument, platform and automated system maintenance services including all interface packages and technical services.
- 2.3. The Framework Agreement is for laboratory services including validation and verification services.



- 2.4. The Supplier is required to provide customer support services including training and account management services.
- 2.5. A more detailed Specification for Lot 1 can be found in Appendix 1 to this Schedule 5.

### **3. Lot 2 – Research and Development Goods and Services**

- 3.1. Lot 2 is for the supply of goods and/or therapeutic products and/or services for the qualitative/quantitative examination of specimens/samples and the development of assays/kits/medical or therapeutic products.
- 3.2. This Lot consists of Goods and Services mainly for research and development, experimentation and study. The supplies may form a part of the whole diagnostic product lifecycle. Products and services may not be CE marked (or UKCA marked when applicable) as they are under development and primarily used for research and development.
- 3.3. The Supplier may be required to work collaboratively with the Participating Authority in response to new and emerging public health threats such as COVID-19, Ebola, swine flu, flu epidemics etc.
- 3.4. The Supplier may be required to proactively support the development of new solutions by agreeing to open access to platforms for the purpose of research, experimentation, study or development of new assays or therapeutic measures on a case-by-case basis.
- 3.5. The Supplier may be required to supply equipment for evaluation to assess the public health value of that piece of equipment in any aspect of modern microbiology, including equipment developed on new and emerging technologies.
- 3.6. The Supplier may be required to supply chemicals/reagents that are used for the development and/or production of in-house assays (IPR to be owned by the Authority on non-proprietary assays).
- 3.7. The Supplier may be required to work in collaboration with industry suppliers and academia.
- 3.8. A more detailed Specification for Lot 2 can be found in Appendix 2 to this Schedule 5.

### **4. Lot 3 – Manufacturing, Product Development and Commercialisation**

- 4.1. Lot 3 is for the manufacturing, product development and commercialisation of diagnostic and/or therapeutic products for the purpose of research, experimentation, study, development or to establish commercial viability or to recover research and development costs. Manufacturers may have to adhere to any relevant regulations specified, for example for in vitro medical devices / medical devices, the current IVDD/MDD respectively and from May 2022 the new IVDR or from May 2021 the

new MDR. It is expected that suppliers will work collaboratively with the Participating Authority to achieve the desired requirements.

These would include but not limited to:

- diagnostic test/equipment development; or
- diagnostic process optimisation and development; or
- prototyping; or
- manufacturing; or
- assembly; or
- marketing; or
- sales and distribution; or
- the process of obtaining relevant accreditations and regulatory approvals; or
- any other aspect of the full lifecycle of a diagnostic or therapeutic test process.

4.2. The Supplier may be required to work collaboratively with the Participating Authority in response to new and emerging public health threats such as COVID-19, Ebola, swine flu, flu epidemics etc. to develop new assays or therapeutic measures. The collaboration may involve:

- Development work leading to the production of goods and services to be sold on the open market;
- Working on an open book basis; and/or
- The joint development and commercialisation of intellectual property rights.

4.3. The Supplier may be required to work in collaboration with industry suppliers and academia.

4.4. The Supplier may be required to discount or agree preferential terms for the products sold on the open market where the Participating Authority has given input into the development and validation of the product, including the sharing or use of the Participating Authority's intellectual property.

4.5. The Supplier may be required to supply products, materials and other services related to the sale and/or distribution of the manufactured products.

4.6. The Participating Authority is seeking SMEs, niche suppliers and innovative organisations with diagnostic development capabilities to join the framework as well as established organisations.

4.7. A more detailed Specification for Lot 3 can be found in Appendix 3 to this Schedule 5.

## **5. Lot 4 – Clinical Laboratory Diagnostic Testing Services**

5.1. Lot 4 is to provide access to a range of Clinical Laboratory Diagnostic Testing Services. The exact Specification for each requirement will be detailed in the relevant Order Form. The volumes of services contracted via this Lot are expected to be

scalable to meet evolving demand over time taking account of long term and short term (surge) requirements, combined with small-scale or large-scale service provisions being sought.

- 5.2. Lot 4 is intended to enable access to Clinical Laboratory Diagnostic Testing Services using extant techniques and allow for the addition of new techniques or existing techniques utilised in a new manner in the future.
- 5.3. The aim for this Lot is to ensure that there is consistent and affordable provision of high quality, safe and compliant Testing Services which should be delivered efficiently and effectively to support wider clinical services.
- 5.4. With regards to the Clinical Laboratory Diagnostic Testing Services to be offered through the framework the Authority is seeking suppliers that can undertake the following types of testing:
  - Molecular Biology; and
  - Microbiology including:
    - Bacteriology;
    - Virology; and
    - Serology.
- 5.5. Suppliers will also be expected to provide all necessary supporting services including, but not limited to, the receipting of samples, storage, accessioning, laboratory informatics and clinical waste disposal. Where necessary it is also envisaged that suppliers may be required to provide their own sample kits and logistical services.
- 5.6. A more detailed Specification for Lot 4 can be found in Appendix 4 to this Schedule 5.

## **6. Complaints**

- 6.1. The Supplier must operate a complaints handling procedure and share the details of this procedure with Participating Authorities.
- 6.2. The Supplier must report on complaints in accordance with the general terms and conditions of the Framework Agreement.

**National Microbiology Framework**  
**Schedule 5 - Appendix 4 - Specification**

**Lot 4 Specification: Clinical Laboratory Diagnostic Testing Services****1. INTRODUCTION**

- 1.1. Lot 4 is to provide access to a range of Clinical Laboratory Diagnostic Testing Services and other associated peripheral services. There are a set of mandatory services which all Suppliers wishing to be included on Lot 4 must be able to provide. Beyond these core services there are also a number of associated peripheral goods and services to offer the ability for Participating Authorities to meet the evolving needs regarding Clinical Laboratory Diagnostic Testing Service. Further details on the mandatory and peripheral goods and services can be found below. The exact Specification for each requirement will be detailed in each Call-Off Order Form.
- 1.2. The volumes of services contracted via this Lot are also scalable to meet evolving demand over time taking account of long term and short term (surge) requirements, along with small-scale or large-scale service provisions being sought via Lot 4.
- 1.3. It should be noted that this Lot is not exclusively for the provision of support during COVID, it is also intended to support any future requirements for Clinical Laboratory Diagnostic Testing Services in a public health emergency which may arise. Lot 4 is intended to enable access to microbiology-based testing to enable the future provision of lab testing services using extant lab testing techniques, new lab testing techniques which are discovered, or existing techniques utilised in a new manner.
- 1.4. The Authority is seeking Suppliers that can drive continuous improvement and deliver innovative solutions to Participating Authorities that access Lot 4.

**2. MANDATORY REQUIREMENTS**

- 2.1. The Supplier shall be able to offer the following services to the required Standard or Standards as part of the lab testing services:
  - 2.1.1. receipting and receiving Samples;
  - 2.1.2. storage of Samples, in accordance with regulatory requirements;
  - 2.1.3. accessioning of Samples;
  - 2.1.4. Clinical Laboratory Diagnostic Testing Services including, but not limited to:
    - 2.1.4.1. Molecular Biology;
    - 2.1.4.2. Microbiology (including Bacteriology, Virology and Serology)
  - 2.1.5. Laboratory Informatics (inclusive of result reporting, electronic ordering, integration into existing IT systems or other follow-on IT systems); and
  - 2.1.6. Waste Disposal, further details on waste disposal services can be found in Annex B, In certain circumstances the provision of Waste Disposal may be provided by the Authority. This will be set out in individual Call-Off Contracts.

- 2.2. Specific obligations relating to the provisions of Facilities, Waste Disposal, Test Materials and Test Equipment related to the testing services will be set out in each call-off order.

### **3. PERIPHERAL SERVICES**

- 3.1. The Supplier may offer any of the following goods or services listed below in addition to the requirements set out in Paragraph 2:

3.1.1. When necessary the provision of Sample kits, further details on this can be found in Annex A; and

3.1.2. Logistic services for transportation from sampling sites to laboratories including but not limited to:

3.1.2.1. Batch;

3.1.2.2. Pack;

3.1.2.3. Ship (to UK (including Northern Ireland) and any European Destination); and

3.1.2.4. Tracking of Test Samples,

Further details on these services can be found at Annex C below.

### **4. APPLICABLE STANDARDS**

- 4.1. The Participating Authority may require the Supplier to comply with any or all of the following Standards (among others) in a Call-Off Contract for Lot 4, the specific Standards applicable to any given Call-Off Contract will be defined within the requirements for it.

4.1.1. UKAS Compliance;

4.1.2. CQC Compliance;

4.1.3. ISO9001- Quality Management;

4.1.4. ISO14001- Environmental Management;

4.1.5. ISO15189- Medical Laboratories;

4.1.6. ISO17025- Testing and Collaboration Laboratories;

4.1.7. ISO22301- Business Continuity Management;

4.1.8. ISO27001- Information Security;

4.1.9. ISO28000:2007- Security Management Systems for the Supply Chain;

4.1.10. Human Tissue Authority Policy and Procedures;

4.1.11. DHSC Policy and Procedure Compliance (and any changes from time to time).

**Annex A****SAMPLE KIT REQUIREMENTS**

The following requirements are indicative to enable suppliers to understand the requirements they may be required to comply with under the framework if they need to supply their own sample kits as part of their delivery, new requirements may be identified as part of the Call-off contract process or due to regulatory changes. All sample kits need to comply with the Medicines and Healthcare products Regulatory Agency (MHRA) requirements. The products need to be CE marked and the manufacturers need to comply to any relevant standards including those beyond those articulated below where appropriate.

**Dry Swabs**

- Declaration of Conformity to Medical Directive 93/42/EEC;
- EC Certificate; and
- Evidence that the devices are registered with a competent authority e.g. the MHRA or an equivalent body.

**Liquid Media & Tube/Vial**

- Declaration of Conformity to In vitro Diagnostic Device Directive 98/79/EC; and
- Evidence that the devices are registered with a competent authority e.g. the MHRA or an equivalent body.

**Additional Information**

Including but not limited to:

- Instructions for use; and
- Quality Management System Certification.

To note the supplier shall ensure any sample kits they provide can be fully integrated with the wider National Testing Programme's electronic systems e.g. bar-coding, tracking etc.



**Annex B****CLINICAL WASTE DISPOSAL SERVICES**

1. The Supplier shall be able to arrange for the safe destruction or disposal on behalf of the Participating Authority of all Samples.
2. The Supplier will be responsible for ensuring that the Samples are destroyed/disposed of in a legally compliant manner at a site that is suitably licensed for the type of Samples presented. The destruction/disposal facility (e.g. incinerator) must be compliant to and hold the relevant permits in relation to:
  - 2.1. The Environmental Permitting Regulations 2013 (England & Wales);
  - 2.2. The Pollution Prevention and Control (Industrial Emissions) Regulations 2012 (Northern Ireland);
  - 2.3. The Waste Management Licensing Regulations (Scotland) (Northern Ireland);
  - 2.4. The Pollution Prevention and Control Regulations 2012 (Scotland);
  - 2.5. The Industrial Emission Directive 2010;
  - 2.6. Hazardous Waste Regulations (England, Wales & Northern Ireland);
  - 2.7. Special Waste Regulations (Scotland),as applicable, and any subsequent revisions for the period of this Framework Agreement and any Call Off Contract(s).
3. The Supplier shall provide a certificate of destruction to the Participating Authority for all items that have been destroyed upon request, this will be defined by the Participating Authority at Further Competition.

**Annex C****LOGISTIC SERVICES**

The following provides further requirements which suppliers may be required to comply with when logistics services are included in a Call-Off Contract.

**1. ENVIRONMENTAL AND SUSTAINABILITY**

- 1.1. This paragraph outlines the Suppliers requirements in relation to the environmental and sustainability requirements of this Framework Agreement.
- 1.2. The government is committed to environmental improvement through integrating environmental protection and sustainable development into its decision-making processes in respect of both the execution of its core functions and responsibilities and the management of day-to-day operations.
- 1.3. The Authority requires that the Supplier consider the relevance of sustainability at all lifecycle stages of the Services provided under this Framework Agreement. This includes not only consideration of commercial needs and minimisation of negative impacts but also the maximisation of positive impacts on society and the environment. The Supplier shall seek to reduce the sustainability impacts in all lifecycle stages of this Framework Agreement.
- 1.4. The Supplier shall work with the Authority and Participating Authorities to identify opportunities to introduce innovation, reduce cost and waste and ensure sustainable development is at the heart of their operations. This shall include but is not limited to product rationalisation and standardisation; leverage opportunities within the Supplier's supply chain and reviewing order placement methods, frequency and quantity. The Supplier shall be required to work with the Authority during the Framework Agreement period in meeting this strategy.
- 1.5. The Supplier shall provide information on new or improved environmentally preferable products when they become commercially available and, promote their use under the Framework Agreement.
- 1.6. The Supplier shall be required to demonstrate their measured progress on climate change adaptation, mitigation and sustainable development including performance against carbon reduction management plans.
- 1.7. The Supplier shall complete annual Corporate Social Responsibility (CSR) assessments upon request from Participating Authorities.
- 1.8. The Supplier shall monitor and manage emissions from their transport operations and shall update the Authority on the findings, results and progress achieved.
- 1.9. The Supplier shall include the provision of transport and services that are aligned with the EU Green Public Procurement standards.
- 1.10. The Supplier shall fully comply with the following government standards for the duration of this Framework Agreement:

**2. MANAGEMENT OF ROAD RISK AND SAFETY****Roadworthiness**

- 2.1. The Supplier shall ensure that all vehicles meet the requirement and comply with UK transport Laws.
- 2.2. The Supplier shall on recruitment and then at least twice a year thereafter check all drivers' licences directly against the Department for Transport (DVLA) record with a maximum interval of 6 months between checks.
- 2.3. The Supplier shall ensure that all contracts of employment require drivers to provide notification within 24 hours of conviction of any motoring offence, or of any other offence affecting their suitability to drive or the diagnosis of any medical condition which could affect their suitability to drive.
- 2.4. The Supplier shall maintain a register of such notifications or endorsement details and a copy of the driver's licence record shall be held on your files.
- 2.5. The Supplier shall certify within three months of recruitment and then at least every 2 years thereafter, that all drivers complete and pass a recognised test to measure their understanding of the EU drivers' hours' regulations. The Supplier shall ensure that any serious shortcomings are rectified within 30- days of a test failure by advice, tuition and re-testing as appropriate.
- 2.6. The Supplier shall certify on permanent appointment of a driver and then at least every 2 years thereafter, that all managers and supervisors, responsible for drivers complete and pass a test to measure their understanding of road transport law including EU drivers' hour's regulations. Any serious shortcomings are rectified by advice, tuition and re-testing as appropriate, within 30-days of a test failure.
- 2.7. The Supplier shall hold and produce evidence of a valid Operator's Licence and insurances (vehicle, public liability and employer's liability).
- 2.8. The Supplier shall have an effective system in place to ensure vehicles used on the road have the appropriate Vehicle Excise Duty and comply with Vehicle Excise and Registration Act 1994 (VERA).
- 2.9. The Supplier shall ensure that vehicles are driven in a manner to abide by all road transport Laws/ regulations, the highway code and local bylaws.
- 2.10. The Supplier shall guarantee that full engineering safety inspections occur at a maximum of six-weekly intervals to a regular, pre-planned timetable in accordance with the principles in the Department for Transport DVSA guide to maintaining roadworthiness.
- 2.11. The Supplier shall have regard to the guide to maintaining roadworthiness in the delivery of Services. This can be viewed via the link below:  
<https://www.gov.uk/government/publications/guide-to-maintaining-roadworthiness>

### **3. COMPLIANCE WITH TRANSPORT REGULATIONS**

- 3.1. The Supplier shall ensure that all vehicles and sub- contractor vehicles comply with current UK and EU transport regulations.
- 3.2. Suppliers shall be required to ensure their vehicles or vehicles used in the delivery and performance of this Framework Agreement comply with the relevant transport regulations, including but not limited to:

- 3.2.1. <https://www.gov.uk/government/collections/vehicle-safety-and-maintenance-guides>
- 3.2.2. Vehicle Excise and Registration Act 1994 (VERA);
- 3.2.3. Standard International Operator's Licence (This applies to all vehicles with a gross vehicle weight rating above 3.5 tonnes.);
- 3.2.4. Certificate of Professional Competence (CPC);
- 3.2.5. Community Licences and road haulage permits (allow drivers to use a single permit for trips between all EU Member states. The licence also allows transit traffic through EU member states and to and from non-member countries. Community Licences also allow cabotage, i.e. journeys entirely within one other EU Member).

#### **4. COLLECTION TIMES**

- 4.1. The Supplier shall work with the Participating Authority to offer a mutually acceptable collection time in relation to the collection of items from Participating Authorities premises.
- 4.2. Such collection times shall ensure that delivery timescales for items can be achieved.
- 4.3. The collection of items from the Participating Authority premises shall be made on a free of charge basis.
- 4.4. The Authority accepts that on occasions, the Participating Authority may request an urgent, un-scheduled collection. The Authority acknowledges that such collections may attract a fee; however the Authority expects the Supplier to make every effort to keep such a charge to an absolute minimum. This will be agreed on an individual basis between the Supplier and the Participating Authority at the Call Off Stage.

#### **5. UNDELIVERED ITEMS**

- 5.1. The Supplier shall have a robust process in place for dealing with items which have not been delivered successfully.

#### **6. PACKING SPECIFICATION**

- 6.1. All packaging of test kits is to meet the appropriate safety standards.
- 6.2. Infectious substances classified as UN3373 Biological Substances Category B should be packaged in compliance with Packing Instruction 650 as detailed in the latest edition of the International Civil Aviation Organization's Technical Instructions.
- 6.3. All packaging must comply with CAA (Civil Aviation Authority) agreed specifications or have the required exceptions in place
- 6.4. All items must have the correct and relevant labels and barcoding affixed to the front of the packages. The specific requirements for the provision of barcoding and labelling will be set out in the Call-Off Order Form.

#### **7. TRAINING REQUIREMENTS**

- 7.1. The Supplier shall ensure its employees are provided with the appropriate training to undertake the service provision.

**8. DEDICATED VEHICLE MOVEMENTS AND CONSIGNMENT TRACKING**

- 8.1. The Supplier shall have the capacity and capability to be able to provide a suitable number of dedicated vehicles, using its own resources or that of a partner organisation, in order to be able to provide for a single, secure network covering sites nominated by the Participating Authority as part of the Call-Off Order.
- 8.2. The Supplier shall provide a secure Dedicated Courier Network Service to the Participating Authority for the collection and delivery of Samples for same day delivery.
- 8.3. The Supplier shall provide a fully tracked (online) service for Samples, including the provision of signed collection and deliveries (this may be achieved through the use of the scanning of bar codes where appropriate).
- 8.4. The Supplier shall provide dedicated vehicles for the collection and delivery of consignments to and from specified sites within the dedicated network.
- 8.5. The Supplier shall ensure the Participating Authority's consignments are effectively and securely segregated from other customers' mail during line haul movements.

**9. COLLECTIONS**

- 9.1. Specific collection requirements will be set out in the individual Call-Off Contracts, however, the Supplier will be required to comply with specific defined procedures with regards to the collection of Samples from Test Sites and Test Units, depending on the provider of the Test Sites or Test Units.

**10. DELIVERY**

- 10.1. The Supplier shall be required to deliver Samples to their own premises for Testing.

**11. SUPPLIER PERSONNEL**

- 11.1. Supplier's Personnel must be easily identifiable and wear the appropriate Personal Protection Equipment (PPE) including but not limited to:
  - 11.1.1. Industrial footwear;
  - 11.1.2. High visibility jackets when entering Participating Authority premises.
- 11.2. Where the Supplier intends to use sub-contractors or Third Party providers in the delivery of the services, then such sub-contractors or Third Party Personnel must wear suitable attire which includes the appropriate Personal Protective Equipment (PPE) i.e. industrial footwear and high visibility jackets.
- 11.3. The Supplier shall ensure that all personnel will have appropriate security clearance, as required by the Participating Authority.
- 11.4. The Supplier shall ensure that all personnel carry relevant photographic identification upon their person at all time including but not limited to:
  - 11.4.1. A UK driving licence;
  - 11.4.2. Photo identity cards;
  - 11.4.3. Organisation identity cards.

**Schedule 6****Lot 4 Commercial Schedule****Table 1: Cost Per Test**

<u>Supplier</u>	<u>Type of Test</u>	<u>Extant Maximum Daily Operating Capacity (Test Numbers)</u>	<u>Cost Per Test</u>	<u>Pricing Duration</u>	<u>Minimum quantity of tests for volume price break</u>	<u>Maximum quantity of tests for volume price break</u>	<u>Results Turnaround Time</u>

**Table 2: Enhanced Capacity Cost**

<u>Supplier</u>	<u>Type of Test</u>	<u>Enhanced Maximum Daily Operating Capacity (Test Numbers)</u>	<u>Volume Increase Increment</u>	<u>Pricing Duration</u>	<u>Ramp Up Price</u>	<u>Cost Per Test Post Ramp Up</u>	<u>Leadtime to delivery of Capacity Uplift</u>



**Table 3: Logistics**

<u>Supplier</u>	<u>Consignment Size</u>	<u>Consignment Price</u>	<u>Pricing Duration</u>	<u>Minimum quantity of daily consignments within volume pricing break.</u>	<u>Maximum quantity of daily consignments within volume pricing break.</u>

**Table 4: Sample Kits**

<u>Manufacturer Name</u>	<u>Manufacturer Number</u>	<u>Type of Sample Kit</u>	<u>Price per Sample Kit</u>	<u>Pricing Duration</u>	<u>Minimum Levels of supply with volume pricing</u>	<u>Maximum of supply with volume pricing</u>	<u>Leadtime to delivery</u>

## **Schedule 7**

### **Ordering Procedure, Award Criteria and Order Form**

#### **1 Framework call-off**

- 1.1. If a Participating Authority wishes to purchase Goods and/or Services through this Framework Agreement, it may do so in accordance with one of the following call-off processes and related ordering procedures:

*Without reopening competition*

- **“Direct Award Business Case Technical Justification”** (as further described in paragraph 3.1);
- **“Direct Award Lowest Price”** (as further described in paragraph 3.2);
- **“Low Value Direct Award”** (as further described in paragraph 3.3);

*Reopening competition*

- **“Mini-competition”** (as further described in paragraph 3.4).

- 1.2. In this Schedule 7 the following words shall have the following meanings:  
**“Capability Search and Assessment”** shall mean the search and review process described in paragraphs 2.2.1 and 2.2.2;  
**“Framework Supplier”** shall mean the Supplier and other suppliers appointed under a relevant lot of the National Microbiology Framework.

#### **2 Common processes for all call-offs**

##### **2.1. Statement of Requirements**

- 2.1.1. For all call-off processes and related ordering procedures, the Participating Authority will develop a statement setting out its requirements (**“Statement of Requirements”**). The Statement of Requirements shall be deemed part of the Order Form and Specification and Tender Response Document for the purposes of any Contracts.

- 2.1.2. The Statement of Requirements will broadly define the Goods and/or Services sought. The statement will, as far as reasonably practicable, define outputs, minimum requirements and any Authority Obligations. This may include, but not be limited to, the following scientific research, diagnostics and manufacturing products/services information:

- test types (including variants);
- test access (single, batch, random, laboratory only, mobile/ward based);
- test volumes, speeds and turnaround times;
- specimen types and restrictions;
- product quantities;
- manufacturer catalogue numbers;
- chemicals/pathogens/antigens/ reagents/assays/kits descriptions;
- specimen/sample types and volumes;
- product purity, strains, concentration, presentation;
- limit of detection;

- limit of quantitation;
- linear dynamic range;
- sensitivity, specificity, rejection/failure rates;
- reproducibility;
- repeatability;
- uncertainty of measure;
- calibration parameters;
- weight, dimensions and ergonomics;
- utility and laboratory environment requirements;
- packaging, transport and storage requirements;
- workflows including automated and manual processes;
- service standards, service levels and management reporting, key performance indicators (KPIs);
- required diagnostic tests / services;
- required research products / services;
- required reagents / assays / chemicals / pathogens / antigens;
- required maintenance / support / training;
- required capital or rental options;
- required peripheral items or systems or software.

2.1.3. Where the nature of the requirements are sensitive, the Participating Authority may require the potential Framework Suppliers to enter into a non-disclosure agreement as a condition of participation in a call-off process.

## **2.2. Preliminary assessment processes**

### **Capability Search and Assessment**

2.2.1. Unless specified otherwise, for all call-off processes and related ordering procedures, the Participating Authority will carry out a search of the relevant tables in Schedule 6 (Commercial Schedule) using appropriate parameters and key scientific features to identify a long list of those Framework Suppliers that are potentially capable of meeting the minimum requirements.

2.2.2. The Participating Authority will then review the data sheets of Framework Supplier(s) identified following the process in paragraph 2.2.1 to confirm whether a Framework Supplier has the capability to meet all key aspects of the Statement of Requirements and supply the required Goods and/or Services.

### **Expression of Interest**

2.2.3. The Participating Authority may broadcast an expression of interest (“**Expression of Interest**”), in addition to or as an alternative to the Capability Search and Assessment, to identify Framework Suppliers capable of meeting the requirements. For example, an Expression of Interest may be broadcast where the key aspects of the Statement of Requirements are not clearly ascertainable from a search of the data fields in Schedule 6 (Commercial Schedule). The Participating Authority should provide the Statement of Requirements to all Framework Suppliers in the applicable Lot and request a response within a reasonable period of time, taking into account any urgency in the requirement.

### 3 Ordering procedures

The Participating Authority will notify:

- in the case of a direct award in accordance with paragraphs 3.1, 3.2 or 3.3 below, all Framework Suppliers; or
- in the case of a mini-competition in accordance with paragraph 3.4 below, all Framework Suppliers participating in the mini-competition,

of its intention to award a Contract. It is recommended that a 10-day voluntary standstill period should be observed for awards made under all procedures set out below. However, the Participating Authority may decide to dispense with the prior notification and standstill period in exceptional circumstances, for example, following a public health emergency or where the observance of such standstill period is likely to prejudice the security of supply of a Good or Service in which exclusive rights prevent competition. Where in such circumstances the Participating Authority has determined that prior notification was not practicable the Participating Authority shall inform all Framework Suppliers as soon as possible following the award of the Contract.

#### 3.1. Direct Award Business Case Technical Justification

**3.1.1.** The Participating Authority may directly award a Contract to a Framework Supplier if a business case prepared by the Participating Authority has highlighted that only one supplier can meet the minimum requirements set out in the Statement of Requirements on the ground(s) of:

- Unforeseen circumstances of national interest or public health impact requiring an emergency response; or
- Holding intellectual property and rights that prevent competition, or
- Absence of competition for technical reasons (for the avoidance of doubt, the absence of competition for market-driven reasons, such as shortages in available supplies, is deemed to be a technical reason); or
- Interchangeability and interoperability with existing equipment, services or installations, or
- Alternative Goods and Services offered by other Framework Suppliers would cause significant inconvenience or substantial duplication of costs for the Participating Authority, or
- Clinical or scientific justification.

