

DHSC Terms and Conditions for the Supply of Goods

The Authority	The Department of Health and Social Care Quarry House Leeds LS2 7UE
The Supplier	Honeywell Safety Products (UK) Ltd Company Registration Number: 01093827 Honeywell House Skimped Hill Lane Bracknell Berkshire RG12 1EB
Date	7 May 2020
Type of Goods	Honeywell SuperOne 3205 - FFP2 NR D Honeywell SuperOne 3207 FFP3 D NR

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

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Goods on the terms of this Contract. For the avoidance of doubt, the Contract consists of the terms set out in the Order Form and the Schedules, together with the annexes as stated.

The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Additional Special Conditions

Order Form

1. Contract Reference	N/A												
2. Date	7 May 2020												
3. Authority	The Department of Health and Social Care Quarry House Leeds LS2 7UE												
4. Supplier	Honeywell Safety Products (UK) Ltd Company Registration Number: 01093827 Honeywell House Skimped Hill Lane Bracknell Berkshire RG12 1EB												
5. The Contract	<p>The Supplier shall supply the deliverable described below on the terms set out in this Order Form and the Schedules.</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3.</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <p>Please do not attach any supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</p>												
6. Deliverables	<p>Supply of the following goods:</p> <p>Honeywell SuperOne 3205 - FFP2 NR D Honeywell SuperOne 3207 FFP3 D NR</p> <p>The minimum order is as follows:</p> <table><thead><tr><th>Month of Manufacturing</th><th>Month</th><th>Quantities of Goods (Thousands)</th></tr></thead><tbody><tr><td>Jul-20</td><td>1</td><td></td></tr><tr><td>Aug-20</td><td>2</td><td></td></tr><tr><td>Sep-20</td><td>3</td><td></td></tr></tbody></table>	Month of Manufacturing	Month	Quantities of Goods (Thousands)	Jul-20	1		Aug-20	2		Sep-20	3	
Month of Manufacturing	Month	Quantities of Goods (Thousands)											
Jul-20	1												
Aug-20	2												
Sep-20	3												

Oct-20	4		
Nov-20	5		
Dec-20	6		
Jan-21	7		
Feb-21	8		
Mar-21	9		
Apr-21	10		
May-21	11		
Jun-21	12		
Jul-21	13		
Aug-21	14		
Sep-21	15		
Oct-21	16		
Nov-21	17		
Dec-21	18		

The Supplier can satisfy its obligations under the Contract by supplying either or in combination the FFP2 or FFP3 model. However, starting from October 2020 and subject to the availability of the relevant raw material, DHSC can specify the quantity of each model its desires to purchase by giving a two (2) months prior written notice to Supplier. The Supplier acknowledges that demand for the FFP3 model (from October 2020 onwards) is likely to be higher than demand for the FFP2 model.

Delivered in accordance with the following instructions:

In the event that the Supplier is in a position to make delivery earlier than the above delivery dates, the Supplier will notify the Authority and the parties may agree expedited delivery.

Packaging Instructions: the inclusion in English of the following :

- Supplier name (and code)
- Purchase Order number
- Part number / NPC code (NHS specific code)
- Detailed product description
- Quantity (total)
- Quality status (i.e. approved, certification status etc.)
- Any product expiration dates
- Any other contract reference

Delivery dates:

As agreed between the Authority and the Supplier.

Delivery Address:

Clipper Logistics plc
Daventry DC

	Danes Way Dirft Daventry NN6 7GX
7. Specification	The specification of the Deliverables is as attached.
8. Term	The Term shall commence on 1 st July 2020. And the Expiry Date shall be 1 st January 2022, unless it is otherwise extended or terminated in accordance with the terms and conditions of the contract.
9. Charges	The Charges for the Deliverables are: HONEYWELL SuperOne 3205 FFP2 - [REDACTED] (per unit) HONEYWELL SuperOne 3207 FFP3- [REDACTED] (per unit)
10. Payment	All invoices must be sent quoting a valid purchase order number to: mb-paymentqueries@dhsc.gov.uk Within 10 Business Days of receipt of your countersigned copy of the Contract, we will send you a unique Purchase Order number (the “PO Number”). You must in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non- compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to: mb-paymentqueries@dhsc.gov.uk
11. Authority Authorised Representative(s)	For general liaison your contact will continue to be: [REDACTED] or, in their absence, [REDACTED]



12. Supplier's Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>[REDACTED]</p> <p>or, in their absence,</p> <p>[REDACTED]</p>	
13. Address for notices	<p>Authority:</p> <p>Department of Health & Social Care Quarry House Leeds LS2 7UE</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>Supplier:</p> <p>Honeywell Safety Products (UK) Ltd Honeywell House Skimped Hill Lane Bracknell Berkshire RG12 1EB</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>With a copy to:</p> <p>Honeywell Safety And Productivity Solutions 300 S. Tryon Street, Suite 500 Charlotte, NC 28202 (USA)</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>
14. Key personnel	<p>Authority:</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p>
15. Procedures and Policies	<p>The Authority may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclose and Barring Service check. The supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a "Relevant conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>	



16. Right of First Refusal	The Supplier shall notify the Authority if, at any time during the Term of the Contract, the Supplier makes capital investments to increase the production capacity of the factory where the Goods that are the subject to this Contract are being manufactured. Should that occur, the Authority shall be given the first opportunity to enter into a long-term supply contract with the Supplier for the purchase of additional Goods from the factory during the Term of the Contract.
17. Testing of Goods/Deliverables	In relation to the Goods, the Supplier shall by dates agreed in writing with the Authority submit to the Authority (or such third party as the Authority may notify) for approval agreed quantities of pre-production samples of the Goods in question (" Pre- Production Samples "), such samples to be manufactured in conformance with the Specification; and such quantities of the Goods for testing in a healthcare environment that the Authority may reasonably require. The Authority's approval of the Pre-Production Samples constitutes confirmation by the Supplier that the Goods shall be manufactured in conformity with those samples. The Supplier shall ensure that all such Goods manufactured include a type and serial number or batch number or other element allowing identification.

Signed by the authorised representative of THE AUTHORITY

Name:	Signature:	DocuSigned by: B3B506C9632B439...
Position:	Deputy Director	Date	07-May-2020

Signed by the authorised representative of THE SUPPLIER

Name:	Signature	DocuSigned by: 17A7ECAA6D47483...
Position:	Director	Date	07-May-2020

Schedule 1

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 and 2 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 3 to 11 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Order of precedence

- 2.1 Subject always to Clause 1.10 of Schedule 3 should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
 - 2.1.1 Order Form
 - 2.1.2 Schedule 1: Key Provisions;
 - 2.1.3 Schedule 2: General Terms and Conditions;
 - 2.1.4 Schedule 3: Definitions and Interpretations;
 - 2.1.5 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.
- 2.2 For the avoidance of doubt, the Order Form 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 In these Terms and Conditions. Should there be a conflict between these parts of the Order Form, 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.

3 Quality assurance standards ☒ (only applicable to the Contract if this box is checked and the standards are listed)

- 3.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply, and/or installation of the Goods: **EN149.2001+A1:2009.**
- 4 Purchase Orders ☒ (only applicable to the Contract if this box is checked)**
- 4.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.
- 5 Time of the essence ☐ (only applicable to the Contract if this box is checked)**
- 5.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 12.4(i) of Schedule 2.
- 6 Specific time periods for inspection ☒ (only applicable to the Contract if this box is checked and Clause 11.1 of this Schedule 1 is completed)**
- 6.1 The Authority shall visually inspect the Goods within 7 days which any inspection must be carried out of the date of delivery of the relevant Goods.
- 7 Specific time periods for rights and remedies under Clause 4.6 of Schedule 2 ☐ (only applicable to the Contract if this box is checked and Clause 7.1 of this Schedule 1 is completed)**
- 7.1 The Authority's rights and remedies under Clause 4.6 of Schedule 2 shall cease **[insert date]** from the date of delivery of the relevant Goods.
- 8 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 is completed)**
- 8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on 3 months' written notice.
- 9 Right to terminate ☐ (only applicable to the Contract if this box is checked)**
- 9.1 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 (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.