**3.1.2.** The Participating Authority shall be responsible for carrying out appropriate due diligence to assure itself that the relevant Framework Supplier is the only supplier capable of performing the Contract, and for documenting the due diligence carried out. This may involve, but does not require, following the processes referred to in paragraph 2.2 above. In instances where the Participating Authority is uncertain whether or not the relevant Framework Supplier is the only supplier capable of performing the Contract, the Participating Authority shall reopen competition as further detailed in paragraph 3.4 below.

3.1.3. In accordance with the Participating Authority's minimum requirements and the associated ground(s) (as per paragraph 3.1.1) that have been highlighted in the business case, limited variations to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services may be agreed under this ordering procedure. Potential variations should be limited to the following areas:

- Delivery of Goods and passing of risk and ownership in Goods;
- Operation of the Services;
- Warranties;
- Intellectual property and rights of use;
- Indemnities and liabilities;
- Insurance;
- Termination.

The Participating Authority must ensure that any variations do not undermine the underlying ground(s) for use of this ordering procedure as set out in paragraph 3.1.1. For the avoidance of doubt, the Participating Authority may also include any relevant supplemental requirements as further described in paragraph 4.7 below. A Participating Authority may consult a relevant Framework Supplier in relation to any potential variations / supplemental requirements and/or in relation to any other matters to be included as part of the Order Form prior to placing an Order.

### **3.2. Direct Award Lowest Price**

3.2.1. Having conducted a Capability Search and Assessment, the Participating Authority may directly award a Contract to the Framework Supplier with the lowest price capable of meeting all requirements set out in the Statement of Requirements.

3.2.2. The Participating Authority may only adopt this process if it can ensure that prices are comparable between those Framework Suppliers that can meet all requirements in the Statement of Requirements. As the inclusion of variations or supplemental requirements to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services would undermine the basis of this comparison, variations or supplemental requirements should not be used under this ordering procedure. If these conditions cannot be ensured, the Participating Authority should use an alternative ordering procedure.

### **3.3. Low Value Direct Award**

3.3.1. Where the Participating Authority has identified a Good or Service that meets its Statement of Requirements and the whole life cost of the proposed Contract (including the value of any extensions and/or options) will not exceed £25,000 (excluding VAT), the Participating Authority may directly award a Contract to a Framework Supplier.

3.3.2. In using this ordering procedure:

- the Participating Authority may determine whether or not to conduct either of the preliminary processes referred to in paragraph 2 above; and

- other than in exceptional cases, supplemental requirements are unlikely to be relevant for inclusion (based on the smaller scale and likely nature of the proposed Contract).

3.3.3. The Participating Authority should comply with any additional requirements of its own standing financial instructions (“**SFIs**”) in using this procedure and in the event of a conflict with those SFIs then the SFIs will prevail.

### **3.4. Mini-competition**

3.4.1. The Participating Authority may reopen competition at any time including in order to establish the precise terms for a Contract. The choice of whether specific Goods and/or Services shall be acquired following a reopening of competition shall be made pursuant to the application of one or more of the following objective criteria:

- The Participating Authority requires further competition to improve the terms of the Contract in its favour;
- The Participating Authority has a bespoke requirement;
- The Participating Authority requires further information to precisely formulate all the terms of the Contract.

3.4.2. The Participating Authority may consult in writing the Framework Supplier(s) capable of performing the Contract:

- following a Capability Search and Assessment; or
- assessed following responses received following the broadcast of an Expression of Interest.

For the avoidance of doubt, such consultation may, without limitation, include consultation with Framework Suppliers in relation to any supplemental requirements, as further described in paragraph 4.7 below, and/or in relation to any other matters to be included as part of the Order Form. Where the nature of the requirements are sensitive, the Participating Authority may request entry into a non-disclosure agreement prior to consultation with Framework Suppliers. This would normally follow a Capability Search and Assessment (rather than an Expression of Interest which would otherwise entail the broadcast of the sensitive requirements to all Framework Suppliers).

3.4.3. The Participating Authority shall fix a time limit which is sufficiently long to allow tenders for each specific Contract to be submitted, taking into account factors such as the complexity of the subject-matter of the Contract, the time needed to complete and send in tenders, and the urgency of the requirement.

3.4.4. Tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for response has expired.

3.4.5. The Participating Authority shall award each Contract to the Framework Supplier that has submitted the best tender on the basis of the award criteria below. The Participating Authority may apply its own weightings (in line with the allowable range set out below (to total 100% after adjustment)) and relevant sub-criteria to each of the award criteria provided that such sub-criteria are consistent with the relevant award criteria.

Criterion Number	Award Criteria	Weighting	Allowable Range
1	Technical merit	50%	+/- 20%
2	Commercial (for example, pricing, other payment related matters, risk issues, issues relating to TUPE and redundancy costs relevant to the specific Order, and as relevant to any other supplemental requirements applicable to the specific Order, as referred to at paragraph 4.7 below)*	50%	+/- 20%
3	After sales service and technical assistance	10%	+/- 10%
4	Non-technical features (for example, social value, environmental, sustainability characteristics, health and safety, supply chain management)*	10%	+/- 10%
5	Business Continuity	10%	+/- 10%

\*The examples of sub-criteria under Criterion 1 & 2 above are illustrative examples only and are not intended to be an exhaustive list. Also, some of these examples will not be relevant for every type of Order.

## 4 General provisions

### 4.1. Due diligence

- 4.1.1. The Participating Authority reserves the right to conduct due diligence on the Framework Suppliers that are capable of performing the Contract and if necessary consult them in writing prior to Contract award or prior to acceptance of delivery where:
- the complexity of the requirements is high; or
  - the technical and economic impact of failure/poor performance of the Goods and/or Services is high.

For the avoidance of doubt, as part of such due diligence, a Participating Authority may require relevant Framework Suppliers to complete a pre-acquisition questionnaire in order to confirm any additional product details and other additional information required by the Participating Authority in relation to any Goods.

### 4.2. Credit checks

- 4.2.1. The Participating Authority reserves the right to use a credit reference agency report to assess the Framework Supplier's economic and financial standing to determine the level of financial risk the Framework Supplier would represent. The reports provide information on a range of financial indicators including (but not limited to) such measures as credit rating, credit limits, turnover, asset/liabilities, cash flow and profit statements.
- 4.2.2. If the Participating Authority determines (on the basis of a credit reference agency report or other available financial information) that the Framework Supplier's economic and financial standing to deliver against the requirements specific to the Contract is not adequate the Framework Supplier may be excluded from consideration in such ordering procedure.



#### **4.3. Discounts**

- 4.3.1. The Participating Authority may agree discounted pricing with the Framework Supplier on the basis of value or volumes of purchases made or committed to making over agreed time periods. The Framework Supplier will be required to share value and/or volume purchasing data where such discounts are agreed.

#### **4.4. Category 1 responder - Emergency responder**

- 4.4.1. Some Participating Authorities are Category 1 responders (under the Civil Contingencies Act 2004) and provide specialist advice and support to the emergency services and the NHS.
- 4.4.2. The Framework Supplier must prioritise the performance of all new or existing Contracts awarded to Participating Authorities with this status.

#### **4.5. Access Agreement**

- 4.5.1. The Participating Authority must sign an agreement ("**Access Agreement**") with the Authority prior to placing an order for a Contract with the Framework Supplier. The Participating Authority shall only have permission to place orders if an Access Agreement has been signed.
- 4.5.2. For the avoidance of doubt, the Authority will maintain a list of Participating Authorities that is available to the Framework Supplier on request.

#### **4.6. Framework management fee**

- 4.6.1. Participating Authorities will be required to provide the Authority with annual spend data in relation to Contracts awarded through the National Microbiology Framework.
- 4.6.2. The Framework Supplier will pay the Authority a management fee for all Orders placed by **all** Participating Authorities through this Framework Agreement. The management fee will be 1% of the total annual order value excluding VAT.
- 4.6.3. The management fee will be paid annually in arrears and is capped at £20,000 per calendar year. This payment will be made via a purchase order to the Authority.

#### **4.7. Supplemental requirements**

- 4.7.1. Participating Authorities may include supplemental requirements to the Contract in addition to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services together with any related variations to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services.
- 4.7.2. The supplemental requirements may include, but are not limited to, supplemental requirements relating to, and/or arising from, one or more of the following:
- Intellectual property – where relevant, the Participating Authority may consult with Framework Suppliers prior to formulating terms covering ownership of intellectual property rights and distribution of profits arising therefrom;
  - TUPE and staffing issues – where relevant, additional and/or replacement terms and conditions related to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 and/or

to otherwise reflect any specific practical and/or commercial arrangements in respect of any staff transfers, potential staff redundancies and any other relevant staffing matters;

- VAT and Contracted Out Services (“**COS**”) rules and regulations requirements,
- The mobilisation, implementation and/or transition approach and the associated activities to be performed;
- The requirements of any relevant leases (including pursuant to amendments to those leases or new leases), licences or other property related matters;
- The applicable performance mechanism (including applicable performance measures and associated performance measurement regime);
- The security requirements of the Participating Authority;
- The nature or scope of any ICT or utility requirements and their associated infrastructure;
- Any required third party consents or approvals;
- Any relevant third party contracts and any related issues;
- Any required collaboration arrangements;
- Any asset or other verification or audit processes;
- Any changes / developments in Law, Guidance or Good Industry Practice;
- Any asset or exit related issues (including, without limitation, any handover and handback conditions);
- Any specific policy, quality, governance, protocol, standards, and/or business process requirements applicable to and/or required by the Participating Authority;
- Any other specific commercial and/or risk related issues relevant to a specific Order;
- Any issues relating to the exit of the United Kingdom from the European Union;
- Clinical Laboratory Diagnostic Testing Services – where relevant, the terms covering clinical laboratory diagnostic testing services;
- Reagent rental – where relevant, the terms covering reagent rental equipment;
- Managed equipment services – where relevant, the terms covering managed equipment services;
- Bespoke research, development and manufacturing requirements – where relevant, the terms covering research, development and manufacturing requirements together with any related commercial exploitation and intellectual property matters;
- Any supplemental terms, additional key provisions and other supplementary provisions / information / requirements that the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services (including any optional additional terms) envisage may form part of a Contract;
- Other commercial issues specific to a particular Order that are in addition to the commercial issues referred to above – where relevant, a Participating Authority may include both amendments to existing terms and the addition of further terms to reflect any specific commercial arrangements / risk issues relating to an Order. For the avoidance of doubt, such commercial terms may include terms relating to mobilisation payments (including in relation to TUPE and/or redundancy costs), early termination (including payments on termination), property and asset transfer issues and/or that relate to the issues considered as part of the Participating Authority’s approach to commercial evaluation relating to a specific Order together

with any other specific commercial and/or risk related issues relevant to a specific Order; or

- Any consequential issues or requirements relating to any of the above bullets.

For the avoidance of doubt, the reference above to “supplemental requirements” relating to the Contract and the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services shall include both amendments to existing terms and the addition of further terms, as appropriate.

#### **4.8. Legal status and jurisdiction of certain Participating Authorities**

- 4.8.1. As part of an Order, a Participating Authority may make such changes as it deems necessary to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services to reflect its legal status and related legal obligations. Additionally, where a Participating Authority is based in another legal jurisdiction, it may also require the law and jurisdiction of that jurisdiction to apply (e.g. if it is based in Scotland or Northern Ireland, it may require the application of the relevant law and jurisdiction of its own locality rather than English law and jurisdiction, together with any relevant consequential changes, to apply) and may make such changes to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services as it considers necessary to give effect to this. For the avoidance of doubt, any reference to “changes” to the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services shall include both amendments to existing terms and the addition of further terms, as appropriate.

**Appendix 1****National Microbiology Framework Agreement****Order Form****FROM**

<b>Authority:</b>	
<b>Invoice address:</b>	Post: Email:
<b>Contract Manager:</b>	Name: Phone: E-mail:
<b>Secondary Contact: e.g. business operational contact, project manager</b>	Name: Phone: E-mail:
<b>Procurement lead</b>	Name: Phone: E-mail:
<b>Name and address for notices:</b>	Name: Address:
<b>Internal reference (if applicable):</b>	To be quoted on all correspondence relating to this Order Form:

**TO**

<b>Supplier:</b>	
<b>Contract Manager:</b>	Name: Phone: E-mail:
<b>Secondary Contact:</b>	Name: Phone: E-mail:
<b>Account Manager:</b>	Name: Phone: E-mail:
<b>Name and address for notices:</b>	Name: Address:

**Applicable terms and conditions**

The following terms and conditions are applicable to the Contract for this Order:

<b>Appendix A</b>	Call-off Terms and Conditions for the Supply of Goods and the Provision of Services	<b>Applicable to this Contract</b>
<b>Appendix B</b>	Optional Additional Call-off Terms and Conditions for Installation and Commissioning Services	<input type="checkbox"/> (only applicable if this box is checked)
<b>Appendix C</b>	Optional Additional Call-off Terms and Conditions for Maintenance Services	<input type="checkbox"/> (only applicable if this box is checked)
<b>Appendix D</b>	Optional Additional Call-off Terms and Conditions for Bespoke Research, Development and Manufacturing Requirements	<input type="checkbox"/> (only applicable if this box is checked and to the extent the applicable terms are included in Annex A (Order Specific Key Provisions))
<b>Appendix E</b>	Optional Additional Call-off Terms and Conditions for Reagent Rental	<input type="checkbox"/> (only applicable if this box is checked)
<b>Appendix F</b>	Optional Additional Call-off Terms and Conditions for Managed Equipment Services	<input type="checkbox"/> (only applicable if this box is checked)
<b>Appendix G</b>	Optional Additional Call-off Terms and Conditions for Clinical Laboratory Diagnostic Testing Services	<input type="checkbox"/> (only applicable if this box is checked and to the extent the applicable terms are included in Annex A (Order Specific Key Provisions))
<b>Appendix H</b>	Further Optional Additional Call-off Terms and Conditions	<b>(only applicable if one or more boxes are checked)</b>
	Each of the following clauses in Appendix H is only applicable to this Contract if the relevant box is checked:	
	1. TUPE applies at the commencement of the provision of Services	
	2. TUPE on exit	
	3. Different levels and/or types of insurance	
	4. Induction training for Services	
	5. Further Authority obligations	

6.	Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services	<input type="checkbox"/>		
7.	Inclusion of a Change Control Process	<input type="checkbox"/>		
8.	Authority step-in rights	<input type="checkbox"/>		
9.	Guarantee	<input type="checkbox"/>		
10.	Termination for convenience	<input type="checkbox"/>		
11.	Pre-Acquisition Questionnaire	<input type="checkbox"/>		
12.	Time of the essence (Goods)	<input type="checkbox"/>		
13.	Time of the essence (Services)	<input type="checkbox"/>		
14.	Specific time periods for inspection	<input type="checkbox"/>		
15.	Specific time periods for rights and remedies under Clause 3.6 of Schedule 2 of Appendix A	<input type="checkbox"/>		
16.	Right to terminate following a specified number of material breaches	<input type="checkbox"/>		
17.	Expert Determination	<input type="checkbox"/>		
18.	Consigned Goods	<input type="checkbox"/>		
19.	Improving visibility of Sub-contract opportunities available to Small and Medium Size Enterprises and Voluntary, Community and Social Enterprises	<input type="checkbox"/>		
20.	Management Charges and Information	<input type="checkbox"/>		
21.	COVID-19 related enhanced business continuity provisions	<input type="checkbox"/>		
22.	Buffer stock requirements	<input type="checkbox"/>		
23.	Modern slavery	<input type="checkbox"/>		
The additional Order Specific Key Provisions set out at Annex A (Order Specific Key Provisions) to this Order Form shall also apply to this Contract.				<input type="checkbox"/> (only applicable if this box is checked)

<b>1. CONTRACT DETAILS</b>
<b>(1.1) Commencement Date:</b>
<b>(1.2) Services Commencement Date (if applicable):</b>
<b>(1.3) Contract Price ((i) breakdown and (ii) payment profile):</b>
<b>(1.4) Term of Contract:</b>
<b>(1.5) Term extension options:</b>
<b>2. GOODS AND/OR SERVICES REQUIREMENTS</b>
<b>(2.1) Description of the Goods / Services:</b>
<b>(2.2) Premises and Location(s) at which the Goods / Services are to be delivered / provided:</b>
<b>(2.3) Key personnel of the Supplier to be involved in the Goods / Services:</b>
<b>(2.4) Performance standards:</b> <i>[To be listed or referenced e.g. "According to the Authority's specification (as set out in ITT XXXX) and the Supplier's tender response, including any correspondence and clarifications."]</i>
<b>(2.5) Quality standards:</b> <i>[To be listed or referenced e.g. "According to the Authority's specification (as set out in ITT XXXX) and the Supplier's tender response, including any correspondence and clarifications."]</i>
<b>(2.6) Contract monitoring arrangements:</b> <i>[Monitoring arrangements to be described or referenced here. For example, this may cover matters such as Implementation Requirements for each site, monitoring of KPIs, service credits and deductions, invoicing and billing, risk reviews etc.]</i>
<b>(2.7) Management information and meetings:</b> <i>[Management information (including the contents of the contract management report) and review meetings to be described or referenced here in accordance with clause 8 of the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services.]</i>
<b>3. CONFIDENTIAL INFORMATION (if applicable)</b>



**(3.1) The following information shall be deemed Confidential Information:**

**(3.2) Duration that the information shall be deemed Confidential Information:**

**4. DATA PROCESSING (if applicable)**

**(4.1) Personal Data to be processed by the Supplier:**

In accordance with the Data Protection Protocol.

**5. LEASE / LICENSE (if applicable)**

**(5.1) The Authority is granting the following lease or licence to the Supplier:**

*[Relevant details to be inserted or state "Not applicable"]*

**Signature:**

**Signature:**

**For and on behalf of the Authority**

**For and on behalf of the Supplier**

**Name:**

**Name:**

**Job title:**

**Job title:**

**Date:**

**Date:**

## **Annex A**

### **Order Specific Key Provisions**

#### **1. Introduction**

- 1.1. This Annex A includes any supplemental requirements and any other relevant details, information, provisions and terms, forming part of this Order Form, as envisaged by the Framework Agreement, the Ordering Procedure, the other parts of this Order Form, the Call-Off Term and Conditions for the Supply of Goods and the Provision of Services and/or as required by the Authority (as applicable to this Contract and to the extent not addressed elsewhere as part of this Order Form). For the avoidance of doubt, any further annexes, appendices, schedules or other documents referred to in this Annex A shall be deemed part of this Annex A and part of this Order Form. *[Insert further sections as required for the purposes of the specific Order]*

## **Schedule 8**

### **Supplier Relationship Management**

#### **Governance**

The aim of Supplier Relationship Management (“**SRM**”) is to provide a framework to facilitate good governance and sustain a mutually beneficial relationship where both the Authority and the Supplier will be able to discuss the strategic objectives of the relationship between them and to monitor the Supplier’s performance in delivering the goods / services.

#### **Governance framework**

Governance assessment may be carried out via the following (but not limited to) meetings:

- Service performance / operational review meetings (to be held monthly or quarterly or as otherwise agreed between each Party in writing);
- Commercial opportunity / strategic & executive review meetings (to be held as mutually agreed between the Parties in writing) – this will be for the Authority’s strategic suppliers only.

Depending on the nature of the delivered service and the relationship with the Supplier, the agenda for service performance / operational review meeting may include (but not be limited to) the following:

- Previous minutes and actions;
- Overall contract operational performance against service targets and/or service levels;
- Service failures and root cause analysis;
- Service credits;
- Invoicing and billing;
- Establish any improvement action plans required;
- Corrective action notices;
- Process improvements / best industry practice;
- Review and discussion of a continuous improvement plan;
- Relevance of the supplier’s Business Continuity Plan and contingency planning for the Authority’s objectives;
- Change control;
- Capacity management achievement of authority’s objectives;
- Review of risks; and
- Where necessary: objective reviews and scope for delivery of goods and services.

Commercial opportunity / strategic & executive review meetings shall discuss the following:

- To guide the relationship between the Authority and the Supplier during the term of the Framework Agreement and related Contracts ensuring that the principles of governance are upheld;
- To discuss the Supplier’s Business Continuity Plan including monitoring supply chain risks and issues that impact on the Authority as a Category 1 Responder;
- To guide the strategic development and the delivery of the goods and services;
- To explore all opportunities to increase value of business (added value, efficiency improvement, business development, cost improvement etc.) to the Authority and the Supplier;
- To ensure all the contractual terms are being met and are relevant going forward.

**Supplier roles and responsibilities**

<b>Applicable for strategic suppliers where each Party will appoint and undertake:</b>	<b>Supplier</b>	<b>The Authority</b>
<b>Post</b>	Contract Manager	Contract Manager
<b>Responsibility</b>	Responsible for senior level executive co-operation and understanding between the Supplier and the Authority	Responsible for senior level executive co-operation and understanding between the Supplier and the Authority
	Will work with the other party's (Authority) Contract manager to guide the relationship (between both organisations) during the period of the commercial arrangement.	Will work with the other party's (Supplier) Contract manager to guide the relationship (between both organisations) during the period of the commercial arrangement.
	Will ensure that the principles of governance are upheld by the Supplier and will be responsible for guiding the strategic relationship development and the delivery of the goods and services, whilst exploring opportunities to increase value of business (added value, efficiency improvement, business development, cost improvement etc.) to both the Authority and the Supplier.	Will ensure that the principles of governance are upheld by the Authority and will be responsible for guiding the strategic relationship development and the delivery of the goods and services, whilst exploring opportunities to increase value of business (added value, efficiency improvement, business development, cost improvement etc.) to both the Authority and the Supplier.
<b>Post</b>	Finance Lead/Account Manager/Business Development Lead or other Leadership authority	Supplier Relationship Manager
<b>Responsibility</b>	Will be responsible for managing the overall relationship between the Authority and the Supplier (on behalf of the Supplier) and ensure Supplier's senior leadership is available for strategic discussion with the Authority.	Will be responsible for managing the overall relationship between the Authority and the Supplier (on behalf of the Authority) and ensuring that the Authority carries out its obligations and facilitate discussions within Authority's leadership circle with reference to the Supplier.

<b>Applicable for all suppliers</b>	<b>Supplier</b>	<b>The Authority</b>
<b>Post</b>	Operational Manager	Operational Manager
<b>Responsibility</b>	To be accountable for all operational aspects of the relationship between the Authority and the Supplier	To be accountable for all operational aspects of the relationship between the Authority and the Supplier

### Account plans for strategic suppliers

The Supplier will produce a plan (an “**Account Plan**”) which will be jointly agreed by both the Authority and the Supplier. Both organisations will comply with their obligations in the Account Plan once it is agreed.

An Account Plan is a document which details the goals and objectives for the relationship and individual project initiatives that will deliver them.

### Management Information

The Supplier will provide management information (“**MI**”) reports as specified by the Authority. The Supplier will also provide detailed MI support data as requested by the Authority.

The Authority will rely on the MI as provided by the Supplier to measure and monitor the Supplier’s performance as well as information derived from the Authority’s internal operations. It is important that the Authority obtains timely and accurate MI.

The MI reports will be reviewed by both the Authority and the Supplier at each service performance review meeting and shall include the following categories of MI:

- MI to allow the Authority to monitor the performance of the goods and services (for their intended purposes), charges, total spend on framework, service credits (where applicable) and govern its relationship with the Supplier;
- New or amended MI as requested from the Supplier by the Authority in accordance with any agreed change control procedures;
- The Supplier shall provide the MI reports to the Authority at such frequency, for such purpose and in such agreed format as specified by the Authority. Unless agreed otherwise by the Authority, the MI reports shall be delivered in electronic format;
- The Supplier shall deliver the MI reports to the Authority on a daily, weekly and monthly basis (as specified in respect of such MI report or as otherwise agreed between the Authority and Supplier) in an agreed timely manner.

### Supplier scorecard

The Authority and the Supplier, where applicable, shall work together and agree on the following:

- The initial set of measures to be used in the supplier scorecard;
- The format of the supplier scorecard;
- Processes for the measurement of the effectiveness of the Account Plan;
- Agree the tools/processes required to generate the supplier scorecard;
- Agree the full distribution list of the recipients of the supplier scorecard;
- Unless otherwise agreed between the Authority and the Supplier, the supplier scorecard will include the following categories of MI:
  - The aggregated contract performance of the Supplier against service levels;
  - Customer service monitoring, which may include process and quality measures;
  - Financial monitoring;
  - Operational risk monitoring.

For all strategic suppliers a supplier scorecard shall be completed (unless otherwise agreed on a case-by-case basis) quarterly by the Authority and the Supplier and shall include an executive summary, which shall rank the Supplier’s performance as agreed.

## **Appendix A**

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

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

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

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

For the avoidance of doubt, unless otherwise confirmed by the Authority as part of the Order Form as an additional Key Provision, any actions or work undertaken by the Supplier prior to the receipt of an Order Form and an associated valid purchase order (i.e. issued in accordance with the Authority's financial systems for the value of the relevant Goods and/or Services) shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods and/or Services covered by both: (1) a valid Order Form; and (2) a valid purchase order.

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

### **Schedules**

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

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

### **Key Provisions**

#### **Standard Key Provisions**

#### **1      Application of the Key Provisions**

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

#### **2      Term**

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

#### **3      Contract Managers**

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

#### **4      Names and addresses for notices**

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

#### **5      Management levels for escalation and dispute resolution**

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

<b>Level</b>	<b>Authority representative</b>	<b>Supplier representative</b>
1	Contract Manager	Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

#### **6      Order of precedence**

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



- 6.1.2 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
- 6.1.3 the provisions on the front page of these Call-off Terms and Conditions for the Supply of Goods and the Provision of Services;
- 6.1.4 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;
- 6.1.5 the Specification and Tender Response Document (but only in respect of the requirements);
- 6.1.6 any optional additional Call-off Terms and Conditions, as applicable to this Contract as referred to in the Order Form;
- 6.1.7 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;
- 6.1.8 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;
- 6.1.9 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations;
- 6.1.10 the order in which all subsequent schedules, if any, appear; and
- 6.1.11 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

## **7 Supply of Goods only or provision of Services only**

- 7.1 To the extent that the Supplier is only supplying Goods under this Contract it shall be relieved of any requirements or obligations that relate solely to the provision of Services.
- 7.2 To the extent that the Supplier is only providing Services under this Contract it shall be relieved of any requirements or obligations that relate solely to the supply of Goods.