10 Consigned Goods ☐ (only applicable to the Contract if this box is checked)

- 10.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form 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 in accordance with Clause 2 of Schedule 2 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.
- 10.2 For the avoidance of doubt, Clause 4 of Schedule 2 shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 10.3 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.
- 10.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
- 10.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
 - 10.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
 - 10.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
 - 10.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 10.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each [week/month/quarter/other agreed period] 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.
- 10.6 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).
- 10.7 Each [week/month/quarter/other agreed period] 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 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:

10.7.1 the Contract Price of the Minimum Quantity in the relevant period; and

10.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.

- 10.8 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.
- 10.9 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.
- 10.10 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 [*insert period*] of their delivery to the Authority and/or which have a remaining shelf life of less than [*insert period*].
- 10.11 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 3.2 of Schedule 2.
- 10.12 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 10.8 and 10.9 of this Schedule 1 shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 10, shall survive the expiry or earlier termination of this Contract for these purposes.

11 Electronic product information ☐ (only applicable to the Contract if this box is checked)

- 11.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 11.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same.
- 11.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information.
- 11.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Authority's contracts from time to time.
- 11.5 Before any publication of the Product Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval.
- 11.6 If requested in writing by the Authority, and to the extent not already agreed as part of writing, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

12 Supply of PPE Goods ☒ (only applicable to the Contract if this box is checked)

Regulatory Requirements

- 12.1 The Supplier acknowledges and understands that when procuring PPE the Authority is required to ensure the PPE Goods are compliant with and meet applicable legal and regulatory requirements.
- 12.2 The Supplier shall supply the PPE Goods to Authority in accordance with the terms of this Contract and in accordance with the relevant requirements of applicable laws and regulations applicable to the supply of PPE, including, as applicable, the EU PPE Regulation 2016/425 and the Personal Protective Equipment (Enforcement) Regulations 2018 (together the "**PPE Laws**").
- 12.3 Save in relation to any PPE Goods for which the Supplier has approval in accordance with the cross-Government Decision Making Committee and without prejudice to the generality of clause 12.2, the Supplier shall ensure for PPE Goods supplied:
 - 12.3.1 the appropriate conformity assessment procedure(s) applicable to the PPE Goods have been followed;

12.3.2 all declarations of conformity and approvals required by PPE Laws are in place prior to the delivery of any PPE Goods to the Authority;

12.3.3 where required by PPE Laws, there is a CE mark affixed to the PPE Goods in accordance with the PPE Laws; and

12.3.4 where, necessary current EC-type examinations certificates are in place for the PPE Goods.

12.4 If there are any PPE Goods supplied to the Authority hereunder that require a CE mark under more than one set of regulations, due to the nature of those PPE Goods, including and not limited to:

- PPE Laws;
- Control of Lead at Work Regulations 2002;
- Ionising Radiations Regulations 2017;
- Control of Asbestos Regulations 2012;
- Control of Substances Hazardous to Health Regulations 2002; and
- any other relevant regulations,

the Supplier shall ensure that the CE marking for any such PPE Goods is affixed in accordance with the relevant requirements and shall indicate that the PPE Goods also fulfils the provisions of that other regulation or regulations.

Goods bought to the market before 21 April 2019

12.5 The Supplier shall provide details, including any EC-type examination certificates and approval decisions issued under Directive 89/686/EEC and Directive 93/42/EEC (if applicable), and corresponding national implementing legislation, of any PPE Goods supplied under this Contract that have been placed on the market before 21 April 2019 and products already in the distribution chain by that date confirming that these can continue to be supplied as PPE to the Authority until 21 April 2023, unless their certificate or approval will expire before that date.

Other Specific Requirements

12.6 The Supplier shall offer to the Authority spares and consumables required for any of the PPE Goods supplied to the Authority. The Supplier agrees any charging rate for the spares and consumables shall be inclusive of all packaging and standard delivery.

Schedule 2

General Terms and Conditions

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26. General

1. Supply of Goods

- 1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:
- 1.1.1 promptly and in any event within any time limits as may be set out in any this Contract;;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 using reasonable skill and care in their delivery and supply;
 - 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
 - 1.1.5 in accordance with any quality assurance standards as set out in the Key Provisions and/or in the Order Form.
 - 1.1.6 in accordance with the Law and with Guidance;
 - 1.1.7 in accordance with Good Industry Practice; and
 - 1.1.8 Not used.
 - 1.1.9 in a professional and courteous manner.

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

2 Delivery

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions set out in an Order Form or a Purchase Order, or as otherwise agreed with the Authority in writing.

Delivery and collection

- 2.2 Delivery dates are estimates subject at all times to delays requested or caused, directly or indirectly, by the Authority. The Supplier will attempt to meet requested delivery dates. However, if the Supplier cannot meet Authority's delivery date, the Supplier will notify the Authority of this. Delivery shall be to the location set out in the Order Form.

Delivery note

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

Part deliveries

- 2.4 Deliveries may be made in partial shipments. Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates.

Transport and other related costs

- 2.5 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods

Use of third party carriers

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

3 Passing of risk and ownership

- 3.1 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract.
- 3.2 Ownership of the Goods shall pass to the Authority on the earlier of:
- 3.2.1 full payment for such Goods; or
- 3.2.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3 of this Schedule 2, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.
- 3.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

4. Inspection, rejection, return and recall

- 4.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 and subject to Clause 4.7 of this Schedule 2, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). Goods will be presumed accepted unless the Authority provides written notice of rejection explaining the basis for rejection within that period.
- 4.3 The Supplier will have a reasonable opportunity to repair or replace Rejected Goods, at its option. The Supplier assumes shipping costs to the Supplier's designated facility for the return of properly rejected Goods.
- 4.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on collection by the Supplier in accordance with Clause 4.3 of this Schedule 2;
- 4.5 Not used.
- 4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the

Authority's discretion:

- 4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 4.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.4 of this Schedule 2.
- 4.7 The Supplier shall be relieved of its liabilities under Clause 4.2 of this Schedule 2 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 4.8 The Authority's rights and remedies under Clause 4.6 of this Schedule 2 shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out in the Key Provisions, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Order Form.
- 4.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("Requirement to Recall") in respect of the Goods, the Supplier shall:
- 4.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;
- 4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 2;
- 4.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and
- 4.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

5. The Authority's obligations

- 5.1 Subject to the Supplier supplying the Goods in accordance with this Contract, the Authority shall purchase the minimum quantity of Goods as set out in the Order Form and the Authority will pay the Supplier for the Goods in accordance with Clause 6 of this Schedule 2. Notwithstanding the foregoing, in the event that Supplier is unable to supply at least 15M FFP3 units over the term of the Contract, the Authority's minimum quantity of Goods it is required to

purchase under the Contract shall be reduced by 15M units such that the Term of the Contract will be shortened to expire on the date on which the minimum quantity of Goods (having applied the reduction of 15M units) has been supplied by the Supplier.

- 5.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods.
- 5.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 5.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to the Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

6. Price and payment

Charges

- 6.1 The Charges shall be calculated as set out in the Order Form.
- 6.2 Subject to Clause 6.2A of this Schedule 2 and unless otherwise stated in the Order Form the Charges:
- 6.2.1 shall remain fixed during the Term; and
- 6.2.2 is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
- (i) packaging, packing materials, addressing, labelling, loading, delivery to the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, the costs of all associated documentation and information supplied or made accessible to the Authority in any media;

- (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

6.2A.1 If for any reason the Supplier's production or purchase costs for raw material for the Goods ("**Purchase Costs**") increase by more than five percent (5%) over a period of thirty (30) days, then the Supplier will be able to reflect such actual increase above five percent (5%) but not more than ten percent (10%) in the Charges at its sole option without formalities other than a prior notice to the Authority, together with all relevant documentation evidencing the increase of Purchase Costs.