## **8 TUPE**

- 8.1 Unless otherwise set out in Appendix H of these Call-off Terms and Conditions (as applicable to this Contract), the Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 8.2 If any person who is an employee of the Authority or a Third Party claims or it is determined that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
  - 8.2.1 the Supplier will, within seven (7) calendar days of becoming aware of that fact, give notice in writing to the Authority;

- 8.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) calendar days of the notification by the Supplier;
- 8.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment; and
- 8.2.4 if after that period specified in Clause 8.2.2 of this Schedule 1 of these Call-off Terms and Conditions has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions, as it applies to the relevant public sector pension scheme. If Fair Deal for Staff Pensions does not apply, the Supplier or Sub-contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

**Schedule 2 of these Call-off Terms and Conditions****General Terms and Conditions****Contents**

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

## **1 Supply of Goods and the provision of Services**

- 1.1 The Supplier shall supply the Goods and provide the Services 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 with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
  - 1.1.4 in accordance with the Law and with Guidance;
  - 1.1.5 in accordance with Good Industry Practice;
  - 1.1.6 in accordance with the Policies; and
  - 1.1.7 in a professional and courteous manner.
- In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, if specified in the Order Form, carry out all implementation activities fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 Where the Supplier is providing services, the Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document and/or the Order Form, including, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation and training in relation to the Goods and their use).
- 1.5 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 Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:
- 1.6.1 required to supply the Goods are in place prior to the delivery of any Goods to the Authority; and

- 1.6.2 required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.7 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, or the use of the Services 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 or Services.
- 1.8 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 or the Services, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

## **2 Delivery of the Goods and passing of risk and ownership in the Goods**

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the

Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.

- 2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.
- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.
- 2.7 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.
- 2.8 Ownership of the Goods shall pass to the Authority on the earlier of:
- 2.8.1 full payment for such Goods; or
  - 2.8.2 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 2.8.2 of this Schedule 2 of these Call-off Terms and Conditions, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.
- 2.9 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.

### **3 Inspection, rejection, return and recall of the Goods**

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



and quality assurance processes are in accordance with the requirements of this Contract.

- 3.2 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out as part of the Authority's requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall at the Authority's written request:
- 3.3.1 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
- 3.3.2 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 3.5 of this Schedule 2 of these Call-off Terms and Conditions.
- If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.
- 3.4 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 3.3 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.
- 3.5 Where the Authority rejects any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.
- 3.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or



otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:

- 3.6.1 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
  - 3.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.5 of this Schedule 2 of these Call-off Terms and Conditions.
- 3.7 The Supplier shall be relieved of its liabilities under Clauses 3.2 to 3.5 (inclusive) and/or Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 3.8 The Authority's rights and remedies under Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.
- 3.9 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:
  - 3.9.1 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;
  - 3.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions;
  - 3.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavors to minimise the impact on the Authority of the recall; and
  - 3.9.4 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 Operation of the Services**

- 4.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 4.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 4.3 Subject to Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 of these Call-off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 4.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 4.2 and Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier as referred to in any Order Form.
- 4.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 4.6 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
- 4.6.1 shall be provided at the Authority's sole discretion;
  - 4.6.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
  - 4.6.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

- 4.6.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).
- 4.7 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 4.8 The Supplier shall notify the Authority forthwith in writing:
- 4.8.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 4.8.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 4.9 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 4.10 Upon receipt of notice pursuant to Clause 4.8 of this Schedule 2 of these Call-off Terms and Conditions or any report or communication pursuant to Clause 4.9 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 4.11 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 4.12 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

- 4.13 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 4.14 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.
- 4.15 The Supplier shall be relieved from its obligations under this Contract to provide the Services to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

## **5 Staff and Lifescience Industry Accredited Credentialing Register**

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to supply the Goods and/or provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
  - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of

Health and Social Care or any relevant regulatory body or any industry body in relation to such Staff; and

- 5.5.6 comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
  - 5.7.1 are questioned concerning their Convictions; and
  - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
  - 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2 of these Call-off Terms and Conditions;
  - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions; or
  - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2 of these Call-off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
  - 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;



- 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
- 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 of these Call-off Terms and Conditions have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

## **6 Business continuity**

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

6.1.2 the size and scope of the Supplier's business operations, regarding continuity of the supply of the Goods and the provision of the Services during and following a Business Continuity Event.

- 6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 of these Call-off Terms and Conditions and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.3 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.4 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods and provide the Services in accordance with this Contract.

## **7 The Authority's obligations**

- 7.1 Subject to the Supplier supplying the Goods and providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Goods and/or Services in accordance with Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply of the Goods and the provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

## **8 Contract management**

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



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

Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods and Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
  - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 of these Call-off Terms and Conditions, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## **9 Price and payment**

- 9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.
- 9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:
- 9.2.1 shall remain fixed during the Term; and
  - 9.2.2 in respect of the Goods, is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
    - (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
    - (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence

rights granted to the Authority in accordance with Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and

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

9.2.3 in respect of the Services:

- (i) shall be payable from the Actual Services Commencement Date; and
- (ii) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses, the cost of Staff and all appropriate taxes (excluding VAT), duties and tariffs and any expenses arising from import and export administration.

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

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

9.3.2 where Clause 9.3.1 of this Schedule 2 of these Call-off Terms and Conditions does not apply, the Supplier shall invoice the Authority for the Goods or Services at any time following completion of the supply of the Goods or the provision of the Services 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. Each invoice may be submitted electronically by the Supplier if it complies with the standard on electronic invoicing as set out in the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/2870.

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

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

9.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority

shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.

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

## **10 Warranties**

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 it shall comply with the Framework Agreement;
- 10.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory

- quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;
- 10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods and any products purchased by the Supplier partially or wholly for the purpose of providing the services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
- 10.1.4 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.5 without prejudice to the generality of the warranty at 10.1.4 of this Schedule 2 of these Call-off Terms and Conditions, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.6 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.7 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.8 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.9 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.10 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;
- 10.1.13 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;



- 10.1.14 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law, Guidance and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.15 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 10.1.16 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.17 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.18 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, Guidance and Good Industry Practice and shall at all times comply with such quality controls and processes;
- 10.1.19 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and/or Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.20 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, Guidance and/or Good Industry Practice, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.21 receipt of the Goods and/or Services by or on behalf of the Authority and use of the Goods and/or deliverables or of any other item or information supplied or made available to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.22 it will comply with all Law, Guidance, Good Industry Practice, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods and/or the provision of the Services;
- 10.1.23 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.24 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.25 without limitation to the generality of Clause 10.1.22 of this Schedule 2 of these Call-off Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the

Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;

- 10.1.26 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.27 any equipment it uses in the provision of the Services shall comply with all relevant Law, Guidance and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.28 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.29 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;
- 10.1.30 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.30 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.31 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.32 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and/or Order Form) and all accompanying materials is accurate;
- 10.1.33 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;



- 10.1.34 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
  - 10.1.35 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
  - 10.1.36 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 10.1.37 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
  - 10.1.38 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
  - 10.1.39 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance and with Good Industry Practice relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking or UKCA marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking or UKCA marking, and evidence of any other authorisations, registrations, approvals or documentation required;
  - 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law, Guidance and Good Industry Practice relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of

any other authorisations, labelling, registrations, approvals or documentation required; and

- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking, UKCA marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 Without prejudice to the generality of Clause 10.5 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier acknowledges that a failure by the Supplier to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that it shall submit accurate invoices and other information on time to the Authority.
- 10.7 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.8 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.8.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.8.2 promptly provide to the Authority:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

- 10.9 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.
- 10.10 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

- 11.1 Unless specified otherwise in the Specification and Tender Response Document or elsewhere in this Contract, 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 (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) 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.
- 11.2 Unless specified otherwise in the Specification and Tender Response Document or elsewhere in this Contract, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in any Key Provisions, the Specification and Tender Response Document and/or elsewhere in this Contract, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## **12 Indemnity**

- 12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
  - 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
  - 12.1.2 any loss of or damage to property (whether real or personal);
  - 12.1.3 any breach of Clause 10.1.21 and/or Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and/or
  - 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;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 Goods and

provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 of these Call-off Terms and Conditions and Clause 2.6 of Schedule 3 of these Call-off Terms and Conditions shall be unlimited. Liability under Clauses 3.9.4, 10.3, 12.1.2 and 12.1.4 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2 of these Call-off Terms and Conditions.

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

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

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

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

### **13 Limitation of liability**

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

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

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

13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods and Services.

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

under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative goods and/or services;
  - 13.3.2 costs incurred in relation to any product recall;
  - 13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
  - 13.3.4 the costs of extra management time; and/or
  - 13.3.5 loss of income due to an inability to provide health care services, in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);
  - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);
  - 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
  - 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.



**14 Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 of these Call-off Terms and Conditions and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability, product liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement or as part of Appendix H (as applicable to the Contract), if any.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 of these Call-off Terms and Conditions on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

**15 Term and termination**

- 15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 15.2 The Authority:
- 15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term referred to in the Key Provisions; or
  - 15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.
- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4(ii) of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
  - 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
  - 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 15.4(ii) of this Schedule 2 of these Call-off Terms and Conditions, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.



- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
  - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:
- 15.5.1 the Supplier does not commence supply of the Goods and/or delivery of the Services by any Long Stop Date;
  - 15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
  - 15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
  - 15.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions;
  - 15.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions;
  - 15.5.6 the warranty given by the Supplier pursuant to Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable; or

- 15.5.7 pursuant to and in accordance with any termination rights set out in any optional additional Call-off Terms and Conditions, as applicable to this Contract as referred to in the Order Form.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2 of these Call-off Terms and Conditions.
- In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
- 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
- 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour

Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.

- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.9 Within three (3) months of the Commencement Date (or in accordance with any different timescales specified by the Authority as an extra Key Provision in the Order Form) the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract. If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of this Schedule 2 of these Call-off Terms and Conditions (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

## **16 Consequences of expiry or early termination of this Contract**

- 16.1 Subject to the provision set out in Clause 16.5 of this Schedule 2 of these Call-off Terms and Conditions, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:
- 16.1.1 the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and
  - 16.1.2 the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
  - 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to this Contract; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and

- 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 of these Call-off Terms and Conditions for the period set out in Clause 24.1 of this Schedule 2 of these Call-off Terms and Conditions.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 If the Authority terminates the Contract in accordance with Clause 15.5.1 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination. Should the Authority seek a refund in respect of Goods already delivered, the Authority shall return such Goods to the Supplier at the Supplier's written request and at the Supplier's cost and expense.
- 16.6 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.
- 16.7 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.8 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.9 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.
- 17 Staff information and the application of TUPE at the end of the Contract**
- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the

Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 of these Call-off Terms and Conditions, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
  - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
  - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
  - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
  - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
  - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
  - 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 of these Call-off Terms and Conditions shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 of these Call-off Terms and Conditions are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to



seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

- 17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 of these Call-off Terms and Conditions and (as applicable) the requirements of Fair Deal for Staff Pensions, as it applies to the relevant public sector pension scheme, or the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
  - 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
  - 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;

- 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
  - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.2 of this Schedule 2 of these Call-off Terms and Conditions;
  - 17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
  - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
  - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
  - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
  - 17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 of these Call-off Terms and Conditions to any



Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.

- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
  - 17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;
  - 17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and
  - 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 of these Call-off Terms and Conditions has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

## **18 Packaging, identification, end of use and coding requirements**

- 18.1 The Supplier shall 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.
- 18.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 18.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 18.4 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.

- 18.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 18.5 of this Schedule 2 of these Call-off Terms and Conditions.
- 18.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.7 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).
- 18.7 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.8 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

## **19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
  - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and
  - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2 of these Call-off Terms and Conditions.

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

**20 Electronic product and services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2 of these Call-off Terms and Conditions.
- 20.3 If the Product Information and/or the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information and/or the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call-off Terms and Conditions, no obligation to illustrate or advertise the Product Information or the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2 of these Call-off Terms and Conditions.
- 20.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Supplier in the Authority's product and/or services catalogues from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogues to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any product and/or services catalogues as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

**21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods and/or Services (to include related operational and other requirements) may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to this Contract including the Specification and Tender Response Document (to include, without limitation, where any relevant matters comparable to any of the matters referred to in paragraph 4.7.2 of Schedule 7 of the Framework Agreement necessitate a change to such requirements and amendments to this Contract during the Term), as may be requested by the Authority from time to time at its option.
- 21.2 Subject to Clause 21.3 of this Schedule 2 of these Call-off Terms and Conditions, any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed (a) in accordance with any Change Control Process if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

**22 Dispute resolution**

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

- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 of these Call-off Terms and Conditions or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or the provision of the Services; or
  - 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;
  - 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
  - 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.



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

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal

business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

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

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

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

- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 of these Call-off Terms and Conditions does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

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

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

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

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

- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 of these Call-off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.



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

## **26 Equality and human rights**

- 26.1 The Supplier shall:

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

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

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

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

## **27 Notice**

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

- 27.2 A notice shall be treated as having been received:

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

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

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

## **28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to:
- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 of this Schedule 2 of these Call-off Terms and Conditions;
- 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
- 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
- 28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services, the Supplier shall include

provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:

- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods or the performance of the Services to the extent relevant to such Sub-contracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law, Guidance and Good Industry Practice, and record keeping;
  - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 of these Call-off Terms and Conditions after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2 of these Call-off Terms and Conditions;
  - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2 of these Call-off Terms and Conditions; and
  - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 of these Call-off Terms and Conditions in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the supply of the Goods and/or the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## 29 **Prohibited Acts**

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

- 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
- 29.2.1 the Authority shall be entitled:
- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
  - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
  - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 29.2.2 any termination under Clause 29.2.1 of this Schedule 2 of these Call-off Terms and Conditions shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 29.2.3 notwithstanding Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any Dispute relating to:
- (i) the interpretation of Clause 29 of this Schedule 2 of these Call-off Terms and Conditions; or
  - (ii) the amount or value of any gift, consideration or commission, shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and

any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

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



**Schedule 3 of these Call-off Terms and Conditions****Information and Data Provisions****1 Confidentiality**

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 1.1.2 the provisions of Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
  - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
  - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
  - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);



- 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.6 on a confidential basis to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;  
and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3 of these Call-off Terms and Conditions.
- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3 of these Call-off Terms and Conditions, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall remain in force:
  - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2     Data protection**

- 2.1     The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2     Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3     The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4     Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to NHS patients and/or service users and/or has access to NHS systems as part of the Services, the Supplier shall:
- 2.4.1     complete and publish an annual information governance assessment using the Data Security and Protection toolkit;
  - 2.4.2     achieve all relevant requirements in the Data Security and Protection toolkit;
  - 2.4.3     nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 2.4.4     report all incidents of data loss and breach of confidence in accordance with Department of Health and Social Care and/or the NHS England and/or Health and Social Care Information Centre guidelines;
  - 2.4.5     put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 2.4.6     put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
  - 2.4.7     put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS

- organisations in circumstances in which sharing of that data is required under this Contract;
- 2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
- 2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
- 2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
- 3 Freedom of Information and Transparency**
- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
- 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
- 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;

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

#### **4 Information Security**

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

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

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

**Schedule 4 of these Call-off Terms and Conditions****Definitions and Interpretations****1 Definitions**

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

<b>“Actual Services Commencement Date”</b>	means the date the Supplier actually commences delivery of all of the Services;
<b>“Authority”</b>	means the authority named on the Order Form;
<b>“Authority Confirmation”</b>	means the written confirmation provided (or deemed to be provided) by the Authority that the Goods appear to have been correctly supplied, installed and commissioned ready for use;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Specification and Tender Response Document and/or the Order Form;
<b>“Breach Notice”</b>	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods and/or provide the Services including a pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods and the provision of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Cabinet Office Statement”</b>	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>“Call-off Terms and Conditions”</b>	means these Call-off Terms and Conditions for the Supply of Goods and the Provision of Services together with any optional additional terms and conditions, as may be referred to as part of the Order Form as applying to this Contract;
<b>“Change Control Process”</b>	means the change control process, if any, referred to in any Key Provisions;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;



<b>“Commencement Date”</b>	means the date of the Order Form;
<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <ul style="list-style-type: none"> <li>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</li> <li>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</li> <li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</li> </ul>
<b>“Contract”</b>	means the Order Form, the Call-off Terms (including, without limitation, the provisions on the front page, all Schedules of these Call-off Terms and Conditions and any optional additional terms and conditions, as may be referred to as part of the Order Form as applying to this Contract), the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
<b>“Contracting Authority”</b>	means any contracting authority as defined in Regulation 2(1) of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
<b>“Controller”</b>	shall have the same meaning as set out in the GDPR;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“Data Protection Legislation”</b>	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as

	amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Protocol”</b>	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document appended to the Order Form;
<b>“Defective Goods”</b>	has the meaning given under Clause 3.6 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Dispute(s)”</b>	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>“Dispute Notice”</b>	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions;
<b>“DOTAS”</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“Employment Liabilities”</b>	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
<b>“eProcurement Guidance”</b>	means the NHS eProcurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a>

	together with any further Guidance issued by the Department of Health and Social Care in connection with it;
<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“Fair Deal for Staff Pensions”</b>	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> </ul>

	<p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>"Framework Agreement"</b>	means the Framework Agreement referred to in the Order Form;
<b>"Fraud"</b>	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679) whilst it is in force in England and Wales and, after that, GDPR means the Data Protection Act 2018, as amended, replaced or superseded from time to time;
<b>"General Anti-Abuse Rule"</b>	<p>means:</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract; including without limitation in accordance with good manufacturing practice, good clinical practice, good laboratory practice, good distribution practice, good warehousing practice, good quality practice, good pharmacovigilance practice, good scientific practice, with any relevant ISO or similar standards and with any codes of practice published by relevant trade associations;
<b>"Goods"</b>	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract;
<b>"Guidance"</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of

	Health and Social Care, NHS England and NHS Improvement, the Medicines & Healthcare products Regulatory Agency, the European Medicines Agency, the European Commission, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“HM Government Cyber Essentials Scheme”</b>	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at:  <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>“Implementation Plan”</b>	means the implementation plan, if any, referred to in the Key Provisions;
<b>“Implementation Requirements”</b>	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
<b>“Installation and Commissioning Services”</b>	means the installation and commissioning services set out in this Contract (including, without limitation, as part of the Specification and Tender Response Document);
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
<b>“Interested Party”</b>	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1 of these Call-off Terms and Conditions and/or as part of the Order Form;
<b>“KPI”</b>	means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
<b>“Law”</b>	means any applicable legal requirements including, without limitation,:  (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;  (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such

	<p>obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</p> <p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</p>
<b>“Long Stop Date”</b>	means the date, if any, specified in the Specification and Tender Response Document;
<b>“Maintenance Inventory”</b>	means the maintenance inventory as referred to at Clause 4.1.1 of the Optional Additional Call-off Terms and Conditions for Maintenance Services;
<b>“Maintenance Services”</b>	means the maintenance services set out in this Contract (including, without limitation, as part of the Specification and Tender Response Document);
<b>“NHS”</b>	means the National Health Service;
<b>“Non-performed Services”</b>	has the meaning give under Clause 11.1 of the Optional Additional Call-off Terms and Conditions for Maintenance Services;
<b>“Occasion of Tax Non-Compliance”</b>	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(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;</p> <p>(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</p>



	<p>Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Order Form”</b>	means the order form for the Goods and/or Services issued by the Authority in accordance with the Framework Agreement;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	shall have the same meaning as set out in the GDPR;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>“Premises and Locations”</b>	has the meaning given under Clause 4.1 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Process”</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR;
<b>“Product Information”</b>	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority’s product catalogue from time to time;
<b>“Rejected Goods”</b>	has the meaning given under Clause 3.2 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Relevant Tax Authority”</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Requirement to Recall”</b>	has the meaning given under 3.9 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Services”</b>	means the services set out in this Contract;
<b>“Services Commencement Date”</b>	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, this services commencement date shall be the Commencement Date;

<b>“Services Information”</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority’s services catalogue from time to time;
<b>“Specification and Tender Response Document”</b>	means the Specification and Tender Response Document set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form (including any “Statement of Requirements” document issued by the Authority) and as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;
<b>“Sub-contractor”</b>	means a party to a Sub-contract other than the Supplier;
<b>“Subsequent Transfer Date”</b>	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
<b>“Subsequent Transferring Employees”</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
<b>“Successor”</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
<b>“Supplier”</b>	means the supplier named on the Order Form;
<b>“Supplier Code of Conduct”</b>	means the code of that name published by the Government Commercial Function dated February 2019, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
<b>“Term”</b>	means the term as referred to in the Key Provisions;

<b>“Termination Notice”</b>	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>“Third Party”</b>	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2 of these Call-off Terms and Conditions;
<b>“Transfer Date”</b>	means the Actual Services Commencement Date;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off Terms and Conditions, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 1.10 Where there is a conflict between the Supplier's responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.14 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.
- 1.15 For the avoidance of doubt, and to the extent not prohibited by any Law, the term "expenses" (as referred to under any indemnity provisions forming part of this Contract) shall be deemed to include any fine and any related costs imposed by a commissioner, regulator or other competent body.

## **Appendix B**

### **Optional Additional Call-off Terms and Conditions for Installation and Commissioning Services**

#### **1 Installation and Commissioning Services**

- 1.1 The Goods shall be installed and commissioned at the relevant Premises and Locations by the Supplier as set out in the Specification and Tender Response Document or as otherwise agreed by the Authority in writing.
- 1.2 The Supplier shall provide the Installation and Commissioning Services:
- 1.2.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.2.2 in accordance with all other provisions of this Contract;
  - 1.2.3 using reasonable skill and care;
  - 1.2.4 in accordance with any quality assurance standards as set out in the Contract;
  - 1.2.5 in accordance with the Law and with Guidance;
  - 1.2.6 in accordance with Good Industry Practice;
  - 1.2.7 in accordance with the original manufacturer's guidelines and recommendations relating to the Goods being installed and commissioned;
  - 1.2.8 in accordance with the Policies;
  - 1.2.9 in a professional and courteous manner; and
  - 1.2.10 using appropriately skilled, trained and experienced Staff.
- 1.3 The Supplier will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Installation and Commissioning Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

#### **2 Inspection and Testing**

- 2.1 Once the Goods have been installed and commissioned, the Supplier shall inform the Authority in writing that the Goods are ready for use. The following process will then apply:
- 2.1.1 within five (5) Business Days of receipt of such written confirmation from the Supplier that the Goods are ready to use, the Authority may carry out any such reasonable inspections and testing of the Goods as the Authority deems appropriate (in accordance with the relevant manufacturers'

- technical manuals relating to the Goods and/or as otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed by the Parties in writing) to confirm that the Goods comply with the requirements of this Contract and are ready for use;
- 2.1.2 as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods;
- 2.1.3 if the Authority on inspection and testing is of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;
- 2.1.4 if the Authority on inspection and testing is not of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 2.3 and 2.4 of this Appendix B shall apply; and
- 2.1.5 if the Authority chooses not to inspect and/or test the Goods, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6th) Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 2.1.1 of this Appendix B that the Goods are ready to use.
- 2.2 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Supplier notwithstanding any such Authority Confirmation.
- 2.3 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, forthwith re-supply, re-install and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the Goods are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.
- 2.4 In the event of any Dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure.



- 2.5 In the event that the Specification and Tender Response Document states that Goods shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Appendix B shall apply to the Goods within each phase and/or instance of supply.
- 2.6 In the event that the Specification and Tender Response Document stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the replacement Goods, the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Appendix B shall apply in relation to the inspection and testing of any substitute or replacement Goods.

### **3 Relocation of Goods**

- 3.1 Upon reasonable written notice from the Authority, the Supplier shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Appendix B shall apply in relation to the inspection and testing of any relocated Goods.
- 3.2 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 3.1 of this Appendix B provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

### **4 Supplier's obligation to make good any damage**

- 4.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the installation, commissioning, removal and/or relocation of the Goods by the Supplier.

## **Appendix C**

### **Optional Additional Call-off Terms and Conditions for Maintenance Services**

#### **1      Maintenance Services**

- 1.1      From the point set out in the Specification and Tender Response Document at which Maintenance Services are triggered or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to the Goods, all Goods forming part of the Maintenance Inventory shall be maintained throughout the Term by the Supplier so as to comply with:
- 1.1.1      any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements set out as part of the Specification and Tender Response Document); and
  - 1.1.2      any applicable manufacturers' specifications.
- 1.2      The Supplier shall provide the Maintenance Services:
- 1.2.1      promptly and in any event within any time limits as may be set out in this Contract;
  - 1.2.2      in accordance with all other provisions of this Contract;
  - 1.2.3      using reasonable skill and care;
  - 1.2.4      in accordance with any quality assurance standards as set out in the Contract;
  - 1.2.5      in accordance with the Law and with Guidance;
  - 1.2.6      in accordance with Good Industry Practice;
  - 1.2.7      in accordance with the original manufacture's guidelines and recommendations relating to the Goods being maintained;
  - 1.2.8      in accordance with the Policies;
  - 1.2.9      in a professional and courteous manner; and
  - 1.2.10      using appropriately skilled, trained and experienced Staff.

#### **2      General maintenance requirements**

- 2.1      The Supplier, in accordance with Good Industry Practice and the original equipment manufacturer's guidelines and recommendations, shall:
- 2.1.1      provide effective planned preventative maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing; and

- 2.1.2      provide appropriate remedial maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing.

### **3      Service visits**

- 3.1      The Supplier shall ensure that the Authority is notified in writing in advance of all service visits to any Premises and Locations and that Staff comply with any relevant Policies and/or reasonable instructions and/or security procedures notified to the Supplier by the Authority from time to time in connection with such site visits.

### **4      Provision of information**

- 4.1      Without prejudice to any specific records keeping requirements set out in this Contract, including as part of the Specification and Tender Response Document, the Supplier shall:
  - 4.1.1      maintain a record of all Goods that are covered by the Maintenance Services ("**Maintenance Inventory**"). For the avoidance of doubt, such Maintenance Inventory shall be deemed to form part of the Specification and Tender Response Document and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time;
  - 4.1.2      maintain records of all maintenance work carried out on any Goods in connection with this Contract; and
  - 4.1.3      provide all required management information to the Authority promptly upon the Authority's written request to demonstrate, to the Authority's reasonable satisfaction, compliance with requirements to provide planned preventative maintenance and, where applicable, remedial maintenance in connection with all Goods listed in the Maintenance Inventory.
- 4.2      Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Maintenance Services, the Maintenance Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.
- 4.3      Subject always to the provisions of Clause 8 of this Appendix C, the Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any Goods forming part of the Maintenance Inventory:
  - 4.3.1      the Supplier will no longer be able to maintain the item of Goods as any required third party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or
  - 4.3.2      the Supplier will no longer not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

- 4.4 Where the Supplier provides information to the Authority under Clause 4.3 of this Appendix C, it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.

## **5 Loan Goods and replacement Goods**

- 5.1 Where the Supplier is unable to fix any Goods forming part of the Maintenance Inventory as part of the Maintenance Services during a site visit, and the Specification and Tender Response Document provides for substitute Goods to be provided to the Authority in these circumstances on a loan and/or replacement basis, the Supplier shall:

5.1.1 provide the Authority with such substitute Goods in accordance with the relevant provisions and timescales, as set out in the Specification and Tender Response Document;

5.1.2 comply with any installation, commissioning, inspection and testing processes as may be set out in this Contract or otherwise agreed by the Parties in writing; and

5.1.3 update the Maintenance Inventory accordingly to include any substitute Goods.