6.2A.2 Should Purchase Costs increase by more than ten percent (10%) over a period of thirty (30) days then the Supplier may request a renegotiation of the Charges. If the parties are not able to agree on revised Charges within a reasonable time after a request for renegotiation is given, then Supplier may terminate this Agreement on ten (10) days' notice to Authority.

6.2A.3 In the event that the Supplier increases the Charges under Clauses 6.2A.1 or 6.2A.2 of this Schedule 2 this Contract, the Supplier shall inform the Authority if and when Purchase Costs revert back to the original Purchase Costs over a subsequent period of thirty (30) days in which case the Supplier shall also resume charging the Authority at the original Charges unless and until a subsequent increase in Purchase Costs occurs and Clauses 6.2A.1 or 6.2A.2 apply..

completion of the supply of the Goods in compliance with this Contract.

Invoices

6.3 Unless stated otherwise in the Order Form:

- 6.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods supplied in compliance with this Contract in the preceding calendar month;
- 6.3.2 where Consigned Goods are to be provided by the Supplier in accordance with the Key Provisions, the Supplier shall invoice the Authority in relation to such Consigned Goods in accordance with the relevant Key Provision applicable to such Consigned Goods; or
- 6.3.3 where Clauses 6.3.1 or 6.3.2 of this Schedule 2 do not apply, the Supplier shall invoice the Authority for Goods at any time following

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

- 6.4 The Charges are exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 6.5 Not used.
- 6.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 6.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 6.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 6.6 after a reasonable time has passed.

- 6.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 6.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination..
- 6.8 Not used.
- 6.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 6.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
7. **Warranties**
- 7.1 The Supplier warrants and undertakes that:
- 7.1.1 subject to the provisions of this Clause 7 and Clause 10 of this Schedule 2, for a period of time of 12 months starting from delivery (the **“Warranty Period”**), the Goods shall be of satisfactory quality and shall comply with the standards and requirements set out in this Contract;
- 7.1.2 Not used.
- 7.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and

care and in accordance with Good Industry Practice;

doubt, unless otherwise set out in the Order Form, any such changes or substitute goods, if accepted, shall not lead to an increase in the Charges.

- 7.1.4 without prejudice to the generality of the warranty at Clause 7.1.3 of this Schedule 2, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under applicable Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 7.1.5 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 7.1.6 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 7.1.7 it will have manufacturing capacities to produce at least the minimum quantity of Goods set out in the Order Form;
- 7.1.8 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 7.1.9 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 7.1.10 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 7.1.11 all Goods delivered to the Authority shall comply with any shelf life requirements set out by the Supplier;
- 7.1.12 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 7.1.13 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 7.1.14 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of

- 7.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 7.1.16 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 7.1.17 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 7.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 7.1.19 it will comply with all Law, Guidance, in so far as is relevant to the supply of the Goods;
- 7.1.20 it will promptly (and in any event within one (1) Business Day) notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 7.1.21 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 7.1.22 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 7.1.22 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;.
- 7.1.23 it will fully and promptly respond to all requests for information regarding this Contract and the Goods at the frequency and in the format that the Authority may reasonably require;
- 7.1.24 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Order Form) and all accompanying materials is accurate;

7.1.25	it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;	7.2	Not used.
7.1.26	it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;	7.3	Not used.
7.1.27	all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;	7.4	The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
7.1.28	there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;	7.5	The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Order Form shall be submitted to the Authority
7.1.29	there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;	7.6	The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
7.1.30	it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and	7.7	The Supplier warrants that, to the best of its knowledge and as at the Commencement Date, it is not involved in any Occasion of Tax Non-Compliance.
7.1.31	it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.	7.8	The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
		7.9	Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
		7.10	If, during the applicable Warranty Period for the Goods, it is determined if Goods are defective due to faulty workmanship or defective materials, then such Goods shall be returned to Supplier, it being agreed that Supplier shall bear the expense of shipping such Goods to the Supplier. Upon receipt of any such Goods during the applicable Warranty Period, the Supplier shall, at its expense:
		7.10.1	in Supplier's sole discretion, repair or replace such Goods; and
		7.10.2	ship such Goods to return it to its original location.
		7.11	The Supplier's obligations under this Contract shall arise only if the claimed defect or nonconformity actually exists and was not caused by any improper installation, testing, or use; any misuse or neglect; any failure of electrical power, air conditioning, or humidity control; or Force Majeure Event, accident, fire or other hazard.
		7.12	Repair or replacement of a Goods (or any part thereof) does not extend the Warranty Period for such Goods. Goods which have been repaired or replaced during the Warranty Period are warranted for the remainder of the unexpired portion of the Warranty Period.
		7.13	The express warranties of the Supplier stated in this Clause 7 of Schedule 2 are in lieu of all other warranties, express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose, and non-infringement of third party rights. In addition, the Supplier expressly represents that the products are not tested and certified against any pathogens or virus such as COVID-19.

- 7.14 The express obligation of the Supplier stated in Clause 7.13 of this Schedule 2 is in lieu of any other liability or obligation of the Supplier, including without limitation any liability or obligation for damage, loss, or injury (whether direct, indirect, exemplary, special, consequential, or incidental) arising out of or in connection with the delivery, use, or performance of the Goods. Repair or replacement (at the Supplier's option) is the sole remedy for any such damage, loss, or injury. No extension of this warranty will be binding upon the Supplier unless set forth in writing and signed by the Supplier's authorised representative.

8. <u>Intellectual property</u>	10.1.2 for fraud or fraudulent misrepresentation; or
8.1 Unless specified otherwise in the Order Form, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.	10.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
9. Not Used	10.2 Subject to Clause 10.1. of this Schedule 2, the total liability of the Supplier to the Authority 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 [five million GBP (£5,000,000)].
10. <u>Limitation of liability</u>	10.3 Subject to Clause 10.1 of this Schedule 2, the total liability of the Authority to the Supplier 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 five million GBP (£5,000,000), provided that this limitation of liability does not apply to the obligation of the Authority to pay the Charges.
10.1 Nothing in this Contract shall exclude or restrict the liability of either Party:	
10.1.1 for death or personal injury resulting from its negligence;	10.4 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.
	10.5 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.
	10.6 Clause 10 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
	11. <u>Insurance</u>
	11.1 Subject to Clause 11.2 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law, however, the Supplier shall have responsibility for ensuring that it is adequately insured to cover all potential liability under this Contract.
	11.2 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 11.1 and of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
	11.3 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

- 11.4 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 11.5 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 11 of this Schedule 2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 11.6 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

12. Term and termination

- 12.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 12.2 Neither the Supplier or the Authority may terminate this Contract for convenience.
- 12.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including and not limited to any breach of any payment obligations, under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 12.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
 - 12.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be ten (10) days unless otherwise agreed between the Parties); and/or
 - 12.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal, provided that the Parties agree that non-performance in relation to the delivery of a specific quantity of the Goods shall not be considered a material breach unless such non-performance remains not remedied for forty (40) days).
- 12.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:

- (i) not capable of remedy; or

	(ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.	12.6.1	the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
12.5	The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:	12.6.2	a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 12.6 of this Schedule 2 in accordance
12.5.1	Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;		
12.5.2	the Supplier purports to assign this Contract other than in accordance with its terms or Sub-contract this Contract;		
12.5.3	the warranty given by the Supplier pursuant to Clause 7.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 7.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 7.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or		
12.5.4	any guarantee guaranteeing the obligations of the Supplier under this Contract ceases to be valid or enforceable for any reason (and the Supplier shall notify the Authority promptly on becoming aware of such invalidity or unenforceability), provided however, the Authority shall first provide Supplier with thirty (30) days advance written notice and afford Supplier with an opportunity to cure by furnishing the Authority with a comparable guarantee to the satisfaction of the Authority with the guarantor or with another guarantor which is acceptable to the Authority, such satisfaction or acceptance to not be unreasonably withheld.		
12.6	If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:		

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

13. Consequences of expiry or early termination of this Contract

- 13.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 13.2 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 13.3 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 13.4 The Supplier will not be responsible for any additional costs incurred as a result of the termination of this Contract, including but not limited to any costs associated with the Authority procuring replacement Goods.