Where the Supplier loans Goods to the Authority and subsequently replaces the loaned Goods, the Supplier shall comply with the provisions of Clauses 5.1.2 and 5.1.3 of this Appendix C in relation to such replacement of the loaned Goods.

- 5.2 Subject to Clauses 7 and 8 of this Appendix C, any Goods added to the Maintenance Inventory in accordance with Clause 5.1.3 of this Appendix C will be covered by the Maintenance Services for the remainder of the Term from the point set out in the Specification and Tender Response Document at which Maintenance Services are triggered for such substitute Goods or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to such substitute Goods. For the avoidance of doubt, this Contract shall apply in full to the supply, installation, and commissioning (as applicable) of such substitute Goods.

## **6 Additional warranties**

- 6.1 The Supplier warrants and undertakes that:

6.1.1 when providing the Maintenance Services (including, without limitation, providing any loan or replacement Goods), it shall comply with all timescales and KPIs set out in the Specification and Tender Response Document associated with such requirements;

6.1.2 any replacement parts, consumable items, replacement Goods and/or loan Goods shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;

6.1.3 it will ensure sufficient stock levels of any replacement parts, consumable items, replacement Goods and/or loan Goods to comply with its obligations to provide the Maintenance Services in accordance with the provisions of this Contract;

- 6.1.4      it has and shall maintain a properly documented system of quality controls in respect of the Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and shall at all times comply with such quality controls;
  - 6.1.5      any equipment it uses in the installation of any replacement parts, consumable items, replacement Goods and/or loan Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;
  - 6.1.6      receipt of any replacement parts, consumable items, replacement Goods and/or loan Goods by or on behalf of the Authority and use of such items or of any other related 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;
  - 6.1.7      it will comply with all Law, Guidance and Good Industry Practice in so far as it is relevant to the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods to the Authority; and
  - 6.1.8      it will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 6.2      Where the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods relates to medical devices or medicinal products (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance and with Good Industry Practice relating to such activities in relation to such medical devices or medicinal products. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement Goods and/or loan Goods are supplied to the Authority, all such items which are medical devices shall have valid CE marking or UKCA marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law, Guidance and Good Industry Practice relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Appendix C, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of such valid CE marking or UKCA marking, and evidence of any other authorisations, registrations, approvals or documentation required.
- 6.3      If the Supplier is in breach of Clause 6.2 of this Appendix C, in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall, subject to Clause 13.2 of Schedule 2 of these Call-off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

- 6.4 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 any replacement parts, consumable items and/or replacement Goods in full or part.
- 6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Appendix C have been breached or there is a risk that any warranties may be breached.

## **7 The Authority's rights to remove Goods from the Maintenance Inventory**

- 7.1 By giving a minimum of thirty (30) days written notice to the Supplier, the Authority may remove any Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the event that:
- 7.1.1 it decommissions or replaces the Goods for health and safety reasons and/or for reliability reasons;
  - 7.1.2 it sells, transfers or otherwise disposes of the Goods;
  - 7.1.3 the Goods are lost or stolen; or
  - 7.1.4 the Goods are replaced by the Authority and the replacement Goods are still under warranty.

## **8 The Supplier's rights to remove Goods from the Maintenance Inventory**

- 8.1 By giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the following circumstances:
- 8.1.1 the Supplier will no longer be able to maintain the Goods as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or
  - 8.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.
- 8.2 The Parties acknowledge that:
- 8.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Appendix C notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and
  - 8.2.2 Clause 8.1 of this Appendix C shall only apply where the Term of the Contract exceeds twelve (12) months.



**9      Adjustment to the Contract Price where Goods are removed from the Maintenance Inventory**

9.1      Following the removal of any Goods from the Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Appendix C:

9.1.1      there shall be a pro-rata adjustment to the Contract Price to account for such removal; and

9.1.2      where applicable, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for any period following the removal of such Goods. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective date of the removal of the relevant Goods from the Maintenance Inventory and may be by credit note where the Supplier continues to provide ongoing Maintenance Services to the Authority.

9.2      If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 of this Appendix C within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to (and resolved in accordance with) the Dispute Resolution Procedure.

**10      Additional termination provisions**

10.1      If the Authority removes any Goods from the Maintenance Inventory in accordance with Clause 7.1 of this Appendix C and no Goods will remain part the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining Goods in accordance with the Clause 7.1 of this Appendix C or at any time afterwards.

10.2      If the Supplier removes Goods from the Maintenance Inventory in accordance with Clause 8.1 of this Appendix C and no Goods will remain part of the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining Goods in accordance with Clause 8.1 of this Appendix C or at any time afterwards, but shall not take effect before the effective date of the removal of such Goods from the Maintenance Inventory.

10.3      Following any termination of the Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Appendix C, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for the Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 9.1.2 of this Appendix C. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contract.

**11      Non-performance**

11.1      The Supplier acknowledges the critical importance that the Authority places on ensuring that all Goods used by the Authority are properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users.

Therefore, without prejudice to any other provisions of the Contract, where the Supplier does not provide the Maintenance Services in accordance with any time periods and/or other requirements set out in the Contract ("**Non-performed Services**"), without prejudice to its other right and remedies under this Contract, the Authority may elect to: (i) follow the remedial process set out in Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions; or (ii) the Authority may procure alternative maintenance services from a third party.

11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Appendix C. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:

11.2.1 the alternative services are required urgently due to health and safety reasons and/or to keep the relevant Goods operative;

11.2.2 the Supplier has been notified of the urgency of the requirement and its failure to provide the Maintenance Services in accordance with the requirements of this Contract; and

11.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services itself. What is a "reasonable period of time" in the particular circumstances shall be determined at the Authority's sole discretion taking into account its obligation under this Clause 11.2 of this Appendix C to act reasonably.

11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Appendix C, the following provisions shall apply:

11.3.1 where the Supplier has been paid the Contract Price in advance for such Non-performed Services, the Supplier shall (i) refund the Authority the full Contract Price paid; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contract Price paid to the Supplier; and

11.3.2 where the Supplier has not yet been paid the Contract Price for such Non-performed Services, the Supplier shall: (i) forfeit the Contract Price for such Maintenance Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contract Price that would have been paid to the Supplier had the Supplier performed the Non-performed Services in accordance with any time periods and/or other requirements set out in the Contract.

## 12 **Supplier's obligation to make good any damage**

12.1 The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the Supplier when providing the Maintenance Services.

## Appendix D

### Optional Additional Call-off Terms and Conditions for Bespoke Research, Development and Manufacturing Requirements

If the Order Form confirms that the Supplier will be providing bespoke research, development and manufacturing requirements, this Appendix D shall apply together with the provisions of the Schedule to this Appendix D in the performance of the Contract to the extent that these terms and Schedule are included and/or cross-referred to in Annex A to the Order Form and as may be more precisely formulated, supplemented or amended to reflect the requirements of the Contract.<sup>1</sup>

#### Schedules

Schedule 1 of these Call-off Terms and Conditions for Bespoke Research, Development and Manufacturing Requirements	Licence
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### **1** Definitions

1.1 In this Appendix D, the following words shall have the following meanings unless the context requires otherwise:

<b>“Background Intellectual Property”</b>	means all Intellectual Property Rights owned by or licensed to a Party, excluding all Foreground Intellectual Property.
<b>“Deliverable”</b>	means any product, report or other goods or materials to be developed and supplied by the Supplier pursuant to the Services, as specified in the Specification and Tender Response Document.
<b>“Deliverable Specifications”</b>	means the specification which sets out the Authority’s requirements regarding each Deliverable, contained in the Specification and Tender Response Document.
<b>“Delivery”</b>	means provision of the Deliverables by the Supplier to the Authority, in the form and manner set out in the Specification and Tender Response Document, and <b>“Deliver”</b> and <b>“Delivered”</b> shall be construed accordingly.

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<sup>1</sup> To the extent relevant and appropriate to the particular Contract, these terms should be included in Annex A to the Order Form. As part of their inclusion as part of the Order Form these terms should be more precisely formulated, supplemented or otherwise adapted / amended to reflect the specific requirements of the Contract to which the Order Form relates. Particular attention should be given to any provisions in square brackets. Where any provisions in square brackets are used as part of the Order Form, the square brackets should be removed.

<b>“Delivery Date”</b>	means the date specified in the Implementation Plan (which may be varied in accordance with any Change Control Process and otherwise on written agreement of the Parties) by which the Supplier is to provide the Deliverables to the Authority.
<b>“Experimental Product”</b>	means any Deliverable identified as experimental in the Specification and Tender Response Document.
<b>“Foreground Intellectual Property” or “Foreground IP”</b>	means all Intellectual Property Rights that:  (a) arise; or  (b) are obtained or developed by, or by a contractor on behalf of, either Party  in the course of or for purposes of the Services, including all such Intellectual Property Rights in the Deliverables.
<b>“Services Background IP”</b>	means all Background Intellectual Property used or made available by a Party in the course of, for the purpose of, or otherwise in connection with, the Services.

### **Provision of Services**

#### **1.2 The Supplier shall:**

- 1.2.1 provide the Services in accordance with the Implementation Plan and otherwise in accordance with the provisions of this Contract, so as to provide the Deliverables to meet the Deliverable Specifications by the Delivery Date;
- 1.2.2 develop the Deliverables in accordance with the Implementation Plan and the requirements of the Deliverable Specifications; and
- 1.2.3 ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

#### **1.3 Time shall be of the essence regarding the Delivery Date.**

### **2 Delivery and delays**

- 2.1 The Supplier shall Deliver the Deliverables to the Authority by the Delivery Date.
- 2.2 Notwithstanding any other provision in this Contract, the Supplier is not obliged to procure that any Experimental Product Delivered pursuant to this Contract shall have valid CE marking or UKCA marking as required by Law and Guidance.
- 2.3 If the Delivery is delayed at the request of the Authority, the Implementation Plan shall be deemed to be amended to take account of such delay.
- 2.4 The Supplier shall prominently mark all Deliverables which are in written and/or graphic form, and all technical and other documentation relating to any Deliverables, which are in any media and which are created by or on behalf of the Supplier, and/or supplied or

made accessible by the Supplier to the Authority, under this Contract, with the following notice (or such other notice relating to copyright as the Authority may require):

"Copyright © [insert name of the Authority] [insert year of first creation]."

### 3 Acceptance<sup>2</sup>

#### 3.1 [There are Acceptance Tests ☐ (only applicable to the Contract if this box is checked)]

3.1.1 For the purposes of this clause 3.1 the following words shall have the following meanings:

- (i) **"Acceptance Criteria"** means any acceptance criteria that are required to be met to demonstrate that the Deliverables comply with the Deliverable Specifications, as set out in the Specification and Tender Response Document; and
- (ii) **"Acceptance Tests"** means the acceptance tests referred to in clause 3.1.2.

3.1.2 Following Delivery, the Parties shall carry out acceptance tests of the Deliverables to determine whether or not the Deliverables meet the Acceptance Criteria, in accordance with the procedure set out in the Specification and Tender Response Document and within the period set out in the Implementation Plan.

3.1.3 A Deliverable shall fail to pass the Acceptance Tests if it fails to meet all the Acceptance Criteria. If any Deliverable fails to pass the Acceptance Tests, the Authority shall, within [number] days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect to the Supplier, giving details of such failure(s). Within [number] days of receipt of such notice, the Supplier shall remedy such failure(s) and Deliver the rectified Deliverable to the Authority. The Acceptance Tests shall be repeated in respect of such Deliverable.

3.1.4 If any Deliverable fails to pass any repeated Acceptance Tests within [number] days from the date of its second submission to the Acceptance Tests, the Authority may, by written notice to the Supplier, choose at its sole discretion:

- (i) to fix (without prejudice to the Authority's other rights and remedies) a new date for carrying out further Acceptance Tests on such Deliverable on the same terms and conditions. If such Deliverable fails such further Acceptance Tests then the Authority may request a repeat Acceptance Test or proceed under clause **Error! Reference source not found.** or clause 3.1.4(iii);
- (ii) to accept the Deliverable subject to such change of acceptance criteria, amendment of the Deliverable Specifications and/or

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<sup>2</sup> Clauses 3.1 and 3.2 provide different options depending on whether or not there will be acceptance tests. Only one of these options is likely to be required for a particular Contract.

reduction in the Contract Price as, after taking into account all the relevant circumstances, is reasonable; or

- (iii) if the Supplier is unable to correct defects in any Deliverable, such that it meets all the Acceptance Criteria, within a period of [insert] from the commencement of Acceptance Tests under clause 3, to reject such Deliverable as not being in compliance with the Deliverable Specifications, in which event the Authority may terminate this Contract by issuing a Termination Notice to the Supplier.

3.1.5 Acceptance of the Deliverables shall be deemed to have occurred on whichever is the earliest of:

- (i) written notice by the Authority to the Supplier, following successful completion of the Acceptance Tests, that the Deliverables meet the Acceptance Criteria; or
- (ii) the expiry of [insert] days after the completion of all the Acceptance Tests, unless the Authority has given any written notice under clause 3.1.3.]

**3.2 [There are no Acceptance Tests ☐ (only applicable to the Contract if this box is checked)]**

3.2.1 The Authority may, within [insert] days after Delivery, give the Supplier written notice that any of the Deliverables are not in compliance with the Deliverables Specifications, giving details of such failure(s). Within [number] days of receipt of such notice, the Supplier shall remedy such non-compliance and Deliver the rectified Deliverable to the Authority.

3.2.2 If any rectified Deliverable is still not in compliance with the Deliverables Specifications, then the Authority may, by written notice to the Supplier, choose at its sole discretion:

- (i) to require the Supplier (without prejudice to the Authority's other rights and remedies) to remedy such non-compliance within a reasonable period specified by the Authority. If such Deliverable is still not in compliance with the Deliverables Specifications then the Authority may again require the Supplier to remedy such non-compliance under this clause 3.2.2(i) or proceed under clause 3.2.2(ii) or clause 3.2.2(iii);
- (ii) to accept the Deliverable subject to such change of acceptance criteria, amendment of the Deliverable Specifications and/or reduction in the Contract Price as, after taking into account all the relevant circumstances, is reasonable; or
- (iii) if the Supplier is unable to correct defects in any Deliverable, such that it complies with the Deliverable Specifications, within a period of [insert] from the first Delivery of such Deliverable under clause 2.1, to reject such Deliverable as not being in compliance with the Deliverable Specifications, in which event the Authority may terminate this Contract by issuing a Termination Notice to the Supplier.



3.2.3 Acceptance of the Deliverables shall be deemed to have occurred on whichever is the earliest of:

- (i) written notice by the Authority to the Supplier, following Delivery, that the Deliverables are in compliance with the Deliverables Specifications; or
- (ii) failure by the Authority to give the Supplier written notice under clause 3.2.1.]

#### **4 Background Intellectual Property**

4.1 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived).

4.2 The Supplier shall:

4.2.1 by the Actual Services Commencement Date, make full written disclosure to the Authority of all Background Intellectual Property of the Supplier which are relevant to the Services; and

4.2.2 promptly make full written disclosure to the Authority of all Services Background IP of the Supplier which the Supplier, and all Intellectual Property Rights which any Sub-contractor engaged by the Supplier in the provision of the Services, uses or makes available in the course of, for the purpose of, or otherwise in connection with, the Services.

4.3 The Authority grants the Supplier a non-exclusive, non-transferable licence to use the Services Background IP of the Authority for the purposes of providing the Services.

4.4 The Supplier shall not:

4.4.1 grant any sub-licence of its rights under clause 4.3 other than to a Sub-contractor for the purpose of providing the Services; or

4.4.2 unless otherwise provided in this Contract or with the prior written consent of the Authority, use the Services Background IP of the Authority for any purpose other than providing the Services.

4.5 The Supplier grants the Authority a non-exclusive, royalty-free, transferable, perpetual and irrevocable worldwide licence (with the right to grant sub-licences):

4.5.1 to use the Services Background IP of the Supplier for the purpose of receiving the Services; and

4.5.2 to the extent that the Authority would not otherwise be able to exercise its rights of ownership of the Foreground Intellectual Property without infringing any Background Intellectual Property of the Supplier, to use such Background Intellectual Property for any purpose in relation to the exercise of such rights.

4.6 To the extent that the Supplier engages a Sub-contractor to perform any of the Services, the Supplier shall procure that such Sub-contractor grants to the Authority,

on the same terms as clause 4.5, a licence of the Intellectual Property Rights owned by or licensed to such Sub-contractor, which such Sub-contractor uses or makes available in the course of, for the purpose of, or otherwise in connection with, the Services.

- 4.7 The provisions of clauses 4.1, 4.2, 4.4, 4.5 and 4.6 shall survive termination or expiry of the Contract.

## **5 Foreground Intellectual Property**

- 5.1 All Foreground Intellectual Property shall vest in and be owned absolutely by the Authority.

- 5.2 The Supplier assigns to the Authority absolutely with full title guarantee all its right, title and interest in and to the Foreground Intellectual Property including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Foreground Intellectual Property whether occurring before, on, or after the date of this Contract.

- 5.3 To the extent that clause 5.2 does not operate to transfer to the Authority legal and beneficial ownership of any Foreground Intellectual Property, the Supplier shall hold on trust for the benefit of the Authority all such Foreground Intellectual Property until such time as such Foreground Intellectual Property are assigned to the Authority.

- 5.4 To the extent that the Supplier engages a Sub-contractor to perform any of the Services, the Supplier shall procure that such Sub-contractor assigns to the Authority absolutely, in a form required by the Authority, all such Sub-contractor's right, title and interest in any Foreground Intellectual Property arising from the relevant Sub-contract.

- 5.5 At its own expense the Supplier shall, and shall procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the assignments under clauses 5.2 and 5.4.

- 5.6 The Authority grants the Supplier a non-exclusive, non-transferable licence to use the Foreground Intellectual Property for the purposes of providing the Services.

- 5.7 [The Authority grants the Supplier a further licence to use the Foreground Intellectual Property in accordance with and subject to the terms of Schedule 1.] *Guidance: This clause should be omitted if there is no such licence.*

- 5.8 The Supplier shall not:

5.8.1 grant any sub-licence of its rights under clause 5.6 other than to a Sub-contractor for the purpose of providing the Services; or

5.8.2 unless otherwise provided in this Contract or with the prior written consent of the Authority, use the Foreground Intellectual Property for any purpose other than providing the Services.

- 5.9 The provisions of clauses 5.3, 5.4, 5.5 and 5.8 shall survive termination or expiry of the Contract.

**6      Manufacture and supply**

- 6.1      Any manufacture and supply to the Authority by the Supplier of any Deliverable after acceptance of such Deliverable pursuant to clause 3, shall be governed by the applicable terms in Appendix A relating to the supply of Goods.

*Guidance: This would constitute the supply of Goods and would be covered by the relevant terms of Appendix A.*

**Schedule 1**[Licence]<sup>3</sup>**1 Definitions**

In this Schedule 1, the following words shall have the following meanings unless the context requires otherwise:

<b>“Adverse Event”</b>	means any untoward medical occurrence in a subject to whom a Licensed Product has been administered, including occurrences which are not necessarily caused by or related to that Licensed Product.  <i>Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature</i>
<b>“Exploit”</b>	<i>Guidance: This definition should describe the purpose(s) for which the Foreground Intellectual Property is to be used by the Supplier, e.g.</i>  <i>“to develop, use, sell and otherwise supply Licensed Products”</i>  <b>“Exploiting”, “Exploited” and “Exploitation”</b> shall be construed accordingly.
<b>“Fee”</b>	<i>Guidance: this should only be included if a lump sum licence fee is payable and should state the amount of the fee</i>
<b>“Field of Use”</b>	<i>Guidance: This definition should describe the field within which the Foreground Intellectual Property is to be exploited.</i>  <i>If there is to be no field of use, state “Not Applicable”</i>
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the Field of Use.
<b>“Improvement”</b>	means any improvement, enhancement, development or modification to the technology that is the subject of the Foreground Intellectual Property.

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<sup>3</sup> To be completed and included as part of Annex A to the Order Form where Clause 5.7 of this Appendix D is included as part of Annex A to the Order Form.

<b>“Launch”</b>	means the first commercial sale of the Licensed Product in the relevant country or region in the Territory by the Supplier.  <i>Guidance: Only include if Exploitation includes the manufacture of the Licensed Products</i>
<b>“Licence”</b>	means the licence granted under clause 2.1.
<b>“Licence Commencement Date”</b>	<i>Guidance: This definition should state the date on which the licence takes effect</i>
<b>“Licence Term”</b>	<b>[insert]</b> years from the Licence Commencement Date, as extended by agreement of the Parties under clause 11.3.1.  <i>Guidance: only insert if the licence is to be for a fixed term. If the licence is to be indefinite, state “Not Applicable”</i>
<b>“Licensed Product”</b>	means <b>[description of product]</b> and any other product or component which is made, developed or used in accordance with, embodies, incorporates or utilises, any of the Foreground Intellectual Property.  <i>Guidance: If the licence is to manufacture and sell products, these should be clearly identified. If no products are to be manufactured or sold under the licence, delete this definition.</i>
<b>“Marketing Authorisation”</b>	means authorisation to place a medicinal or healthcare product on the market in the United Kingdom and the European Union (or any part of it whether centrally or nationally authorised), or any equivalent authorisation granted by any Regulatory Authority in any country or region outside the United Kingdom and the European Union.  <i>Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature</i>
<b>“Minimum Royalty”</b>	<i>Guidance: This definition should only be included if an ongoing royalty is payable and should state the amount(s) of the minimum royalty (if any) to be paid</i>

<b>“Net Revenue”</b>	<i>Guidance: This definition should only be included if an ongoing royalty is payable and should set out the revenue earned by the Supplier against which the royalty is to be</i>
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	<p><i>applied and the cost items to be deducted from the revenue, e.g.</i></p> <p><i>“the actual invoiced price in an arm’s-length transaction, less, to the extent identified on the invoice, any costs of packing, insurance, transport, delivery, VAT and any other government taxes, duties or levies, and trade discounts and other allowances granted, provided that where the Licensed Products are:</i></p> <p>(a) <i>let, leased or sold on hire purchase or supplied other than in an arm’s-length transaction;</i></p> <p>(b) <i>sold or otherwise supplied to any Group Company of the Supplier;</i></p> <p>(c) <i>incorporated in another article and sold or otherwise supplied at a price which is included in the price of the other article; or</i></p> <p>(d) <i>put into use by the Supplier,</i></p> <p><i>the price of each such Licensed Product shall be deemed to be the price which would have been applied under this Schedule 1 had such Licensed Product been transferred to an independent arm’s-length customer.”</i></p> <p><i>or</i></p> <p><i>“the actual invoiced price, less, to the extent identified on the invoice, any costs of packing, insurance, transport, delivery, VAT and any other government taxes, duties or levies, and trade discounts and other allowances granted (but not commission or cash discounts)”</i></p>
<b>“Payment Period”</b>	<p><i>Guidance: This definition should specify the period at the end of which the royalty is to be paid, and should only be included if an ongoing royalty is payable e.g.</i></p> <p><i>“each calendar month”</i></p> <p><i>or</i></p> <p><i>“each period of three calendar months commencing on 1 January, 1 April, 1 July and 1 October respectively”</i></p>
<b>“Reserved Rights”</b>	<p><i>Guidance: This definition should state the purposes for which the Authority will still use the Foreground Intellectual Property. Only include if the Licence is exclusive</i></p>
<b>“Regulatory Authority”</b>	<p>means any competent authority in any country or region which regulates medicines and healthcare and life sciences products, including the Medicines and Healthcare products Regulatory Agency, the European Medicines Agency and the US Food and Drug Administration.</p>



	<i>Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature</i>
<b>“Royalty”</b>	means a royalty of [insert]% of Net Revenue.  <i>Guidance: Only include if an ongoing royalty is payable</i>
<b>“Termination Notice”</b>	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 the Licence on a specified date and setting out the grounds for termination.
<b>“Territory”</b>	<i>Guidance: This definition should state the licensed territory, e.g. “United Kingdom” or “worldwide”.</i>
<b>“Year”</b>	means each 12 month period ending on an anniversary of the Licence Commencement Date.

## 2 **Grant of licence**

2.1 The Authority hereby grants to the Supplier, with effect from the Licence Commencement Date:

2.1.1 a licence under the Foreground Intellectual Property to Exploit the Foreground Intellectual Property in the Territory. Such licence shall be:

- (i) exclusive ☐ non-exclusive ☐ **(check the applicable box)**
- (ii) in the Field of Use; and ☐ **(only applicable if this box is checked)**

2.1.2 to the extent that the Supplier would not otherwise be able to exercise its rights under clause 2.1.1 without infringing any Services Background IP of the Authority, to use such Services Background IP for the purpose of exercising such rights. ☐ **(only applicable if this box is checked).**

2.2 The Licence is subject to the Reserved Rights. *Guidance: Only include if the Licence is exclusive*

2.3 Without prejudice to any rights that have accrued under this Contract or any of its rights or remedies, the Authority may terminate the exclusivity of the Licence (such that it becomes non-exclusive) immediately by giving written notice to the Supplier if the Supplier: *Guidance: Only include if the Licence is exclusive*

2.3.1 commits a breach of clause 4 and fails to remedy that breach within 14 days of being notified in writing by or on behalf of the Authority to do so *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products ; or*

- 2.3.2 fails to pay any amount due under this Schedule 1 on the due date for payment and remains in default not less than 14 days after being notified in writing by or on behalf of the Authority to make such payment.
- 2.4 The Supplier shall not, without the prior written consent of the Authority:
- 2.4.1 grant sub-licences of its rights under clause 2.1; or
- 2.4.2 subcontract the manufacture of the Licensed Products *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 2.5 The Supplier shall:
- 2.5.1 only make use of the Foreground Intellectual Property for the purposes authorised in this Contract;
- 2.5.2 not Exploit the Foreground Intellectual Property in the Territory other than in the Field of Use; and *Guidance: Only include if Exploitation is restricted to a Field of Use*
- 2.5.3 not Exploit the Foreground Intellectual Property outside the Territory. *Guidance: Only include if the Territory is not worldwide*
- 3 Quality control, laws and regulations, and marking**
- 3.1 The Supplier shall, in exercising its rights under the Licence:
- 3.1.1 comply with the specifications, standards and directions relating to the Licensed Products as notified in writing by the Authority from time to time; *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 3.1.2 comply with all applicable laws, regulations, codes of practice and Good Industry Practice;
- 3.1.3 ensure that the Licensed Products are safe for developmental and clinical trial use and for the indication(s) approved under the relevant Marketing Authorisation(s); *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 3.1.4 obtain at its own expense all licences, permits and consents (including Marketing Authorisations) necessary for the provision of the Licensed Products in the Territory and promptly supply copies of all of these to the Authority and such further information as the Authority shall reasonably require; and *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 3.1.5 perform its obligations in connection with the Exploitation of the Foreground Intellectual Property with all due skill, care and diligence.
- 3.2 The Supplier acknowledges and agrees that the exercise of the Licences is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory, codes of practice and Good Industry Practice and the Supplier understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance of all (or the highest) of these.

- 3.3 The Supplier shall promptly provide the Authority with copies of all communications, relating to the Exploitation of the Foreground Intellectual Property, with any regulatory, industry or other authority.
- 3.4 The Supplier shall, at its own expense, at least once in every [insert] months and at any time at the Authority's request, supply samples of the Licensed Products to the Authority. *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 3.5 The Supplier shall permit, and shall use its best endeavours to obtain permission for, the Authority at all reasonable times and on reasonable notice to enter any place used for the development, manufacture or storage of the Licensed Products to inspect the methods of development, manufacture and storage. *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products*
- 3.6 The Supplier shall, upon the Authority's request, provide the Authority with details of any complaints it has received relating to Exploitation of the Foreground Intellectual Property together with reports on the manner in which such complaints and communications under clause 3.3 are being, or have been, dealt with, and shall comply with any reasonable directions given by the Authority in respect of such complaints and communications.
- 3.7 The provisions of this clause 3 shall remain in effect notwithstanding termination or expiry of this Contract.
- 4 Marketing** *Guidance: Only include if Exploitation includes the manufacture and sale of the Licensed Products*
- 4.1 The Supplier shall use its best endeavours to promote and expand the supply of Licensed Products throughout the Territory on the maximum possible scale, and shall provide such advertising and publicity as may reasonably be expected to bring the Licensed Products to the attention of as many buyers and potential buyers as possible.
- 4.2 The Supplier shall:
- 4.2.1 give the Authority written notice as soon as possible of all Adverse Events or adverse experience or drug reaction reports filed with any Regulatory Authority and promptly supply copies of these; *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature*
- 4.2.2 give the Authority 30 days written notice before submission of any Marketing Authorisation application and shall, if requested, provide the Authority, at its expense, with a copy of such Marketing Authorisation application; *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature*
- 4.2.3 promptly give the Authority a copy of each Marketing Authorisation and any amendment or cross-referral to such Marketing Authorisation by the Supplier or any sub-licensee; and *Guidance: Only include if Exploitation includes the manufacture of the Licensed Products which are of a pharmaceutical, medical or therapeutic nature*
- 4.2.4 promptly give the Authority written notice of Launch in each country or region in the Territory.

## 5 **Improvements**

- 5.1 If the Authority makes, devises, discovers, or otherwise acquires rights in, any Improvement the Authority shall, to the extent that it is not prohibited by law or by any obligation to any other person, promptly notify the Supplier in writing giving details of such Improvement, and shall, if the Supplier so requests, provide such further information as is reasonably required to be able to evaluate such Improvement effectively. The Intellectual Property Rights in such Improvement shall be deemed to form part of the Foreground Intellectual Property for purposes of this Schedule 1 (including the Licence). Information provided by the Authority to the Supplier under this clause 5.1 shall be deemed to be Confidential Information of the Authority. ☐ **(only applicable if this box is checked)**
- 5.2 If the Supplier makes, devises, discovers, or otherwise acquires rights in, any Improvement the Supplier shall, to the extent that it is not prohibited by law or by any obligation to any other person, promptly notify the Authority in writing giving details of such Improvement, and shall, if the Authority so requests, provide such further information as is reasonably required to be able to evaluate such Improvement effectively. The Supplier shall grant to the Authority a non-exclusive, royalty-free, transferable, perpetual and irrevocable worldwide licence (together with the right to grant sub-licences) to use in any manner any such Improvement. ☐ **(only applicable if this box is checked)**

## 6 **Fee** ☐ **(only applicable if this box is checked)**

*Guidance: Only include if a lump sum licence fee is payable*

- 6.1 The Supplier shall pay to the Authority the Fee within 30 days of the Licence Commencement Date.
- 6.2 The Fee is exclusive of VAT and shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Supplier shall pay to the Authority such sum as will, after the deduction or withholding has been made, leave the Authority with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If the Supplier is required by law to make a deduction or withholding, the Supplier shall, within five Business Days of making the deduction or withholding, provide a statement in writing showing the gross amount of the payment, the amount of the sum deducted and the actual amount paid. The Supplier shall use all reasonable endeavours to assist the Authority to claim recovery or exemption under any double taxation or similar agreement with respect to any such deduction.
- 6.3 The Fee shall be paid in pounds sterling to the credit of a bank account to be designated in writing by the Authority.
- 6.4 If the Supplier fails to make a payment due to the Authority under this Agreement by the due date, then, without limiting the Authority's remedies under this Contract or Schedule 1, the Supplier shall pay to the Authority:
- 6.4.1 interest (calculated on a daily basis) on the overdue payment from the date when such payment was due to the date of actual payment at a rate of [insert]% over the base rate of [insert full name of bank] from time to time; and

- 6.4.2 an amount equal to any penalties incurred by the Authority as a direct result of the delay.
- 6.5 The provisions of this clause 6 shall remain in effect notwithstanding termination or expiry of the Licence until the settlement of all subsisting claims by the Authority.

**7 Royalty (only applicable if this box is checked)**

*Guidance: Only include if an ongoing royalty is payable*

- 7.1 The Supplier shall pay to the Authority the Royalty.
- 7.2 The Royalty is exclusive of VAT and shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Supplier shall pay to the Authority such sum as will, after the deduction or withholding has been made, leave the Authority with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If the Supplier is required by law to make a deduction or withholding, the Supplier shall, within five Business Days of making the deduction or withholding, provide a statement in writing showing the gross amount of the payment, the amount of the sum deducted and the actual amount paid. The Supplier shall use all reasonable endeavours to assist the Authority to claim recovery or exemption under any double taxation or similar agreement with respect to any such deduction.
- 7.3 The Royalty shall be paid in pounds sterling to the credit of a bank account to be designated in writing by the Authority.
- 7.4 The Supplier shall pay the Royalty within 30 days of the end of each successive Payment Period and for the purpose of converting the local currency (if not pounds sterling) of the Supplier (in which such royalties arise) into pounds sterling, the rate of exchange to be applied shall be the rate of exchange applied by [insert full name of bank] for the purchase of pounds sterling with such foreign currency as at the close of business on the date when the relevant payment first becomes due.
- 7.5 If the payment calculated in accordance with clause 7.1 in respect of any Payment Period is less than the Minimum Royalty for that Payment Period then the Supplier shall, in addition, make such further payment as shall make the payment so calculated up to the Minimum Royalty. ☐ **(only applicable if this box is checked)**
- 7.6 If the Supplier fails to make a payment due to the Authority under this Agreement by the due date, then, without limiting the Authority's remedies under this Contract or Schedule 1, the Supplier shall pay to the Authority:
- 7.6.1 interest (calculated on a daily basis) on the overdue payment from the date when such payment was due to the date of actual payment at a rate of [insert]% over the base rate of [insert full name of bank] from time to time; and
- 7.6.2 an amount equal to any penalties incurred by the Authority as a direct result of the delay.
- 7.7 At the same time as payment of royalties falls due, the Supplier shall submit or cause to be submitted to the Authority a statement in writing recording the calculation of the Royalty payable and, where relevant, on a country-by-country basis:

- 7.7.1 the Payment Period for which the Royalty was calculated;
  - 7.7.2 the Net Revenue earned by the Supplier during such Payment Period and the calculation of such Net Revenue;
  - 7.7.3 the amount of Royalty due and payable;
  - 7.7.4 where relevant, the rate of exchange used;
  - 7.7.5 the amount of any withholding or other income taxes deductible or due to be deducted from the amount of royalties due and payable; and
  - 7.7.6 any other particulars the Authority may reasonably require.
- 7.8 The Supplier shall keep proper records and books of account showing the Net Revenue and its calculation. Such records and books shall be kept separate from any records and books not relating to the Exploitation of the Foreground IP and the Licence and shall be open during normal business hours to inspection and audit by the Authority (or its authorised representative or its designated auditor), who shall be entitled to take copies of or extracts from them. The Supplier shall provide such information and explanations as the representative shall require to verify any statements required to be given under this clause 7 and to satisfy the Authority that the provisions of this Contract are being complied with. If such inspection or audit should reveal a discrepancy in the royalties paid from those payable under this Contract, the Supplier shall immediately make up the shortfall and reimburse the Authority in respect of any professional charges incurred for such audit or inspection. Such right of inspection of the Authority shall remain in effect for a period of [insert] years after the termination or expiry of this Contract. The Supplier shall procure that its sub-licensees (if any) shall grant rights directly to the Authority corresponding to those granted by the Supplier under this clause 7.
- 7.9 Within 30 days of the end of each Year, the Supplier shall submit to the Authority a written statement certified by the Supplier's external auditors of the aggregate Net Revenue earned by the Supplier in such Year and the total amount due to be paid for such Year under this clause 7. If such statement shows that the amount paid by the Supplier is less than the amount due, the Supplier shall pay to the Authority within seven days of the submission of the statement an amount equivalent to the difference between the amount paid and the amount due.
- 7.10 The provisions of this clause 7 shall remain in effect notwithstanding termination or expiry of the Licence until the settlement of all subsisting claims by the Authority.

## **8 Protection of the Foreground Intellectual Property**

- 8.1 Subject to clause 8.3, the Authority shall be responsible, in its sole discretion, for the filing and prosecution of applications for registration of any Foreground Intellectual Property.
- 8.2 If the Supplier wishes the Authority to apply for registration of any Foreground Intellectual Property in any country or countries, it may request the Authority in writing to file and prosecute the necessary application or applications for registration of such Foreground Intellectual Property.
- 8.3 On receipt by the Authority of:



- 8.3.1 any request by the Supplier under clause 8.2; and
  - 8.3.2 such advance payment by the Supplier in respect of any fees and costs associated with the relevant application or applications as the Authority may request,
- the Authority shall file such application or applications in its own name, shall prosecute such application or applications, and shall maintain and renew any registration or registrations granted pursuant to such application or applications, in accordance with the reasonable directions of the Supplier, provided that the Supplier shall bear all fees and costs in relation to such applications and registrations (and shall promptly make such further advance payments as the Authority may request from time to time). The Supplier shall promptly provide the Authority with all assistance, information, and instruction as the Authority reasonably requests in relation to the filing and prosecution of any such application and the maintenance and renewal of any such registration.
- 8.4 Provided that the Supplier has complied with its obligations under clause 8.3, the Authority shall not amend or abandon any application or registration referred to in such clause without the Supplier's written consent (which shall not be unreasonably withheld or delayed).
  - 8.5 The Supplier shall promptly notify the Authority in writing, giving full particulars if any, of the following matters that have come to its attention:
    - 8.5.1 any actual, suspected or threatened infringement, or any actual, suspected or threatened unauthorised disclosure, misappropriation or misuse, of any of the Foreground Intellectual Property;
    - 8.5.2 any actual or threatened claim that any of the Foreground Intellectual Property is invalid;
    - 8.5.3 any claim made or threatened that the Exploitation of any of the Foreground Intellectual Property infringes the rights of any third party;
    - 8.5.4 any other form of attack, charge or claim to which any of the Foreground Intellectual Property may be subject.
  - 8.6 In respect of any of the matters listed in clause 8.5, the Authority shall:
    - 8.6.1 shall, in its absolute discretion, decide what action, if any, to take;
    - 8.6.2 notify the Supplier if it decides not to take any action;
    - 8.6.3 subject to clause 8.8, have exclusive control over, and conduct of, all claims and proceedings; and
    - 8.6.4 the Supplier shall not make any admissions other than to the Authority and shall promptly provide the Authority with all assistance that it may reasonably require in the conduct of any claims or proceedings.
  - 8.7 The Authority shall bear the cost of any claims or proceedings made or instituted by it relating to any of the matters listed in clause 8.5 and shall be entitled to retain all sums that it recovers in any action for its own account.

- 8.8 If the Authority notifies the Supplier under clause 8.6.2, or the Authority does not take any action in respect of any of the matters listed in clause 8.5 within 15 Business Days of the Supplier notifying the Authority of such matter:
- 8.8.1 the Supplier may take action in respect of such matter (including commencing proceedings), subject to the Supplier giving the Authority an indemnity in respect of all costs, damages and expenses that the Authority may incur or suffer arising from such action or proceedings;
  - 8.8.2 the Authority shall at the expense of the Supplier provide such assistance as the Supplier may reasonably request in relation to such action or proceedings; and
  - 8.8.3 the Authority shall bear the cost of any such action or proceedings and shall be entitled to retain all sums recovered in any such action or proceedings for its own account.
- 8.9 The Supplier shall not institute proceedings in relation to any matter listed in clause 8.5, except as allowed by this Contract or expressly authorised by the Authority.

## **9 Indemnity and insurance**

- 9.1 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) (each a “**Claim**”) suffered or incurred by the Authority arising out of or in connection with the Supplier’s exercise of its rights granted under the Licence or any breach by the Supplier of the terms of this Schedule 1, including any Claim based on any theory of product liability relating to Licensed Products manufactured, supplied or put into use by the Supplier.
- 9.2 Subject to clause 9.4, this indemnity shall apply whether or not the Authority has been negligent or at fault.
- 9.3 The Supplier shall, at its expense, carry product liability and comprehensive general liability insurance coverage of an amount adequate to support its liabilities under this Schedule 1. The Supplier shall ensure that such insurance policy names the Authority as co-insured with the Supplier and remains in effect throughout the duration of this Agreement and for a period of [number] years after termination or expiry of the Contract, and shall supply the Authority with a copy of such policy on request. Any such insurance policy shall prohibit the lapse of or any cancellation or non-renewal of such insurance, without the Authority’s prior written consent.
- 9.4 Nothing in this Schedule 1 shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence or for fraud.
- 9.5 The provisions of this clause 9 shall remain in effect notwithstanding termination or expiry of this Agreement.

## **10 Warranties**

Except as expressly set out in this Contract and this Schedule 1, all warranties, conditions and guarantees relating to the Foreground IP and the Licence whether express or implied by statute, law, custom or otherwise are, to the fullest extent permitted by law, excluded from this Contract.

**11 Duration and termination**

- 11.1 The Licence shall terminate on the termination or expiry of this Contract ☐ (only applicable to the Contract if this box is checked)
- 11.2 The Licence shall survive the termination or expiry of this Contract ☐ (only applicable to the Contract if this box is checked)
- 11.3 The Licence is for a fixed term ☐ (only applicable to the Contract if this box is checked)
- 11.3.1 The Licence shall continue, unless terminated earlier in accordance with this Contract or clause 11.5 or clause 15.5, for the Licence Term, when it shall terminate automatically without notice unless, no later than [number] months before the end of the Licence Term, the Parties agree in writing that the term of the Licence Term shall be extended for such period as the Parties agree.
- 11.4 The Licence is indefinite ☐ (only applicable to the Contract if this box is checked)
- 11.4.1 The Licence shall continue, unless terminated earlier in accordance with this Contract or clause 11.5 or clause 15.5, until either Party gives to the other Party [insert period] written notice to terminate, expiring on or after the [insert] anniversary or subsequent anniversary of the Licence Commencement Date.
- 11.5 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either Party may terminate the Licence by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of the Contract which is:
- 11.5.1 not capable of remedy; or
- 11.5.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 11.6 The Authority may terminate the Licence by issuing a Termination Notice to the Supplier if:
- 11.6.1 The Supplier fails to pay any amount due under this Schedule 1 on the due date for payment and remains in default not less than 14 days after being notified in writing by or on behalf of the Authority to make such payment;
- 11.6.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under the Licence, 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;

- 11.6.3 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 11.6.4 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to perform its obligation under this Schedule 1 is in jeopardy; or
- 11.6.5 the Supplier challenges the ownership or validity of any of the Foreground Intellectual Property or causes or assists any other person to do so.

## **12 Effect of termination**

- 12.1 On expiry or termination of the Licence for any reason and subject to any express provisions set out elsewhere in this Contract:
  - 12.1.1 all outstanding sums payable by the Supplier to the Authority shall immediately become due and payable;
  - 12.1.2 the Licence shall cease;
  - 12.1.3 the Supplier shall cease all Exploitation of the Foreground IP;
  - 12.1.4 the Supplier shall immediately terminate all sub-licences which it has granted of the Foreground IP;
  - 12.1.5 the Supplier shall co-operate with the Authority in the cancellation of any licences registered in the name of the Supplier against any registered Foreground Intellectual Property and shall execute such documents and do all acts and things as may be necessary to effect such cancellation; and
  - 12.1.6 within [insert] days after the date of termination the Supplier shall promptly destroy or, if the Authority shall so elect, deliver to the Authority or any other person designated by the Authority, at the Supplier's expense, all Licensed Products that it has not disposed of within [insert] days after the date of termination or expiry.

**Appendix E****Optional Additional Call-off Terms and Conditions for Reagent Rental****1 Definitions**

- 1.1 In this Appendix E, the following words shall have the following meanings unless the context requires otherwise:

<b>“Total Loss”</b>	means for any reason, other than a reason due to the default or negligence of the Supplier, the Goods are lost, stolen, or damaged beyond repair.
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**2 Rental Terms**

- 2.1 The Authority shall rent the Goods that are equipment for the Term from the date of the issue of the Authority Confirmation in accordance with Appendix B (which shall be deemed to apply to this Contract).
- 2.2 The rental charges for Goods that are equipment shall be amortised into the Contract Price for the Goods that are consumables. Where associated Maintenance Services are required (as may be set out in the Order Form), the Contract Price for the maintenance charges may also be amortised into the Contract Price for the Goods that are consumables or, alternatively, may form a separate charge as may be required by the Authority and set out in the Order Form.
- 2.3 The Supplier shall allow the Authority quiet possession of the Goods throughout the Term, subject to compliance by the Authority with its obligations under the Contract.
- 2.4 The Authority shall not:
- 2.4.1 modify or alter the Goods that are equipment without the prior consent of the Supplier;
  - 2.4.2 sell, purport to sell, mortgage or part with possession of the Goods that are equipment (other than to a statutory successor), use such Goods as security for a loan or any other obligation, allow the creation of any charge or lien over such Goods or create or allow to be created any right for a third party to retain such Goods; or
  - 2.4.3 do anything that otherwise interferes with the Supplier’s ownership of or other rights in the Goods that are equipment.
- 2.5 The Authority shall allow the Supplier, on reasonable notice and subject to its compliance with any relevant Policies, to enter the relevant Premises and Locations in which any Goods that are equipment are located for the purposes of inspecting such Goods and checking that the Authority is complying with its obligations under the Contract. Where the Contract is exclusive of maintenance, the Authority shall also

- 2.6 ensure that such Goods are maintained during the Term in accordance with any relevant manufacturer's specifications.

### **3 Consumables**

- 3.1 The Supplier shall supply the consumable Goods to the Authority when requested by the Authority and the Authority shall pay the relevant charges for such Goods as set out as part of the Contract Price. Subject to Clause 3.2 of this Appendix E, where the Contract Price for such consumable Goods includes a minimum volume commitment for any given periods ("**Minimum Volume**"), except to the extent that the Authority's failure to purchase the Minimum Volume during any such given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Volume for a given period, the Supplier may charge the Authority for any shortfall between:

3.1.1 the Contract Price of the Minimum Volume in the relevant period; and

3.1.2 the Contract Price for consumable Goods purchased by the Authority in that period.

- 3.2 Where Clause 9 of Appendix H applies to this Contract, any termination sums payable in accordance with Clause 9 of Appendix H (if any) shall be set out as part of the Contract Price, shall reflect an early settlement discount and shall be the total charges payable by the Authority upon early termination of this Contract in accordance with Clause 9 of Appendix H ("**Termination Sum Payment**").

- 3.3 The amount of any Termination Sum Payment (including any early settlement discount) shall be shown separately on any invoice.

### **4 Title, risk and insurance**

- 4.1 From the point the Supplier receives the Authority Confirmation, the Authority shall bear the risk of loss or damage to the Goods that are equipment occurring other than in the normal use of such Goods for the Term except for loss or damage caused by any act or omission of the Supplier (including, without limitation, any failure to provide the Maintenance Services to the extent such Maintenance Services form part of the Contract), for which the Supplier shall be solely liable.

- 4.2 Title in the Goods that are equipment shall remain with the Supplier at all times throughout the Term.

- 4.3 Title and risk in Goods that are consumables shall pass to the Authority in accordance with the relevant provisions of Appendix A.

- 4.4 The Authority shall, at its sole cost, effect and maintain throughout the duration of this Contract a programme of self-insurance or other insurance or risk pooling arrangements in respect of the Goods that are equipment.

- 4.5 In the event during the Term, following any relevant Authority Confirmation, of a Total Loss of any Goods that are equipment, the Authority shall pay the Supplier the reasonable replacement charges for such Goods, as set out as part of the Contract Price.



**5 Right to cease use and require replacement**

- 5.1 The Authority may cease use of any Goods that are found not to comply with the requirements of the Law, Guidance or Good Industry Practice and such Goods shall be replaced by the Supplier with Goods that comply with such requirements.

**6 Further consequences of termination**

- 6.1 Unless otherwise agreed by the Parties in writing, within seven (7) days following the termination or expiry of this Contract, the Supplier shall remove (at its own cost) the Goods that are equipment from the Premises and Locations and ensure the removal is carried out in such manner to minimise disruption on the day to day operations of the Authority. The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the removal of such Goods by the Supplier.
- 6.2 Subject to Clauses 3.3 and 6.1 of this Appendix E, the only charges or expenses payable by the Authority upon the expiry or termination of this Contract (for whatever reason) shall be the outstanding Contract Price in relation to any consumable Goods that are delivered to the Authority prior to the date of the termination or expiry of the Contract.

**Appendix F****Optional Additional Call-off Terms and Conditions for Managed Equipment Services****1 Definitions**

- 1.1 In this Appendix F, the following words shall have the following meanings unless the context requires otherwise:

<b>“Total Loss”</b>	means for any reason, other than a reason due to the default or negligence of the Supplier, the Goods are lost, stolen, or damaged beyond repair.
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**2 Provision of the Managed Equipment Services**

- 2.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services for the Goods that are managed equipment on the following basis:
- 2.1.1 the Supplier shall not commence provision of the Services until it has received the Authority Confirmation in accordance with Appendix B (which shall be deemed to apply to this Contract);
  - 2.1.2 the Services shall include the provision of the Goods for the Term (including their installation and commissioning); and
  - 2.1.3 the Supplier shall maintain the Goods that are equipment throughout the Term in accordance with all relevant manufacturers’ specifications and Good Industry Practice.
- 2.2 The Supplier shall allow the Authority quiet possession of the Goods throughout the Term, subject to compliance by the Authority with its obligations under the Contract.
- 2.3 The Supplier shall not sell, purport to sell, mortgage or part with possession of the Goods that are equipment (other than to a statutory successor), use such Goods as security for a loan or any other obligation, allow the creation of any charge or lien over such Goods or create or allow to be created any right for a third party to retain such Goods.

**3 Unavailability of Equipment**

- 3.1 If the Goods that are equipment are unavailable for use by the Authority at any time during the Term, the Supplier shall repair or replace the Goods at no additional cost to the Authority in compliance with any service levels or KPIs referred to in the Statement of Requirements forming part of the Specification and Tender Response Document.

#### **4 Consumables**

- 4.1 As part of the Services the Supplier shall supply all consumable Goods to the Authority that are required for the operation of the Goods that are equipment for duration of the Term when requested by the Authority. Unless otherwise agreed by the Parties in writing and subject to Clause **Error! Reference source not found.** of this Appendix F, such consumable Goods shall be supplied in accordance with the relevant provisions of Appendix A.

#### **5 Title, risk and insurance**

- 5.1 From the point the Supplier receives the Authority Confirmation, the Authority shall bear the risk of loss or damage to the Goods that are equipment occurring other than in the normal use of such Goods for the Term except for loss or damage caused by any act or omission of the Supplier (including, without limitation, any failure to maintain such Goods in accordance with the requirements of this Contract).
- 5.2 Title in the Goods that are equipment shall remain with the Supplier at all times throughout the Term.
- 5.3 Title and risk in Goods that are consumables shall pass to the Authority in accordance with the relevant provisions of Appendix A.
- 5.4 The Authority shall, at its sole cost, effect and maintain throughout the duration of this Contract a programme of self-insurance or other insurance or risk pooling arrangements in respect of the Goods that are equipment.
- 5.5 In the event during the Term, following any relevant Authority Confirmation, of a Total Loss of any Goods that are equipment, the Authority shall pay the Supplier the reasonable replacement charges for such Goods, as set out as part of the Contract Price.

#### **6 Contract Price**

- 6.1 The Contract Price for the Services shall be payable from the Actual Services Commencement Date. The Contract Price shall be the entire price payable by the Authority and shall include all costs associated with the provision, installation, commissioning and maintenance of Goods and all consumable Goods provided by the Supplier as part of the Services during the Term.

#### **7 Additional Supplier warranty**

- 7.1 The Supplier warrants and undertakes that it shall maintain, repair and/or replace (as appropriate) the Goods provided as part of the Services to ensure compliance with any service levels or KPIs referred to in the Statement of Requirements forming part of the Specification and Tender Response Document.

#### **8 Right to cease use and require replacement**

- 8.1 The Authority may cease use of any Goods that are found not to comply with the requirements of the Law, Guidance or Good Industry Practice and such Goods shall be replaced by the Supplier with Goods that do comply with such requirements.

**9      Termination**

- 9.1      The Authority may terminate the Contract by issuing a Termination Notice to the Supplier in the event of any critical service failures (as may be defined in the Statement of Requirements forming part of the Specification and Tender Response Document for the relevant Order).
- 9.2      Where Clause 9 of Appendix H applies to this Contract, any termination sums payable in accordance with Clause 9 of Appendix H (if any) shall be set out as part of the Contract Price, shall reflect an early settlement discount and shall be the total charges payable by the Authority up to early termination of this Contract in accordance with Clause 9 of Appendix H ("**Termination Sum Payment**").
- 9.3      The amount of any Termination Sum Payment (including any early settlement discount) shall be shown separately on any invoice.

**10     Further consequences of termination**

- 10.1     Unless otherwise agreed by the Parties in writing, within seven (7) days following the termination or expiry of this Contract, the Supplier shall remove (at its own cost) the Goods that are equipment from the Premises and Locations and ensure the removal is carried out in such manner to minimise disruption on the day to day operations of the Authority. The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the removal of such Goods by the Supplier.
- 10.2     Subject to Clauses 3.2 and 6.1 of this Appendix F, the only charges or expenses payable by the Authority upon the expiry or termination of this Contract (for whatever reason) shall be the outstanding Contract Price in relation to any Services provided to the Authority in compliance with the terms of this Contract prior to the date of the termination or expiry of the Contract.

**Appendix G****Optional Additional Call-off Terms and Conditions for Clinical Laboratory Diagnostic Testing Services**

If the Order Form confirms that the Supplier will be providing clinical laboratory diagnostic testing services, this Appendix G shall apply together with the provisions of the Schedules to this Appendix G in the performance of the Contract to the extent that these terms and Schedules are included and/or cross-referred to in Annex A to the Order Form and as may be more precisely formulated, supplemented or amended to reflect the requirements of the Contract.<sup>1</sup>

**Schedules**

Schedule 1 of these Call-off Terms and Conditions for Clinical laboratory diagnostic testing services	Implementation and Ramp Up
Schedule 2 of these Call-off Terms and Conditions for Clinical laboratory diagnostic testing services	Exit Plan
Schedule 3 of these Call-off Terms and Conditions for Clinical laboratory diagnostic testing services	Approved Sub-contractors

**1 Definitions**

- 1.1 In this Appendix G, the following words shall have the following meanings unless the context requires otherwise:

<b>“Approved Sub-contractors”</b>	the persons listed in Schedule 3 to this Appendix G;
<b>“Assets”</b>	shall have the meaning referred to at Clause 2.1.9 of this Appendix G;

<sup>1</sup> To the extent relevant and appropriate to the particular Contract, these terms should be included in Annex A to the Order Form. As part of their inclusion as part of the Order Form these terms should be more precisely formulated, supplemented or otherwise adapted / amended to reflect the specific requirements of the Contract to which the Order Form relates. Particular attention should be given to any provisions in square brackets. Where any provisions in square brackets are used as part of the Order Form, the square brackets should be removed.

<b>“Asset Register”</b>	shall have the meaning referred to at Clause 2.1.9 of this Appendix G;
<b>“Asset Transfer Date”</b>	shall have the meaning as set out in paragraph 6.3.1 of Schedule 2 of this Appendix G;
<b>“Authority Background Intellectual Property Rights”</b>	Intellectual Property Rights owned by the Authority before the Commencement Date; and/or Intellectual Property Rights created by the Authority independently of this Contract;
<b>“Authority Equipment”</b>	any equipment and consumables provided by the Authority to the Supplier to support provision of the Services, as set out in the Asset Register and/or forming part of the inventory;
<b>“Authority Facilities”</b>	means any premises or other facilities and/or testing infrastructure provided by the Authority at which the Supplier or Sub-contractors (as applicable) are to provide the Services (each an Authority Facility);
<b>“Created Intellectual Property”</b>	<p>any Intellectual Property Rights in any material created or adapted by Supplier (or any of its employees, agents or Sub-contractors) that relates to;</p> <ul style="list-style-type: none"> <li>• software components created to handle the Authority connections into NHS Test Digital Platform interfaces (including components created to support the Authority connections e.g. API authorisation, error-handling, data transformation);</li> <li>• software components created to expose external interfaces to the NHS Test Digital Platform Authority connections (including external interface definitions such as OpenAPI specifications, and components related to support the external interfaces such as API authorisation, error-handling, data transformation);</li> <li>• software components created to map external on-the-wire data structures to usable data objects in code, <ul style="list-style-type: none"> <li>○ including infrastructure-as-code and configuration templates where cloud managed services have been utilised to create the components scoped above;</li> <li>○ artefacts to be provided as reference implementations / source code (they are not required to be production artefacts);</li> </ul> </li> </ul>
<b>“Conclusive Result”</b>	means any Test result that is positive or negative;
<b>“Disabling Device”</b>	means any virus, timer, clock, counter, time lock, time bomb, Trojan horse, worm, file infector, boot sector infector or other limiting design, instruction or routine and surveillance software or routines or data gathering or



	collecting software or devices that could, if triggered, erase data or programming, have an adverse impact on the Services, or cause hardware, software or other resources to become inoperable or otherwise incapable of being used in the full manner for which such hardware, software or other resources were intended to be used;
<b>“Equipment”</b>	the equipment and consumables owned by Supplier and which comprises part of the Supplier Facilities or the equipment purchased by the Authority from Supplier pursuant to this Contract for use at the Facilities;
<b>“Exit Plan”</b>	means the exit plan developed in accordance with this Schedule 2 (Exit Plan). Any reference in the Contract to an “exit plan” shall be deemed a reference to this Exit Plan;
<b>“Exit Group”</b>	the group of personnel established jointly by both Parties to manage the disengagement of the Services and the implementation of the Exit Plan;
<b>“Facilities”</b>	means the Supplier Facilities and/or the Authority Facilities;
<b>“Good Scientific Practice”</b>	means the standards of behaviour and practice set out in the publication entitled ‘Good Scientific Practice’ as published by the Academy for Healthcare Science;
<b>“Guaranteed Daily Capacity”</b>	means the guaranteed number of Tests to be performed per calendar day pursuant to the Supplier's provision of the Services, such guaranteed capacity to be on the basis set out within the Order Form with the initial guaranteed daily capacity applicable from the Commencement Date of the Contract as set out in the Order Form and subject to change upon fourteen (14) calendar days' notice served by Authority in accordance with clause 3.7 of this Appendix G;
<b>“Inconclusive Result”</b>	means a Test result that is not a Conclusive Result;
<b>“Lease”</b>	means the lease to any premises provided by and/or operated by the Supplier under this Contract;
<b>“Licence Terms”</b>	means a royalty-free, non-exclusive right for the Authority (and if applicable a New Provider) to Use, for the Term and any period as set out in the Exit Plan, the Supplier Software solely for the purposes of receiving and benefiting from the Services;
<b>“New Provider”</b>	any third party engaged by the Authority to supply any Replacement Services;
<b>“NHS Test Digital Platform”</b>	a collection of infrastructure and services and operational processes that together form the digital platform for the NHS Test programme;

<b>“Price Per Test”</b>	means the price per Test with a Conclusive Result as referred to as part of the Contract Price;
<b>“Purchase Rejection Notice”</b>	shall have the meaning as set out in paragraph 6.3.2 of Schedule 2 of this Appendix G;
<b>“Purchase Confirmation Notice”</b>	shall have the meaning as set out in paragraph 6.3.1 of Schedule 2 of this Appendix G;
<b>“Ramp-Up Plan”</b>	shall have the meaning referred to in Schedule 1 to this Appendix G
<b>“Records”</b>	shall have the meaning as set out in Clause 12.1.1 of this Appendix G;
<b>“Replacement Services”</b>	services which are the same as or substantially similar to any or all the Services and which are purchased by or provided to the Authority following the termination or expiry of all or a part of this Contract to replace Services formerly provided by the Supplier under this Contract;
<b>“Run-Off Period”</b>	means the period of up to three (3) months (or such other period as may be set out in the Statement of Requirements forming part of the Specification and Tender Response Document for the relevant Contract) from the date of the expiry of the Term or the effective date of any earlier termination of this Contract;
<b>“Sample ID”</b>	means the machine-readable coded form of identification used by the Authority to identify individual Samples from the point of being taken from the service user through to notification of results by Supplier;
<b>“Samples”</b>	means the samples relating to the provision of Tests required to be retained by UKAS guidelines;
<b>“Specialist”</b>	means a Haematology, clinical biochemistry, immunology and microbiology (including virology and mycology) specialist expertise or other such specialist expertise forming part of the Specification and Tender Response Document;
<b>“Specialist-Reviewed Protocols”</b>	means the Specialist reviewed protocols to be followed in the follow on investigations of Tests, amendments to Test requests and in support of managing demand and ensuring appropriate Test requests as set out in the Supplier's documents as agreed from time to time with the Authority;
<b>“Standard Operating Procedures”</b>	means the procedures to be followed in the processing of Tests as set out in the Supplier's standard operating procedures documents as agreed from time to time with the Authority;

<b>"Step-in Notice"</b>	shall have the meaning as referred to at Clause 18.2 of this Appendix G;
<b>"Step-in Termination Condition"</b>	shall have the meaning as referred to at Clause 18.6 of this Appendix G;
<b>"Supplier Party"</b>	means the Supplier, each member of Supplier Personnel and all of the directors, officers, employees and workmen of Supplier or any such person who is engaged in relation to the provision of the Services or performance of Supplier's obligations under this Contract;
<b>"Supplier Test Digital Platform"</b>	a collection of infrastructure and services and operational processes that together form the Supplier's digital platform to integrate with the NHS Test Digital Platform;
<b>"Supplier's Background Intellectual Property Rights"</b>	Intellectual Property Rights owned by the Supplier before the Commencement Date; and/or Intellectual Property Rights created by the Supplier independently of this Contract;
<b>"Supplier Facilities"</b>	means the premises and testing infrastructure provided and/or operated by the Supplier at which the Supplier or Sub-contractors (as applicable) are to provide the Services, and includes the Testing Equipment;
<b>"Supplier's Software"</b>	means the software which is proprietary to or used by the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services during the Term;
<b>"Surge Capacity"</b>	has the meaning given in Schedule 6 (The Commercial Schedule) and/or the Order Form;
<b>"Testing Equipment"</b>	means the equipment used in the provision of the Services, being all that equipment supplied by Supplier;
<b>"Test Requests"</b>	means a request for one or more Test(s) placed on the NHS Test Digital Platform which will be sent by the NHS Test Digital Platform to the Supplier Test Digital Platform for fulfilment by Supplier;
<b>"Tests"</b>	means the tests referred to in the Specification and Tender Response Document and the term 'Testing' shall be construed accordingly;
<b>"Tier"</b>	the term used to denote the maximum number of Tests per calendar day to be provided by the Supplier in any month (being the Guaranteed Daily Capacity), with the relevant Tier level as set out in Order Form (if applicable);
<b>"Third Party Software"</b>	means the software which is proprietary to any third party and supplier as part of or used in providing the Services;

<b>“UKAS”</b>	means the United Kingdom Accreditation Service being national accreditation body recognised by the British government to assess the competence of organisations that provide certification, testing, inspection and calibration services (or any successor or replacement body of UKAS) or any equivalent EU certification agreed in writing in advance with the Authority;
<b>“Use”</b>	means the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate or otherwise utilise that software; and
<b>“Void Test”</b>	means a Sample that cannot be tested because it presents a hazard or otherwise is not capable of being tested.

## 2 **Provision of Services**

### 2.1 The Supplier shall:

- 2.1.1 process any Tests as set out in the Specification and Tender Response Document in accordance with any timescales set out in the Specification and Tender Response Document;
- 2.1.2 provide all Testing Equipment and Supplier Personnel required to process the Tests and provide the Services;
- 2.1.3 provide the Supplier Facilities in accordance with the provisions of this Contract for the purposes of Testing;
- 2.1.4 provide the Services at the Facilities at such locations as may be set out in the Specification and Tender response Document, or as otherwise agreed between the Parties in writing;
- 2.1.5 ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services and the Supplier Facilities are in place at the Services Commencement Date and are maintained throughout the Term;
- 2.1.6 maintain UKAS accreditation in respect of the Facilities;
- 2.1.7 ensure that all the Facilities are fit for the purpose of providing the Services;
- 2.1.8 ensure that it will not embarrass the Authority (meaning by its actions or omissions contrary to the spirit of this Contract that cause material adverse public comment concerning the Authority) or otherwise bring 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 Supplier’s obligations under this Contract; and

- 2.1.9 the Supplier will maintain a register of Assets (an “**Asset Register**”) in the format specified by the Authority in writing, which will be available for inspection by the Authority on reasonable notice. For these purposes, “**Assets**” shall include all assets and services used by the Supplier to provide the Services including any Equipment, Sub-contracts, rental contracts, licences (including software licences), leases or other relevant third party contracts. Where Assets are purchased using funds from the Authority, title to and risk in the Assets shall vest with the Authority on payment of the relevant invoice and shall remain with the Authority unless otherwise agreed with the Supplier in writing (the position shall be noted in the Asset Register). Where Assets are owned by the Supplier, the Asset Register will include their net book value and details of any relevant depreciation policy. The Asset Register shall also include details of the extent to which any third party contracts (including any Sub-contracts, rental contracts, licences (including software licences), and leases) may be novated or otherwise transferred to the Authority or a third party nominated by the Authority (such as a New Provider).

### **3 Operation of the Services**

#### **3.1 The Supplier shall provide the Services:**

- 3.1.1 in accordance with Good Scientific Practice;
- 3.1.2 in compliance with UKAS accreditation requirements;
- 3.1.3 in accordance with the Test volumes required to meet the Guaranteed Daily Capacity,
- 3.1.4 in accordance with this Contract;
- 3.1.5 to meet the KPIs; and
- 3.1.6 at the Facilities and at such locations, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing and shall permit the Authority or its representatives to access any relevant premises (including the Facilities) for audit and quality assurance purposes.

#### **3.2 The Parties agree that no payment is due from the Authority to the Supplier for Void Tests. Any Tests that produce Inconclusive Results must be repeated by the Supplier at the Supplier’s cost and expense. For the avoidance of doubt, the Parties agree that the Authority shall only be required to pay for Tests that produce a Conclusive Result and that the Price per Test only applies to Conclusive Results.**

#### **3.3 The Supplier acknowledges and accepts that:**

- 3.3.1 the Authority’s requirements for implementing measures which require the need for Tests are evolving and are likely to be subject to immediate change, and the requirement for the Guaranteed Daily Capacity and the associated changes to the Contract Price have been structured accordingly and as a result and the Authority gives no guarantee as to the volume of Services required by it pursuant to this Contract; and

- 3.3.2 the Supplier's appointment to provide the Services is non-exclusive and the Authority shall be entitled to purchase equivalent services from other suppliers.
- 3.4 The Supplier undertakes throughout the Term:
- 3.4.1 to use the NHS Test Digital Platform;
  - 3.4.2 to be responsible for the health and safety of all individuals (including each member of Supplier Staff, each Sub-contractor and all of the directors, officers, employees and workmen of Supplier or any such person who is engaged in relation to the provision of the Services or performance of Supplier's obligations under this Contract) at the Facilities and to comply with applicable Authority / Health and Safety Executive instructions provided to the Supplier with respect to the Facilities;
  - 3.4.3 to provide the Services on the basis of continuous improvement in respect of operational efficiency and staffing levels;
  - 3.4.4 to maintain and comply with a recognised information security management system and be actively working towards the ISO/IEC 27001 standard and/or any other standards set out in the Specification and Tender Response Document or Order Form for the Services;
  - 3.4.5 to ensure and guarantee any Sub-contractor appointed by Supplier to provide any element of the Services is UKAS accredited at the time of providing the relevant part of the Services;
  - 3.4.6 to inform the Authority promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Supplier or any Supplier Party which may prevent the Supplier fulfilling its obligations in accordance with this Contract, including immediately sending to the Authority a copy of every notice or other communication of a non-routine nature relating to the provision of the Services received from or sent to any person or body concerning health and safety, environmental, and regulatory matters relating to the performance of the Services; and
  - 3.4.7 to work collaboratively with the Authority to ensure continuous improvements relating to the Services (including those used by equivalent suppliers of the Authority) are implemented throughout the Term.
- 3.5 The Supplier shall remove any member of the Supplier Personnel from the provision of the Services at the reasonable request of the Authority, forthwith (and without any compensation being payable), if the Authority can demonstrate that any such member of the Supplier Personnel:
- 3.5.1 has not co-operated with the Authority in meeting its reasonable requests for the provision of information relating to the Services and the Facilities;
  - 3.5.2 has breached the confidentiality obligations applicable under this Contract; or
  - 3.5.3 has caused or is likely to cause the Supplier or the Authority to breach any data protection / data security requirements under this Contract; or



3.5.4 has been guilty of any misconduct which, if such member of the Supplier Personnel had been an employee of the Authority, would have entitled the Authority summarily to dismiss that employee; or

3.5.5 is not performing the Services demonstrating the skill and experience expected of staff which would reasonably and ordinarily be expected from a skilled, efficient and experienced staff member carrying out services that are the same or similar to the Services;

and, in each case, replace such individual.

3.6 The Supplier shall comply with the provisions regarding the provision of staffing information and TUPE as set out as part of any TUPE related provisions forming part of this Contract.

3.7 The Supplier has agreed to provide the Services at the Guaranteed Daily Capacity. The Guaranteed Daily Capacity will change from time to time upon written notice from the Authority to the Supplier, such notice to be of no less than 14 calendar days and subject to such change being issued by the Authority in accordance with this Clause 3.7 it shall form part of this Contract. The Authority may increase the Guaranteed Daily Capacity throughout the Term. At the end of any ramp-up notice, the Supplier shall provide the Services at the revised Guaranteed Daily Capacity.

3.8 Where the Authority increases the Guaranteed Daily Capacity, the Supplier will undertake the necessary changes in accordance with the Ramp-Up Plan agreed with the Authority.

#### **4 Purchase of Goods**

4.1 Any Goods required by the Authority from the Supplier shall be purchased in accordance with the relevant provisions of Appendix A.

4.2 For the avoidance of doubt, any Goods purchased under this Contract shall be charged separately to the Price Per Test as part of the Contract Price and the Supplier shall keep an inventory of such Goods together with any other goods purchased and/or provided by the Authority. Upon the expiry or earlier termination of this Contract, the Supplier shall transfer any items forming part of such inventory to the Authority (or a third party nominated by the Authority) free of charge.

#### **5 Implementation and Ramp Up**

5.1 In addition to Clause 1.2 of Schedule 2 of Appendix A, the Supplier shall comply with the obligations set out in Schedule 1 to this Appendix G.

#### **6 Authority obligations**

6.1 The Authority shall through the Term at its own cost:

6.1.1 [purchase barcoded Test sample kits to be delivered to the Facilities by professional courier service and the Authority shall facilitate access to the data managed environment (as referred to in the Specification and Tender Response Document) to allow the Supplier to upload Test results;]

6.1.2 [provide the Samples to the Facilities, ensuring that such Samples have the appropriate Sample ID and are transported in accordance with Good

Scientific Practice relevant to the Samples for testing or as otherwise may be defined under any Law, Guidance or Good Industry Practice;]

- 6.1.3 provide the NHS Test Digital Platform in order for the Supplier to log the receipt of Samples, and input the results of a Test;
- 6.1.4 provide such co-operation in connection with the timely progression of issues and provision of information as the Supplier may reasonably require to enable the Supplier to meet its obligation under this Contract at all reasonable times in accordance with the provisions of the Specification and Tender Response Document and the other provisions of this Contract;
- 6.1.5 provide the Supplier with its updated requirements for demand for the Services using a rolling forecast of at least 14 calendar days;
- 6.1.6 where appropriate, invite the Supplier's representative to meetings with other suppliers of services similar to the Services;
- 6.1.7 ensure that adequate and appropriate maintenance and support services are available and in place for all systems and software used by the Authority solely to facilitate the Supplier's delivery of the Services, including the NHS Test Digital Platform; and
- 6.1.8 fulfil any other Authority obligations, as may be referred to as part of the Order Form and/or Specification and Tender Response Document.

## **7 Tests and Testing**

- 7.1 The Supplier will process any Tests set out in the Authority's requirements set out in the Specification and Tender Response Document relating to the Contract in accordance with any timescales set out in the Specification and Tender Response Document. Subject to the any authority obligations forming part of this Contract, the Supplier shall provide all Testing Equipment and the Supplier Personnel required to process a Test and provide the Services.
- 7.2 The Supplier shall ensure that it (or its Sub-contractors) shall have the required Facilities to meet the Guaranteed Daily Capacity.
- 7.3 The Parties agree that:
  - 7.3.1 the Authority shall ensure that the Authority Facilities are constructed to include all internet access, utilities, including electrical, backup power, water and any required compressed gasses or other laboratory requirements, to allow Supplier or its Sub-contractors to complete the Implementation Plan for each Authority Facility and the agreed number of Tests for each Facility;
  - 7.3.2 the Authority can serve notice to ramp-up or ramp-down the Guaranteed Daily Capacity or to require Surge Capacity on serving not less than fourteen 14 calendar days' notice in the case of a change to the Guaranteed Daily Capacity and seven (7) calendar days' notice in respect of a requirement for Surge Capacity.
  - 7.3.3 [risk in the Testing Equipment vests at all times with the Supplier or as applicable its Sub-contractors];

7.3.4 [the Supplier, or its Sub-contractors shall provide, the testing capacity sufficient to comply with its obligations under this Contract]; and

7.3.5 subject at all times to the applicable completion requirements of Tests, it is the sole responsibility of the Supplier to ensure the Facilities have the capacity to undertake the Testing process for the required number of Samples so as to ensure the Supplier meets its obligations set out in this Contract. The Authority shall incur no liability for any delays in, or results of, the Testing process of Samples by Supplier.

## **8 Mobilisation Payments**

8.1 If stipulated by the Authority in the Order Form as part of the Contract Price, the Authority shall pay any mobilisation payment (which may include any TUPE and/or redundancy costs forming part of the Contract Price).

## **9 Additional Supplier Warranties**

9.1 The Supplier to warrants and undertakes that:

9.1.1 [during the Term, the Facilities will be operated in a manner that is compliant with, and has all necessary consents in relation to standards set down by UKAS;]

9.1.2 the Tests shall be suitable for the purposes as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in the Specification and Tender Response Document and any standards required by Law, Guidance or Good Industry Practice;

9.1.3 the Supplier Facilities are compliant with all applicable Laws, Guidance and Good Industry Practice and all relevant health and safety standards;

9.1.4 [it shall ensure that, the handling and storage of Samples at the Facilities is in accordance with good practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Samples for testing, and in accordance with any specific requirements set out in Specification Tender Response Document, the Standard Operating Procedures and any Specialist-Reviewed Protocols (as required in accordance with the Specification and Tender Response Document);]

9.1.5 [it shall ensure that all materials and/or products used in the provision of Tests are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;]

9.1.6 it has, or its Sub-contractors have, testing capacity sufficient to comply with its obligations under this Contract;

9.1.7 [the Testing Equipment shall be suitable for the purposes as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for its intended purpose, maintained fully in accordance with the manufacturer's specifications as applicable; and shall comply with the standards and requirements set out in this Contract;]

- 9.1.8 it will work collaboratively with the Authority to devise plans and demand forecasts to help manage and ensure sufficient levels of consumables inventory are in place such that the Supplier can meet its obligations under this Contract, including managing the inventory availability of assays and the availability of the Facilities for testing purposes during the Term;
- 9.1.9 [it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Services at the Facilities;]
- 9.1.10 [use of the Facilities, the Testing Equipment or of any other item or information supplied or made available by the Supplier will not infringe any third party rights, to include without limitation any Intellectual Property Rights; and]
- 9.1.11 the Supplier IT systems (including the Supplier Test Digital Platform) will:
- (i) be fit for their purpose and for Supplier's requirements;
  - (ii) comply with the IT specification set out in the Specification and Tender Response document;
  - (iii) be maintained regularly in accordance with Good Industry Practice;
  - (iv) not infringe third party Intellectual Property Rights;
  - (v) not expose, subject, transfer or introduce any Disabling Device to the Authority's IT systems from time to time (including without limitation, hardware, software, firmware, middleware and memory capacity); and
  - (vi) prior to installation and during the Term have the benefit of an up to date virus checker.

## **10 Additional Authority Warranties**

### **10.1 The Authority warrants and undertakes that:**

- 10.1.1 [the Authority Equipment and any item or information supplied or made available by the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;]
- 10.1.2 [without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Supplier of any health and safety hazard which has arisen, or the Authority is aware may arise, in connection with any item or information supplied by the Authority and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;]
- 10.1.3 [the Authority Equipment shall be suitable for the purposes as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose, and subject to access to the Facilities on giving reasonable notice to the Supplier, maintained fully in accordance with the manufacturer's specifications as applicable; and shall comply with the standards and requirements set out in this Contract;]

- 10.1.4 [the Authority Facilities are compliant with all applicable Laws and all relevant health and safety standards;]
- 10.1.5 [all information supplied by the Authority to Supplier during the award process leading to the execution of this Contract is true and accurate in all material aspects and the Authority is not aware of any material facts or circumstances which have not been disclosed to Supplier and which would, if disclosed, be likely to have an adverse effect on the decision of a reasonable provider of services similar to the Services whether or not to contract with the Authority]; and
- 10.1.6 the NHS Test Digital Platform will:
- (i) be fit for its purpose to meet the requirements set out in this Contract;
  - (ii) be maintained regularly in accordance with Good Industry Practice;
  - (iii) not infringe third party Intellectual Property Rights;
  - (iv) not expose, subject, transfer or introduce any Disabling Device to Supplier's IT systems from time to time (including without limitation, hardware, software, firmware, middleware and memory capacity); and
  - (v) prior to installation and during the Term have the appropriate security protections and controls in place.

## **11 Intellectual Property Rights**

- 11.1 For the avoidance of doubt, to the extent of any conflict between Clause 11 of Schedule 2 of Appendix A and this Clause 11 of this Appendix G, this Clause 11 of this Appendix G shall prevail to the extent of such conflict.
- 11.2 All Authority Background Intellectual Property Rights provided to the Supplier by Authority pursuant to this Contract shall remain vested in and the property of Authority or licensed to the Authority, as appropriate. The Authority hereby grants to the Supplier a royalty-free, non-exclusive licence for the duration of this Contract to use such Authority Background Intellectual Property Rights, as the Authority may from time to time notify the Supplier that it may use for the sole purpose of performing its obligations under this Contract.
- 11.3 All Supplier Background Intellectual Property Rights provided to Authority by the Supplier pursuant to this Contract shall remain vested in and the property of the Supplier or licensed to the Supplier, as appropriate. The Supplier hereby grants to Authority a royalty-free, non-exclusive licence for the duration of this Contract to use such Supplier Background Intellectual Property Rights as the Supplier may from time to time notify Authority that it may use for the sole purpose of performing its obligations under this Contract.
- 11.4 All Created Intellectual Property Rights in any material which is created by the Supplier in relation to the provision of the Services under the Contract, or the performance by the Supplier of its other obligations under this Contract shall be the property of Authority. The Supplier shall not, and shall procure that its staff, personnel and Sub-contractors shall not, use or disclose any such material without prior written approval

of Authority, except where it is in the public domain. The Supplier hereby assigns to Authority, with full title guarantee, all Created Intellectual Property Rights which may subsist in the materials prepared in accordance with this Clause 11.4. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute such assignment.

- 11.5 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Term, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Authority may suffer or incur as a result of or in connection with any breach of this Clause 11 of this Appendix G, except where any such claim arises from:
- 11.5.1 items or materials based upon designs supplied by Authority; or
  - 11.5.2 the use of data supplied by Authority which is not required to be verified by the Supplier under any provision of the Contract.
- 11.6 Unless restricted from doing so, the Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Supplier.
- 11.7 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
- 11.7.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 11.7.2 shall take due and proper account of the interests of the Authority; and
  - 11.7.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 11.8 The Authority shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Authority or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause 11.5.1 or 11.5.2 above.
- 11.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by Authority or the Supplier in connection with the performance of its obligations under the Contract.
- 11.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or, in the reasonable opinion of the Supplier, is likely to be made, the Supplier shall notify Authority and, at its own



expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- 11.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
- 11.10.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to Authority; and
- 11.10.3 in the event that the Supplier is unable to comply with Clauses 11.10.1 or 11.10.2 within twenty (20) calendar days of receipt of the Supplier's notification, the Authority may terminate the Contract with immediate effect by issuing a Termination Notice to the Supplier.

#### *Licences*

- 11.11 The Supplier hereby grants throughout the Term, or if applicable, shall procure the direct grant, to the Authority of a non-exclusive licence of the Supplier's Software (including any Supplier's Background Intellectual Property Rights or Intellectual Property Rights owned by a third party that are embedded in or which are an integral part of the Supplier's Software) on the Licence Terms.
- 11.12 The Supplier shall, if requested by the Authority under the exit and service transfer arrangements, grant or procure the grant to a New Provider a limited short term (up to 1 month post termination of this Contract) licence to Use any Supplier's Software, Supplier's Background Intellectual Property Rights or Third Party Software subject to such supplier, if appropriate, entering into reasonable confidentiality undertakings with the Supplier solely for the purpose of migrating the Services to the New Provider.

## **12 Records and Samples**

- 12.1 Subject at all times to any instruction from the Authority to transfer the Records to the Authority and thereafter to destroy the Records, the Supplier shall during the Term and for the period of three (3) years thereafter:
  - 12.1.1 maintain such clinical records relating to the provision of the Services (including the Sample ID and associated Test result, whether in hardcopy or electronic form as referred to in the Specification and Tender Response Document) ("**Records**");
  - 12.1.2 store and preserve the integrity of all Samples for such duration and in such manner as the Authority may reasonably require;
  - 12.1.3 on request, produce the Records and Samples for inspection by the Authority or, on receipt of reasonable notice, allow or procure for the Authority and/or its authorised representatives access to any premises where any such Records and Samples are stored for the purposes of inspecting and/or taking copies of and extracts from any such Records free of charge;
  - 12.1.4 preserve the integrity of the Records and Samples in the possession or control of the Supplier or any Supplier Party and all data which is used in, or

generated as a result of, providing the Services and to prevent any corruption or loss of that data; and

- 12.1.5 promptly provide the management information to the Authority as reasonably requested including the total number of Samples processed in the last 24 hours (including positive results, negative results, Inconclusive Results and the reason for Inconclusive Results, Void Tests and the reason for Void Tests) together with any other management information set out in and in accordance with the Specification and Tender Response Document.

### **13 Liability**

- 13.1 The Parties agree that for the purposes of this Contract costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to individuals who have provided Samples shall be direct recoverable losses (to include under any relevant indemnity) by the Authority only to the extent to which such costs, expenses and/or loss of income arise or result from the Supplier's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

### **14 Suspension**

- 14.1 In addition to any other rights of the Authority under this Contract, the Authority shall be entitled at any time during the Term, upon serving written notice of twenty-eight (28) calendar days to the Supplier, to suspend the provision of the Services (in full or part). The terms of any suspension pursuant to this Clause 14 shall be agreed by the Parties, with both Parties acting reasonably and in good faith.

### **15 Termination**

- 15.1 The Authority shall be entitled to terminate this Contract at any time upon serving four (4) weeks' written notice by issuing a Termination Notice to the Supplier.
- 15.2 The Authority may terminate this Contract at its convenience without payment of compensation or other damages caused to the Supplier in accordance with Clause 15.1.

### **16 Consequences of Termination**

- 16.1 On the expiry or termination of this Contract in whole for any reason whatsoever the Supplier shall:
- 16.1.1 continue, for the Run-Off Period following expiry or termination of this Contract, to undertake Tests on any Samples received from service users and the Authority shall continue to pay the applicable Price Per Test (all in accordance with paragraph 3 of Schedule 2 (Exit Plan) of this Appendix G; and
- 16.1.2 without limitation to any of the requirements set out in any agreed Exit Plan or Schedule 2 to this Appendix G (which, for the avoidance of doubt, the Supplier must comply with), if requested by the Authority, the Supplier shall use reasonable endeavours to procure the novation (or other form of transfer as may be agreed with the Authority such as assignment) of all contracts entered into with third parties (to include, as may be set out in the Asset

Register) to the extent that they relate specifically to delivery of the Services to the Authority, or to such New Provider as the Authority shall nominate.

## **17 Sub-contracts**

- 17.1 In addition to Clause 28 (Assignment, novation and Sub-contracting) of Schedule 2 of Appendix A, the Supplier shall comply with the provisions of this Clause 17 of Appendix G.
- 17.2 The Authority hereby provides its consent for the Supplier to enter into Sub-contracts with the Approved Sub-contractors for their respective sub-contracted elements of the Services, as set out in Schedule 3 (Approved Sub-Contractors).

### *Matters to be included in Sub-Contracts*

- 17.3 To the extent not already required in accordance with the Appendix A, the Supplier shall, at all times, ensure that all Sub-contracts include:
- 17.3.1 provisions such that the Sub-contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority;
  - 17.3.2 a right for the Authority to enforce the termination rights under the Sub-contract;
  - 17.3.3 a requirement that either Party to the Sub-contract may release to the Authority any of those parts of the Sub-contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 17 of this Appendix G and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-contract;
  - 17.3.4 a term which gives the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to materially comply in the performance of the Sub-contract;
  - 17.3.5 provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under this Contract;
  - 17.3.6 a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-contract without first seeking the written consent of the Authority;
  - 17.3.7 a term which, upon the Supplier or the Authority's request, requires the Sub-contractor to participate and attend any meetings (whether in person or remotely) with the Authority;
  - 17.3.8 a term which requires the Supplier, the Authority or any other party receiving goods or services under that Sub-contract to consider and verify invoices under that Sub-contract in a timely fashion;
  - 17.3.9 provisions that if the Supplier, the Authority or any other party fails to consider and verify an invoice in a timely fashion, the invoice shall be regarded as valid and undisputed, after a reasonable time has passed;

- 17.3.10 a term which requires payment of undisputed sums to be made by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the Supplier's receipt of a valid invoice;
- 17.3.11 a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices to its Sub-contractors within the specified payment period; and
- 17.3.12 a licence for the Authority to use any Intellectual Property Rights relevant to the Services owned or controlled by a Sub-contractor in the same terms as the licence the Authority receives in relation to Intellectual Property Rights owned or controlled by the Supplier as set out in Clause 11 (Intellectual Property Rights) of this Appendix G.

### ***Termination of Sub-contracts***

17.4 The Authority may require the Supplier to terminate:

- 17.4.1 a Sub-contract where:
  - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority having a right of termination pursuant to this Contract regardless of whether the Authority has elected to exercise that right or not; and/or
  - (ii) the relevant Sub-contractor has embarrassed the Authority (meaning by its actions or omissions contrary to the spirit of the subcontract with the Supplier that cause material adverse public comment concerning the Authority) or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise.
- 17.4.2 a Sub-contract where there is a change in control of the relevant Sub-Contractor within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control), unless:
  - (i) the Authority has given its prior written consent to the particular change in control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within three (3) weeks of the later of the date the change in control took place or the date on which the Authority was given notice (or otherwise became aware) of the change in control.

## **18 Step-In**

18.1 The provisions of this Clause 18 shall apply to the Contract if:

- 18.1.1 the Authority acting reasonably, considers that a breach by the Supplier of any obligation under this Contract:

- (i) may create an immediate and serious threat to the health and safety of any service user or person; or
  - (ii) may result in a material interruption in the provision of one or more of the Services; or
- 18.1.2 the Authority has the right to step-in as set out in paragraph 2 of Schedule 1 to this Appendix G.
- 18.2 In any of the circumstances set out in Clause 18.1, the Authority acting reasonably may serve notice on the Supplier ("**Step-in Notice**") to:
  - 18.2.1 require the Supplier to remedy such breach by re-executing the relevant part of the Services for no extra charge and in accordance with the Specification and Tender Response Document and the requirements of this Contract;
  - 18.2.2 require the Supplier to repay or credit to the Authority that part of the Contract Price paid by the Authority to the Supplier relating to the provision of the relevant part of the Services; or
  - 18.2.3 advise the Supplier that the Authority considers there is not sufficient time, or that the Supplier will be unable to take the necessary or expedient steps to correct any event set out at Clause 18.1, and that the Authority shall take such steps as the Authority considers to be appropriate (either itself or by engaging others to take such steps) to ensure performance of the relevant Services to the standards required by this Contract (but without giving the Authority any rights with regard to the management or operation of the Facilities) and the Supplier shall provide the Authority with all reasonable assistance to enable the Authority to take such steps under this Clause 18.2.3.
- 18.3 Any costs or expenses incurred by the Supplier in taking such steps as are required by the Authority pursuant to Clause 18.2 shall be borne by the Supplier and the Supplier shall provide the Authority with all reasonable and necessary co-operation. The Supplier shall reimburse the Authority for all reasonable costs, losses, expenses or damages incurred by the Authority in taking the steps or engaging others to take the steps referred to in Clause 18.2.3, net of what the Authority would have had to pay to the Supplier for the performance of the applicable Service if the right of step-in under such sub-clause had not been exercised, and the Authority shall be entitled to deduct such amounts from any other sum or amount payable to the Supplier under the provisions of this Contract.
- 18.4 After the expiry of 1 month after the Step-in Notice has been served, the Authority shall promptly (and in any event within [7 calendar days]) either:
  - 18.4.1 if the Step-in Termination Condition defined in Clause of this Appendix G is satisfied, immediately terminate this Contract by issuing a Termination Notice to the Supplier;
  - 18.4.2 if the Supplier has failed to demonstrate that it can resume the performance of the Services so as to meet the KPIs and/or the Guaranteed Daily Capacity, immediately terminate this Contract by issuing a Termination Notice to the Supplier; or
  - 18.4.3 notify the Supplier that it may resume carrying out the Services.

- 18.5 In the event that the Authority does not give notice under either Clause 18.4.1, Clause 18.4.2 or Clause 18.4.3 of this Appendix G, it shall be deemed to have given notice under Clause 18.4.3 of this Appendix G.
- 18.6 For the purposes of Clause 18.4 of this Appendix G, the step-in termination condition ("**Step-in Termination Condition**") shall be satisfied if there has been a breach by the Supplier of any obligation under this Contract which is continuing at the date falling 1 month after the Step-in Notice was served and which:
- 18.6.1 has created or is likely to create an immediate and serious threat to the health and safety of any service user or person; or
- 18.6.2 has resulted or is likely to result in a material interruption in the provision of any of the Services.



**Schedule 1****Implementation and Ramp-Up**

This Schedule 1 sets out:

- The ramp-up plan (“**Ramp-Up Plan**”) which confirms how the Supplier will ramp up its operating capacity: (1) as part of its Implementation Plan; and also (2) when served with a notice from the Authority to increase the Guaranteed Daily Capacity.
- The consequences of failing to achieve the stages in the Ramp-Up Plan.

This Schedule 1 should be read in conjunction with the provisions of Clause 3 of this Appendix G.

**Ramp-Up Plan<sup>2</sup>**

[The Supplier shall comply with the proposed capacity requirements in the below format:

**Format of the proposed capacity requirements**

Weeks	Wk1	Wk2	Wk3	Wk4	Wk5	Wk6	Wk7	Wk8	Wk9	Wk10
Thousand (K) per day *UP TO										

For the avoidance of doubt the proposed capacity requirements set out in the Order Form only shall apply.]

[The Supplier shall measure capacity at the Facilities as the integration of three variables in the below format:

**Format of the variables**

Capacity Variable	Description	Example
Equipment Capacity	Lab automation equipment, RT-PCR machines, liquid handling and RNA extraction equipment, autoclaves and BLS safety hoods.	Equipment for [n]K sample in activations per day.  Equipment for [n]K RNA extractions per day. Equipment for [n]K PCR preparations per day. Equipment for [n]K PCR per day.
People Capacity	Teams of trained lab operators, who have received the Dante Labs training and have previous relevant experience.	[n] trained Lab Operators. [n] full time Sr. Lab Operators

<sup>2</sup> The version included in Annex 1 to the Order Form (including any relevant tables) should be developed / tailored to reflect the requirements of the particular Contract to which the Order Form relates.

Storage Capacity	Room temperature and temperature-controlled storage capacity to store reagents and consumables for the lab operations.	measures as “number of COVID-19 tests”. Quantity of - 20 C reagents, “room temperature” consumables, plastic consumables to analyse [n] samples.
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For the avoidance of doubt the three variables set out in the Order Form only shall apply.]

The Ramp-Up Plan is based core principles aimed at achieving excellence in high-throughput laboratory operations and data analysis. These core principles shall be as set out in the Statement of Requirements or other relevant document forming part of the Specification and Tender Response Document and/or the Order Form for the Contract.

## 1 **Ramp-Up Period**

1.1 To confirm that the required level of Services are ready to commence, either as part of the Supplier’s Implementation Plan and/or in response to a request from the Authority to increase the Guaranteed Daily Capacity, the following requirements must be met:

1.1.1 The Supplier has fully integrated the Supplier Test Digital Platform with the NHS IT Test System covering the following key capabilities to the satisfaction of the Authority:

- (i) the Supplier can receive and fulfil Test Requests sent by the NHS Test Digital Platform;
- (ii) the Supplier can send Test result data to the NHS Test Digital Platform;
- (iii) the Supplier can provide real-time telemetry data (including but not limited to laboratory capacity and sufficient inventory levels of consumables) to the NHS Test Digital Platform for the purpose of monitoring and tracking events in the test lifecycle.

For the avoidance of doubt, this is a digital-only interface validation.

1.1.2 The Supplier Test Digital Platform is tested and assured in line with the requirements of the NHS Test Digital Platform.

1.1.3 The Supplier Test Digital Platform can operate at the volumes projected in the Guaranteed Daily Capacity [(which may be specified per Tier if applicable Tier levels have been specified as part of the Order Form)].

1.1.4 The Supplier has sufficient Supplier Personnel mobilised to operate the Services to the required Guaranteed Daily Capacity. To include, the Supplier and its Sub-contractors having sufficient personnel mobilised to fulfil the Test Requests, to process the Samples and to operate the platform to the required Guaranteed Daily Capacity.

1.1.5 The Facilities used to process the Samples have all the required certifications, accreditations and authorisations from the relevant regulatory bodies to process the Samples to the required quality.

1.1.6 The Facilities used to process the Samples have sufficient equipment and consumables (analysers, fridges, reagents, etc.) to process the Samples to the required Guaranteed Daily Capacity.

- 1.1.7 The Supplier has all required insurance policies in place (in accordance with Clause 14 (Insurance) of Schedule 2 of Appendix A of this Contract), Cyber Essential Plus accreditation and all required consents (to include as may be referred to as part of the Statement of Requirements forming part of the Specification and Tender Response Document for the Contract or as otherwise set out as part of the Order Form.

## **2 Additional Termination Rights**

- 2.1 Without prejudice to (and in addition to) any other rights of the Authority under the Contract, if the Supplier does not: (1) achieve the Guaranteed Daily Capacity pursuant to its Implementation Plan and associated Ramp-up Plan; and/or does not comply with and/or achieve a subsequent request from the Authority to increase the Guaranteed Daily Capacity within four (4) weeks of the Authority's request to increase such capacity, the Authority may either, in its sole discretion:

- 2.1.1 terminate the Contract immediately by issuing a Termination Notice to the Supplier; or

- 2.1.2 exercise its Step-in rights pursuant to Clause 18 of this Appendix G.

**Annex 1 to this Schedule 1 – Ramp-Up Plan<sup>3</sup>**

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<sup>3</sup> The specific Ramp-up Plan for each Contract should be included as part of the Order Form.

**Schedule 2****Exit Plan<sup>4</sup>****1 INTRODUCTION**

- 1.1 Consistent with Clause 15.9 of Schedule 2 of Appendix A, the Parties will produce an Exit Plan based on the principles set out in this Schedule 2 for the orderly transition of the Services from the Supplier to the Authority or any New Provider in the event of any expiry or earlier termination of the Contract. The Parties shall use best endeavours to agree the contents of the Exit Plan.
- 1.2 The Exit Plan shall:
- 1.2.1 address each of the issues set out in this Schedule 2 to facilitate the transition of the Services from the Supplier to the New Provider and/or the Authority and shall include measures aimed at minimising (to the Supplier's best ability) disruption in the supply of the Services and at avoiding any deterioration in the quality of delivery of the Services;
  - 1.2.2 detail how the Services will transfer to the New Provider and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Supplier or any of its Sub-contractors (where applicable);
  - 1.2.3 provide a timetable with milestones and the associated obligations of each Party in achieving such milestones, such milestones to reflect all critical issues and dependencies for carrying out and meeting the milestone obligations in the Exit Plan; and
  - 1.2.4 set out the management structure to be put in place and employed during the Exit Plan period.
- 1.3 The Exit Plan should be updated during the Term by agreement between the Parties, reflect any issues associated with the [Tier level of Guaranteed Daily Capacity], and include any changes to the Contract made under the relevant Contract change provisions. The Exit Plan must be applicable in whatever circumstances termination arises.
- 1.4 The information in the Exit Plan shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to undertake the Services.

**2 EXIT PLAN - COMMENCEMENT**

- 2.1 The Exit Plan will become effective pursuant to Clause 16 (Consequences of expiry or early termination of this Contract) of Schedule 2 of Appendix A.

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<sup>4</sup> This Schedule should be more precisely formulated, supplemented and/or adapted / amended to reflect the specific requirements of the Contract to which the Order Form relates so as to reflect the particular Assets / Facilities used to provide the Services, any relevant TUPE issues, and any other Service / Contract specific exit related issues or requirements.

- 2.2 The Parties will, from the Exit Plan becoming effective, jointly establish an Exit Group comprising staff of both Parties to manage disengagement of the Services and the Contract and to implement the provisions of the Exit Plan. Each Party is to make available sufficient resources to meet the requirements of the Exit Plan. The Exit Group will manage all the activities needed for the transfer of the Services from the Supplier to the Authority or any New Provider so that the transition is carried out as seamlessly as possible.
- 2.3 Notwithstanding anything to the contrary in the Contract, the Parties agree that during the Exit Plan period:
- 2.3.1 the Authority shall give no guarantees in relation to the volume of Services required;
- 2.3.2 the Authority shall have no obligations to pay the Contract Price or other costs to the Supplier unless the Authority places an Test Request for Tests in accordance with the Contract.

### **3 RUN-OFF PERIOD**

- 3.1 Notwithstanding that this Contract will terminate or expire at the end of the Term, the Parties recognise that Samples may continue to be sent to the Facilities. For the avoidance of doubt, for the purposes of this paragraph 3 of this Schedule 2 of this Appendix G, the end of the Term will be the date of the expiry or earlier termination of this Contract for whatever reason. The Parties agree the following in relation to Samples submitted for Testing after the end of the Term:
- 3.1.1 the Supplier and its Sub-contractors shall, for a period up to three (3) months from the end of the Term following expiry or earlier termination, continue to process and complete Tests on any Samples received and to report the Test results in accordance with The Specification and Tender Response Document;
- 3.1.2 such Testing of Samples and the reporting of Test results shall be in accordance with the standards and requirements set out in this Contract;
- 3.1.3 the Supplier shall, at the end of each month, submit an invoice to the Authority for any such processed Tests, such invoices to be in the form as agreed by the Parties and the basis of the Contract Price shall be calculated on the same basis as immediately prior to such termination or expiry; and
- 3.1.4 the Authority shall pay the appropriate Contract Price for all Samples tested and reported in the three (3) month period following expiry or termination but shall have no liability to meet any costs incurred by the Supplier thereafter. Payment of the Contract Price for this three (3) month period shall be made by the Authority in accordance with the relevant provisions of this Contract.

### **4 THE SUPPLIER'S CHARGES**

- 4.1 The Authority will continue to pay Contract Price for Goods and/or Services provided during the Exit Plan period, as referred to in the Exit Plan.



## **5 THE SUPPLIER'S RESPONSIBILITIES**

- 5.1 The Supplier's responsibilities are set out in the Contract in Clause 16 (Consequences of expiry or early termination of this Contract) of Schedule 2 of Appendix A and in any TUPE provisions applicable to exit (including any such Authority specific TUPE related extra Key Provisions forming part of the Order Form).
- 5.2 The Supplier's further responsibilities shall be those set out in the Exit Plan, as well as the following:
- 5.2.1 Training - the Supplier will provide up to two training sessions in total, which shall be delivered to the Authority or any New Provider as the Authority requests to ensure reasonably competent, suitably experienced staff to operate and deliver services similar to the Services.
  - 5.2.2 Requests – the Supplier will, for a period equalling the longer of (1) the period covered by the Exit Plan period; or, (2) three (3) months following effective date of the termination or expiry of this Contract, comply with and/or respond to any reasonable requests made to it from by the Authority.
  - 5.2.3 Staff - the Supplier will continue to meet all its staff related obligations set out in the Contract and comply particularly with any relevant TUPE provisions in respect of transferring employees. During period covered by the Exit Plan, the Supplier shall not remove or replace any member of Staff that is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing.
  - 5.2.4 Documentation and Records - the Supplier shall provide the Authority or any New Provider with all records, configuration, databases details, the technical infrastructure and operating procedures through which the Supplier provides the Services, service delivery reports and management information requested by the Authority following written notice.
  - 5.2.5 Management Procedures - both Parties must work in accordance with the management process, controls and project style defined in the current version of the Exit Plan.
  - 5.2.6 Return of the Authority's Confidential Information - in accordance with Clause 16 (Consequences of expiry or early termination of this Contract) of Schedule 2 of Appendix A and in accordance with any relevant dates in the Exit Plan.
  - 5.2.7 Ceasing use of any Authority Facilities and return of any Authority Equipment or other Assets or inventory owned by the Authority - in accordance any relevant processes and dates in the Exit Plan.
  - 5.2.8 Observation of Services - the Supplier is to permit the Authority or at its request, any New Provider [(save for a New Provider which is a direct competitor to Supplier to the extent this would result in such competitor having access to any commercially sensitive information of the Supplier)] and/or the Authority's mandated consultants or representatives (internal or third party) to have access to the Supplier Personnel to observe the operational delivery of the Services during the Exit Plan period, to enable

the Supplier to fulfil its obligations to transfer knowledge of the Services to the Authority or any New Provider.

5.2.9 Avoidance of Unnecessary Costs - the Supplier is to take all reasonable steps to co-operate with the Authority and any New Provider to prevent any avoidable costs incurred by the Authority or any New Provider as a result of the Supplier's acts or omissions in respect of the Exit Plan.

5.2.10 Retention of Records –

(i) The Supplier shall, subject to paragraph 5.2.10(ii) of this Schedule 2 of this Appendix G, retain all papers, files, records and vouchers (or copies thereof) relating to the provision of the Services and which the Supplier is entitled to keep pursuant to terms of this Contract for the period of six (6) years after the date of the termination or expiry of this Contract and thereafter shall not destroy them but deliver them to the Authority.

(ii) Notwithstanding paragraph 5.2.10(i) of this Schedule 2 of this Appendix G, if any papers, files, records or vouchers (or copies thereof) are required to be retained for a period of more than six (6) years following termination or expiry in order to comply with any relevant industry guidance or other provisions of this Contract, then the Supplier shall retain such papers, files, records or vouchers for such longer period as may be required by such guidance.

## **6 THE AUTHORITY OPTION TO PURCHASE SUPPLIER ASSETS**

6.1 In the event of the expiry or earlier termination of the Contract and, where possible, prior to the effective date of expiry or earlier termination, the Authority shall state in writing whether the Authority is interested in purchasing any Assets not already owned by the Authority, in acquiring a Lease as at the date of termination or expiry, or in having any other Assets transferred subject to the provisions of this paragraph 6 of this Schedule 1 of this Appendix G. Where the Authority has expressed an interest in purchasing or otherwise having any Assets transferred, the Supplier shall:

6.1.1 grant to the Authority (and any nominated third parties of the Authority) a licence to use the Asset from the date of expiry or termination until either the date on which title to the Asset passes to the Authority (or such person to whom the Authority may direct the Asset be transferred) pursuant to paragraph 6.3.1 of this Schedule 2 of this Appendix G below or the date specified in the Purchase Rejection Notice served pursuant to paragraph 6.3.2 of this Schedule 2 of this Appendix G below;

6.1.2 send to the Authority a list of the Assets owned by the Supplier that states, where applicable, the then current net book value of each such Asset; and

6.1.3 provide to the Authority copies of any third party contracts (including any Sub-contracts, rental contracts, licences (including software licences) or leases entered into by the Supplier which relate specifically to the Assets or Services (to include as detailed in the Asset Register)).

6.2 If the Authority does not agree the net book value of a particular Asset owned by the Supplier, the Authority shall be entitled to refer the matter for resolution by an

accountant (either jointly appointed by the Authority and the Supplier or, if the Parties cannot agree a joint appointment, appointed by the [President of the Institute of Chartered Accountants] on the application of the Authority or the Supplier) who shall act as an expert in determining both the relevant net book value and how the expert's costs shall be allocated between the Parties.

#### *Post valuation Decision to Purchase Assets*

6.3 Within five (5) Business Days after the later of (i) the net book value in respect of the Asset being agreed or determined for the purposes of this Contract in accordance with paragraph 6.2 and (ii) copies of all third party contracts relating to such Assets being provided to the Authority:

6.3.1 If the Authority wishes to purchase the Asset it shall serve a notice on the Supplier (a "**Purchase Confirmation Notice**") confirming that it wishes to purchase the Equipment at the total of the net book values of each Asset as agreed or so determined, and the date when such purchase shall take effect (the "**Asset Transfer Date**") which shall in any event be no earlier than the date of termination or expiry; or

6.3.2 If the Authority does not wish to purchase an Asset it shall serve a notice on the Supplier (a "**Purchase Rejection Notice**") to that effect.

#### *Third Party Contracts*

6.4 If the Authority requests in writing transfer of any third party contracts, then:

6.4.1 the Supplier shall use all reasonable endeavours to either:

- (i) secure the novation (or other form of transfer stipulated by the Authority) to the Authority (or such other person as the Authority shall direct in writing) of the third party contract by the date of termination or expiry or as otherwise specified by the Authority; or
- (ii) where it is not appropriate to secure a novation or other form of transfer of a third party contract, so far as it is reasonably practicable, assist the Authority (or such other person as the Authority shall direct in writing) to enter into a new agreement for the relevant on terms similar to those of the third party contract.

#### *Payment for Assets and Associated General Provisions*

6.5 The Supplier shall issue an invoice to the Authority (or such other person as the Authority shall direct in writing) for the amount payable in respect of the Assets, such invoice to be payable by the Authority (or such other person as the Authority shall direct in writing) by bank transfer in cleared funds on the Asset Transfer Date for the Asset or such other date as agreed by the Parties in writing. Title to the Asset shall pass to the Authority (or such other person as the Authority may direct in writing) upon payment being made to the Supplier for that Asset.

6.6 In the event that an Asset shall have been in good working but shall cease to be in good working as at the Asset Transfer Date it shall be deemed to be excluded from the Assets being transferred and the amount payable by the Authority (or such other person as the Authority shall direct in writing) in respect of the Asset shall be reduced

by the net book value of the relevant items and the Supplier shall continue in possession of the relevant Asset.

- 6.7 The Supplier shall indemnify and keep the Authority (or any person to whom the third party contracts may be novated or otherwise transferred) indemnified in full against all liabilities arising and duly payable in respect of the third party contracts which is attributable to the period before the date of novation / transfer.
- 6.8 If any of the third party contract is not novated or otherwise transferred by the termination or expiry date of this Contract (which may be because third party consent to the novation is refused or otherwise not obtained, or where any of the third party contracts are incapable of transfer to the Authority or such person as the Authority may direct by novation or other means):
- 6.8.1 unless and until any such third party contract is novated / otherwise transferred, the Supplier shall hold such third party contracts and any monies, goods or other benefits received thereunder as trustee for the Authority and its successors in title absolutely;
- 6.8.2 the Authority shall (or shall procure that such person as the Authority shall have directed to take the transfer or novation of the relevant agreement shall) (if such sub-contracting is permissible and lawful under the third party contract in question), as the Supplier's sub-contractor, perform all the obligations of the Supplier under such third party contract and, where sub-contracting is not permissible, the Authority shall (or shall procure that such person as the Authority shall have directed to take the transfer or novation of the relevant agreement shall) perform such obligations as agent for the Supplier; and
- 6.8.3 unless and until any such third party contract is novated or otherwise transferred, the Supplier shall (so far as it lawfully may) at the Authority's cost (or at the cost of such person as the Authority shall have directed to take the transfer or novation of the relevant agreement) give all such assistance as the Authority (or such person as the Authority shall have directed to take the transfer or novation of the relevant agreement) may reasonably require to enable the Authority or such person as the Authority shall have directed to take the transfer or novation of the relevant agreement) to enforce any rights under such related contract and (without limitation) shall provide access to all relevant books, documents and other information in relation to such third party contract as the Authority (or such person as the Authority shall have directed to take the transfer or novation of the relevant agreement) may reasonably require from time to time.

#### *Assignment of the Lease*

- 6.9 [The Authority shall notify the Supplier as to whether it requires the Supplier to assign the Lease to the Authority or such third party (e.g. New Provider) nominee as the Authority directs. To the extent reasonably possible, the Authority shall provide such notice in reasonable time prior to the effective date of the expiry or earlier termination of this Contract,]

6.10 [In the event the Authority requires the Supplier to assign the Lease to the Authority or its third party nominee by a particular date, the Supplier shall arrange such assignment on behalf of the Authority or its nominee by such date, and, in such circumstances:

6.10.1 if the Lease has a positive or zero market value (such decision to be made by the independent surveyor appointed pursuant to paragraph 6.11 below of this Schedule 2 of this Appendix G) the Supplier shall ensure such assignment of the Lease is completed with no premium; and

6.10.2 if the Lease has a negative market value (such decision to be made by the independent surveyor appointed pursuant to paragraph 6.11 below of this Schedule 2 of this Appendix G, then the Supplier shall pay such negative market value to the Authority or its nominee by way of a reverse premium.

All reasonable costs incurred by the Supplier to comply with its obligations set out in this paragraph 6.10 of this Schedule 2 of this Appendix G (excluding, for the avoidance of doubt, any reverse premium) shall be payable by the Authority and/or its nominee to the Supplier.]

6.11 [If pursuant to either paragraph 6.10.1 or 6.10.2 of this Schedule 2 of this Appendix G an independent surveyor requires appointment to determine the market value of the Lease, the Supplier and the Authority shall jointly appoint an independent surveyor with at least 5 years' experience of valuing such types of leases by agreement. In the event that the Supplier and the Authority cannot agree such appointment within five Business Days of a request received from either party by the other, either the Supplier or the Authority may make an application to the President for the time being of the Royal Institution of Chartered Surveyors to nominate a surveyor. The independent surveyor shall act as an expert and their decision shall be binding on both parties except in the case of manifest error. The costs of the independent surveyor shall be borne by the Authority.]

**Schedule 3<sup>5</sup>****Approved Sub-contractors**

<b>Supplier</b>	<b>Unit Type</b>	<b>Location</b>	<b>Incorporated Name</b>	<b>Company Number</b>	<b>VAT number</b>

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<sup>5</sup> A completed version of this Schedule should be included as part of the Order Form.

## Appendix H

### Further Optional Additional Call-off Terms and Conditions

*Guidance: These further optional additional provisions enable the Authority to add further optional provisions, as applicable to the relevant Order*

#### **1 TUPE applies at the commencement of the provision of Services**

- 1.1 The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the extra Key Provisions as set out in Annex A (Order Specific Key Provisions) relating to TUPE and pensions shall apply to such transfer.

*Guidance: Clause 1 is required if any staff will transfer to the Supplier at the commencement of the Services. If staff will transfer on the commencement of the Services check this Clause 1 as part of the Order Form and ensure that appropriate extra Key Provisions are added to the Order Form accordingly (these Key Provisions should make it clear that they replace Clause 8 of Schedule 1 of Appendix A for the purposes of that Contract). For example, central government Participating Authorities may require the relevant TUPE on exit related provisions from the Cabinet Office Model Services Contract to apply (see (<https://www.gov.uk/government/publications/model-services-contract>), as may be supplemented, amended or replaced to reflect any supplemental requirements of the specific Contract to which the Order Form relates. By way of further example NHS Trusts may require the relevant TUPE on exit related provisions from the standard NHS Terms and Conditions for the Provision of Services to apply (see <https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services>), as may be supplemented, amended or replaced to reflect any supplemental requirements of the specific Contract to which the Order Form relates.*

#### **2 TUPE on exit**

- 2.1 The provisions at Clause 17 of Schedule 2 of Appendix A (to include any associated definitions) shall be supplemented, amended and/or replaced as set out in Annex A (Order Specific Key Provisions) to the Order Form to reflect the supplementary requirements of the Authority relating to this Contract.

*Guidance: Clause 2 is required if any replacement, amended and/or supplementary TUPE provisions are required on Exit. For example, some central government Participating Authorities may require the relevant TUPE related provisions from the Cabinet Office Model Services Contract to apply (see (<https://www.gov.uk/government/publications/model-services-contract>), as may be supplemented, amended or replaced to reflect the requirements of the specific Contract to which the Order Form relates. Where this is the case, check this Clause 2 as part of the Order Form and ensure that appropriate extra Key Provisions are added to the Order Form accordingly.*

#### **3 Different levels and/or types of insurance**

- 3.1 The Supplier shall put in place and maintain in force the insurances with the minimum cover per claim as set out in Annex A (Order Specific Key Provisions) to the Order Form in the following format:



*Format of Table for Order Form:*

<b>Type of insurance required for this Contract</b>	<b>Minimum cover per claim</b>
<b>[Employer's liability insurance]</b>	<b>[To be inserted]</b>
<b>[Public liability insurance]</b>	<b>[To be inserted]</b>
<b>[Product liability]</b>	<b>[To be inserted]</b>
<b>[Professional indemnity insurance]</b>	<b>[See Order Form]</b>
<b>[Insert other types of insurance as appropriate]</b>	<b>[To be inserted]</b>

*Guidance: This Clause relates to Clause 14 of Schedule 2 of Appendix A. Clause 14 of Schedule 2 of Appendix A requires the Supplier to have in place a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law in respect of employer's liability, public liability, professional indemnity, and product liability insurance. If this default position is not appropriate in relation to the nature and risks of the particular Order, you need to check this Clause 3 as part of the Order Form and insert the table as an extra Key Provision in Annex A of the Order Form confirming the different types and/or levels of insurance the Supplier must have in place.*

#### **4 Induction training for Services**

- 4.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.

*Guidance: If you require staff of the Supplier to undertake training provided by the Authority, check this Clause 4 as part of the Order Form. This may apply when the Services are provided on site and staff of the Supplier may require training in any site specific policies or procedures.*

#### **5 Further Authority obligations**

- 5.1 The Authority's Obligations set out as part of Annex A (Order Specific Key Provisions) to the Order Form shall apply to this Contract.

*Guidance: For some Orders, there may be specific responsibilities on and requirements of your own staff. These could include individuals working alongside the Supplier's staff to develop processes or to ensure the Supplier's staff have an understanding of current systems and processes. Alternatively, where prototypes or samples of any Goods are to be reviewed as part of the manufacturing process this may involve your own staff working alongside the Supplier's staff to review and comment on such prototypes/samples. If there are specific responsibilities on your own staff or other Authority responsibilities, check this Clause 5 as part of the Order Form and include these further obligations as part of Annex A to the Order Form.*

## **6 Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services**

- 6.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to this Clause 6 of this Appendix H and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. This Clause 6 of this Appendix H shall continue notwithstanding the expiry or earlier termination of this Contract.

*Guidance: Clause 11 of Schedule 2 of Appendix A is structured so that the Supplier owns any intellectual property rights in the output of the Services and the Authority is granted a licence of the necessary usage rights. For most Contracts this will be the approach that attracts the most suppliers and provides best value for money.*

*In exceptional circumstances, and if the relevant requirements have not already been addressed as part of another Appendix / relevant extra Key Provisions also applicable to this Contract, it may be appropriate for the Authority to own the intellectual property rights in the outputs of the Services. If there will be intellectual property created as part of the Services and it is appropriate for you to own such rights, check the box above. This does not transfer to your contracting authority any intellectual property rights in the Goods.*

## **7 Inclusion of a Change Control Process**

- 7.1 Any changes to this Contract, including to the Goods and/or Services, may only be agreed in accordance with the Change Control Process set out as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: Clause 21 of Schedule 2 of Appendix A states that any changes to the Goods, Services or other parts of the Contract can only be implemented if agreed between the Authority and the Supplier. In Contracts where complex changes may be required then a more detailed change control process might be appropriate. Where you require a detailed change control process, check this Clause 7 and include the change control process as part of Annex A.*

## **8 Authority step-in rights**

- 8.1 If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise the step-in rights set out as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: Exceptionally, for certain types of business critical services, if the Supplier cannot provide the Services or fails to provide them to an acceptable standard, you may want the right to step into the position of the Supplier to provide the Services yourself or to appoint a third party to do so to the extent your relevant requirements have not already been addressed as part of another Appendix / relevant extra Key Provisions also applicable to this Contract.*

*Before including this right in the Contract you need to consider if in practice it is possible to step into the shoes of the Supplier and provide the Services yourself or through a third party. If not, the inclusion of this right may attract a risk premium from suppliers to account for the risk of step-in being triggered, but with no corresponding benefit as the right is unlikely to be used.*

*Where step-in rights are considered proportionate to the risks of critical service failure and are thought to be a realistic, practical and value for money solution to mitigating these risks, check this Clause 8 as part of the Order Form and include the required step-in provisions as part of Annex A to the Order Form. Such provisions must include the rights required and set out how the step-in and step-out process will operate.*

## **9 Guarantee**

- 9.1 Promptly (and in any event within 10 Business Days) following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the call-off process followed by the Authority. Failure to comply with this Clause shall be an irremediable breach of this Contract.

*Guidance: If you require that a third party guarantees the Supplier's performance, this must be in the call-off documentation and you should check this Clause 9 as part of the Order Form. This Clause then leads to a right of termination should signature of the guarantee be delayed.*

## **10 Termination for convenience**

- 10.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time in accordance with any notice period as may be referred to as part of the Order Form as an extra Key Provision. Where this Clause has been checked as part of the Order Form, but the Order Form does not refer to any such notice period, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time giving three (3) months written notice.
- 10.2 Should the Authority terminate this Contract in accordance with Clause 10.1 of this Appendix H, then the Authority shall pay to the Supplier the termination sum (if any) referred to as part of the Order Form as an extra Key Provision.

*Guidance: If checked as part of the Order Form, this Clause entitles you, as the Authority, to terminate the Contract for no reason on a given period of notice, as proportionate to the particular Goods or Services. Unless otherwise set out in the Order Form as an extra Key Provision in Annex A, the notice period shall be 3 months. The Clause should not be checked as a matter of course or where such a right already exists as part of another Appendix applicable to this Contract, but exceptionally where the contracting authority considers that such flexibility is reasonable and proportionate in the given circumstances.*

*For some Contracts, particularly where there is an initial investment from the Supplier which will be recovered in monthly charges over the contract term (e.g. as is normally the case with contracts for managed equipment services and reagent rental), suppliers will expect to be able to recover some costs should you terminate without cause. This is reasonable and if this is not included you may find suppliers are reluctant to supply without a mechanism to offset this risk.*

*Where it is appropriate for the contracting authority to pay certain costs should you terminate without cause, you will need to address the termination sum payable in Annex A to the Order Form as an extra Key Provision.*

## **11 Pre-Acquisition Questionnaire**

- 11.1 The Supplier warrants and undertakes that its responses to the Pre-Acquisition Questionnaire issued by the Authority are correct and will remain correct and binding on the Supplier until no longer applicable notwithstanding any earlier expiry or termination of this Contract. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that the foregoing warranty and undertaking in this Clause 11.1 of this Appendix H has been breached or there is a risk that it may be breached. Should the Supplier be in breach of this warranty, the Supplier

shall take all such actions necessary to put the Authority in such a position as if the Supplier had continued to comply fully with the warranty.

*Guidance: If you have asked suppliers to complete a Pre-Acquisition Questionnaire to provide information about the goods being considered for purchase, then this Clause should be checked as part of the Order Form to ensure that the Supplier will be bound by any responses it provided in the Pre-Acquisition Questionnaire. If suppliers have not completed a Pre-Acquisition Questionnaire then this Clause is not required.*

## **12 Time of the essence (Goods)**

- 12.1 Time is of the essence as to any delivery dates in respect of the Goods under this Contract and if the Supplier fails to meet any such delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2 of Appendix A.

*Guidance: This Clause can be used where, exceptionally, the delivery dates under the particular Contract are critical and you require the right to terminate the Contract if such dates are not met. Where time of the essence is required, this Clause 12 should be checked as part of the Order Form.*

## **13 Time of the essence (Services)**

- 13.1 Time is of the essence as to any critical timescales relating to the Services under this Contract and if the Supplier fails to meet any such critical timescales this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2 of Appendix A. For the purposes of this Contract, a “critical timescale” shall be any timescale described as such as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: This Clause can be used where, exceptionally, certain timescales relating to the Services under the particular Contract are critical and you require the right to terminate the Contract if such timescales are not met. Where time of the essence is required in relation to such critical timescales, this Clause 13 should be checked as part of the Order Form and the critical timescales detailed in Annex A to the Order Form.*

## **14 Specific time periods for inspection**

- 14.1 For the purposes of Clause 3.2 of Schedule 2 of Appendix A, the Authority shall visually inspect the Goods within any specific period referred to as part of the Order Form as an extra Key Provision following the date of delivery of the relevant Goods.

*Guidance: If you are to visually inspect the Goods within a fixed period of time for the purposes of Clause 3.2 of Schedule of Appendix A (e.g. to reflect market practice in certain industry sectors), this Clause 14 should be checked as part of the Order Form and the time period included as part of Annex to the Order Form as an extra Key Provision.*

**15 Specific time periods for rights and remedies under Clause 3.6 of Schedule 2 of Appendix A**

- 15.1 The Authority's rights and remedies under Clause 3.6 of Schedule 2 of Appendix A shall cease within any specific period referred to as part of the Order Form as an extra Key Provision following the date of delivery of the relevant Goods.

*Guidance: If the Authority's rights under Clause 3.6 of Schedule 2 of Appendix A in relation to defective goods are to be limited to a fixed time period (e.g. to reflect market practice in connection with certain Goods), this Clause 15 should be checked as part of the Order Form and the time period included as part Annex A of the Order Form as an extra Key Provision.*

**16 Right to terminate following a specified number of material breaches**

- 16.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least two (2) previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the third Breach Notice.

*Guidance: This Clause is aimed at providing a termination right where one of the Parties has committed a number of material breaches whether or not they have been remedied. The aim of this Clause is to avoid a situation where one Party can keep breaching the Contract so long as it rectifies each material breach, as this can lead to nagging poor performance and additional time and resources being incurred by the non-breaching Party to manage such breaches. Where this Clause 16 is required you should check it as part of the Order Form.*

**17 Expert Determination**

- 17.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 1 to this Appendix H.
- 17.2 For the avoidance of doubt, where this Clause 17 of this Appendix H is checked as part of the Order Form, all Disputes shall be dealt in accordance with Clause 17.1 of this Appendix H above and the entirety of Clause 22 of Schedule 2 of Appendix A shall be deemed not to apply and deleted in its entirety from this Contract.

*Guidance: This Clause is required when the expert determination process at Schedule 1 is to be adopted in place of the dispute process set out at clause 22 of Schedule 2. Further guidance on the use of expert determination can be found at <https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services> if you scroll down to "Expert determination: briefing note". Where this Clause 17 is required you should check it as part of the Order Form.*



## 18 Consigned Goods

- 18.1 The Authority may request for Goods to be delivered on a consignment basis ("**Consignment Request**"). Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Specification and Tender Response Document and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the "**Consigned Goods**" (meaning Goods to be delivered by the Supplier in response to a Consignment Request prior to their use by the Authority) in accordance with Clause 2 of Schedule 2 of Appendix A in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.
- 18.2 For the avoidance of doubt, Clause 3 of Schedule 2 to Appendix A shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 18.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 18.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
- 18.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
  - 18.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
  - 18.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
  - 18.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 18.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a monthly (or such other period as agreed by the Parties in writing) sales report ("**Sales Report**") detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.
- 18.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).

- 18.7 Each month (or such other period as agreed by the Parties in writing) the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form as an extra Key Provision for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:
- 18.7.1 the Contract Price of the Minimum Quantity in the relevant period; and
  - 18.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 18.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 18.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 18.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within three (3) months (or such other period as agreed by the Parties in writing) of their delivery to the Authority and/or which have a remaining shelf life of less than six (6) months (or such other remaining shelf life period as agreed by the Parties in writing).



- 18.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 2.8 of Schedule 2 of Appendix A.
- 18.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 18.8 and 18.9 of this Appendix H shall then apply accordingly and this Clause, together with Clauses 18.8 and 18.9 of this Appendix H, shall survive the expiry or earlier termination of this Contract for these purposes.

*Guidance: This Clause 18 can be used where a stock of Goods is to be provided by the Supplier to the Authority on a consignment basis. This Clause reflects a relatively straightforward approach to consignment stock. Where this Clause 18 is required you should check it as part of the Order Form. To the extent a different approach is required for your particular Contract, you should include appropriate extra Key Provisions rather than checking this Clause.*

## **19 Improving visibility of Sub-contract opportunities available to Small and Medium Size Enterprises and Voluntary, Community and Social Enterprises**

- 19.1 The Supplier shall:
- 19.1.1 subject to Clause 19.3 of this Appendix H, advertise on “Contracts Finder” (meaning the Government’s publishing portal for public sector procurement opportunities of that name) all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
  - 19.1.2 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;
  - 19.1.3 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;
  - 19.1.4 provide reports on the information at Clause 19.1.3 of this Appendix H to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 19.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 19.2 Each advert referred to at Clause 19.1.1 of this Appendix H 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.

- 19.3 The obligation at Clause 19.1.1 of this Appendix H shall only apply in respect of Sub-contract opportunities arising after the Contract award date.
- 19.4 Notwithstanding Clause 19.1 of this Appendix H, the Authority may by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

*Guidance: Please see Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) for guidance on the application of this Clause 19. Where this Clause 19 is required you should check it as part of the Order Form.*

## 20 Management Charges and Information

- 20.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete reports ("**SME Management Information (MI) Reports**") to the Authority which incorporate the data described in the MI reporting template ("**MI Reporting Template**") at Annex C to Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) which is:
- 20.1.1 the total contract revenue received directly on the specific Contract;
  - 20.1.2 the total value of Sub-contracted revenues to Small and Medium Size Enterprises ("**SMEs**") (as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises) and Voluntary, Community and Social Enterprises ("**VCSEs**"); and
  - 20.1.3 the total value of Sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs).
- 20.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the MI Reporting Template which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days notice in writing of any such change and shall specify the date from which it must be used.
- 20.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

*Guidance: Please see Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) for guidance on the application of this Clause 20. Where this Clause 20 is required you should check it as part of the Order Form.*

## 21 COVID-19 related enhanced business continuity provisions

- 21.1 Subject to Clause 21.2 of this Appendix H, the Supplier's Business Continuity Plan and, where required, its implementation must ensure the continuity of the supply of the Goods and/or the provision of the Services under this Contract in all circumstances where there is a COVID-19 related Business Continuity Event and the text in Clause 6.4 of Schedule 2 of Appendix A to "use reasonable endeavours to" shall be deemed deleted for the purposes of any COVID-19 related Business Continuity Events. For the avoidance of doubt, to the extent that the Supplier fails to ensure such continuity, it shall be deemed not to have fulfilled its business continuity obligations pursuant to Clause 6 of Schedule 2 of Appendix A for the purposes of Clause 23.2.1 of Schedule 2 of Appendix A.
- 21.2 To the extent only that the Supplier is prohibited from implementing its Business Continuity Plan (in full or part) due to any Laws or Guidance, it shall be relieved of its obligations under Clause 21.1 of this Appendix H.

*Guidance: This Clause should only be used for Contracts where the Supplier is required to supply COVID-19 related Goods and/or Services in all circumstances during a pandemic and so needs to have in place appropriate enhanced business continuity plans to enable it to do so. Where this Clause 21 is required you should check it as part of the Order Form.*

## 22 Buffer stock requirements

- 22.1 The Supplier shall comply with any buffer stock requirements. For the purposes of this Contract, a "buffer stock requirement" shall be any stock keeping requirement (to include any related notification requirements) described as such as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: This Clause can be used where there are any buffer stock requirements relating to the Contract. Where there are such requirements relating to the Contract, this Clause 22 should be checked as part of the Order Form and the precise buffer stock requirements detailed in Annex A to the Order Form. Buffer stock requirements may be relevant to both Goods (e.g. where the Order relates to critical Goods and the Authority wishes for a level of buffer stocks to be held in a specific location / territory to mitigate against any risks identified in relation any supply chains) and Services (e.g. where critical Services depend on certain consumable items / replacement parts being available and the Authority wishes for a level of buffer stocks to be held in a specific location / territory to mitigate against any risks identified in relation any supply chains).*

## 23 Modern slavery

- 23.1 To the extent not already required by any other provisions of this Contract, the Supplier shall comply with the requirements of this Clause 23 of this Appendix H. To the extent of any conflict between this Clause 23 of this Appendix H and any provisions relating to modern slavery in Appendix A, the provisions of this Clause 23 of this Appendix H shall prevail to the extent of such conflict.
- 23.2 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with:
- 23.2.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and

- 23.2.2 the Authority's anti-slavery policy as provided to the Supplier by the Authority from time to time ("**Anti-Slavery Policy**").
- 23.3 The Supplier shall:
- 23.3.1 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;
  - 23.3.2 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;
  - 23.3.3 upon request from the Authority, 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;
  - 23.3.4 maintain a complete set of records to trace the supply chain of all goods and services purchased and/or supplied by the Supplier in connection with all contracts or framework agreements with the Authority;
  - 23.3.5 implement a system of training for its employees to ensure compliance with the Slavery Act; and
  - 23.3.6 ensure that any Sub-contracts contain anti-slavery provisions consistent with the Supplier's obligations under this Clause 23 of this Appendix H.
- 23.4 The Supplier undertakes on an ongoing basis that:
- 23.4.1 it conducts its business in a manner consistent with all applicable Laws including the Slavery Act and all analogous legislation in place in any part of the world in which its supply chain operates;
  - 23.4.2 its response to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
  - 23.4.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it (including any Staff):
    - (i) has been convicted of any offence involving slavery or trafficking; or
    - (ii) has been, or is currently, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence committed regarding slavery or trafficking,

not already notified to the Authority in writing in accordance with Clause 23.5 of this Appendix H.

- 23.5 The Supplier shall notify the Authority as soon as it becomes aware of:
- 23.5.1 any breach, or potential breach, of the Anti-Slavery Policy; or
  - 23.5.2 any actual or suspected slavery or trafficking in its supply chain.
- 23.6 If the Supplier notifies the Authority pursuant to Clause 23.5 of this Appendix H, 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 Contract.
- 23.7 If the Supplier is in breach of Clause 23.3 of this Appendix H or the undertaking at Clause 23.4 of this Appendix H, in addition to its other rights and remedies provided under this Contract, the Authority may:
- 23.7.1 by written notice require the Supplier to remove from performance of any contract or framework agreement with the Authority (including this Contract) any Sub-contractor, Staff or other persons associated with it whose acts or omissions have caused the breach; or
  - 23.7.2 terminate this Contract by issuing a Termination Notice to the Supplier.

*Guidance: Please see Procurement Policy Note 05/19: Tackling Modern Slavery in Government Supply Chains ( <https://www.gov.uk/government/publications/procurement-policy-note-0519-tackling-modern-slavery-in-government-supply-chains>) for further guidance on modern slavery issues. Where this Clause 23 is required you should check it as part of the Order Form.*

## **Schedule 1**

### **Expert Determination**

#### **1 Dispute Process**

- 1.1 During any Dispute, including a Dispute as to the validity of the 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).
- 1.2 In the case of a Dispute 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 shall follow the procedure set out in this Schedule 1 of this Appendix H.
- 1.3 In the event of a Dispute either Party may serve a notice of dispute (“**Dispute Notice**”) on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
  - 1.3.1 the material particulars of the Dispute; and
  - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority’s Contract Manager and the Supplier’s Contract Manager (together the “**Contract Managers**”).
  - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the “**Dispute Meeting**”).
  - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
  - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1 of Appendix A, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in paragraph 1.4.2 of this Schedule 1 of this Appendix H.
  - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in paragraph 1.4 of this Schedule 1 of this Appendix H has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to paragraph 1.6 of this Schedule 1 of this Appendix H). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to paragraph 1.6 of this Schedule 1 of this Appendix H.



- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:
- 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
  - 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an “**Expert**”). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen’s Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in paragraph 1.6.1 of this Schedule 1 of this Appendix H (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
  - 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in paragraph 1.6.5 of this Schedule 1 of this Appendix H).
  - 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he or she sees fit.
  - 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
  - 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
  - 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this paragraph 1.6.7 of this Schedule 1 of this Appendix H. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this Schedule 1 of this Appendix H in such proportions

as the Expert shall order. In the absence of such order such third party costs will be paid equally.

- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business Days of the Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.
  - 1.6.9 The Expert’s Decision shall include reasons.
  - 1.6.10 The Parties agree to implement the Expert’s Decision within five (5) Business Days of the Expert’s Decision being provided to them or as otherwise specified as part of the Expert’s Decision.
  - 1.6.11 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.
  - 1.6.12 The Parties will pay the Expert’s costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
  - 1.6.13 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
- 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Goods and/or Services; or
  - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to paragraph 1.7 of this Schedule 1 of this Appendix H, neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 1 of this Appendix H have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert’s Decision.
- 1.9 This Schedule 1 of this Appendix H shall survive the expiry of or earlier termination of this Contract for any reason.