14. Packaging, identification and end of use

- 14.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 14.2 Unless otherwise agreed with the Authority in writing, the Goods shall be securely packed in packaging compliant with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation.
- 14.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) agreed with the Authority in writing; and/or (b) required to comply with Law or Guidance.
- 14.4 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.

15. Dispute resolution

- 15.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 15.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow

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

- 15.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels (if applicable) as set out in the Order Form. Respective representatives at each level, as set out in the Order Form shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 15.4 If the procedure set out in Clause 15.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 15.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 15.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 15.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 15.6 Nothing in this Contract shall prevent:
- 15.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods; or
- 15.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 15.7 Clause 15 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
- 16. Not used.**
- 17. Change Management**
- 17.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition

to the Contract, as may be requested by the Authority from time to time.

- 17.2 Any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 18. Force majeure**
- 18.1 Subject to Clause 18.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible or impractical by a Force Majeure Event.
- 18.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 18 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if the Force Majeure Event does not arise directly or indirectly as a result of wilful misconduct or gross negligence of the Supplier.
- 18.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 18.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 18.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the

	nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.		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.
18.6	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.	20.2	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.
18.7	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.	20.3	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.
18.8	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 fifty (50) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.	20.4	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.
18.9	Following such termination in accordance with Clause 23 of this Schedule 2 and subject to Clause 18.10 of this Schedule 2, neither Party shall have any liability to the other.	20.5	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:
18.10	Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 18.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.	20.5.1	the examination and certification of the Authority's accounts; or
19. <u>Contacts Data</u>		20.5.2	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.
19.1	The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate):	20.6	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 20 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.
	(a) administer and provide the Goods;	20.7	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.
	(b) request and receive the Goods;	20.8	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.
	(c) compile, dispatch and manage the payment of invoices relating to the Goods;	21. <u>Equality and human rights</u>	
	(d) manage the Agreement and resolve any disputes relating to it;	21.1	The Supplier:
	(e) respond and/or raise general queries relating to the Goods; and	21.1.1	shall ensure that (a) it does not, whether as employer or as supplier of the Goods and any associated services, engage in any act or omission that would contravene the Equality Legislation, and
	(f) comply with their respective regulatory obligations.		(b) it complies with all its obligations as an
19.2	Processing of Personal Data relating to each Party's representatives for the purposes set out in Clause 19.1 shall only be done by each Party in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 19.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.		
20. Records retention and rights of audit			
20.1	Subject to any statutory requirement and Clause 20.2 of this Schedule 2, the Supplier shall keep secure and maintain for		

employer or supplier of the Goods and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority

21.1.2 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

21.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 21 of this Schedule 2.

21.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 21 of this Schedule 2.

22 Notice

22.1 Subject to Clause 15.5, of Schedule 2, 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 Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

22.2 A notice shall be treated as having been received:

22.2.1 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

22.2.2 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

22.2.3 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.

23 Assignment, novation and Sub-contracting

23.1 The Supplier:

23.1.1 shall not, except where Clause 23.2 or Clause 23.3 of this Schedule 2 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

as if such act or omission had been committed or omitted by the Supplier itself; and

23.1.2 may assign this Contract in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which Goods pertain to a company registered in the UK which is wholly owned within the Honeywell International Inc, Group. The Supplier's rights under this Clause 23.1.2 of Schedule 2 may be exercised only once.

23.2 Notwithstanding Clause 23.1 of this Schedule 2, 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 23.2 of this Schedule 2 shall be subject to:

23.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 6.8 of this Schedule 2;

23.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;

23.2.3 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;

23.2.4 the provisions of Clause 6 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and

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

23.3 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.

23.5	Not used.
23.6	Not used.
23.7	Not used.

23.8 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.

24.2

24 Prohibited Acts

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

(i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;

(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;

24.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:

(ii) the amount or value of any gift, consideration or commission.

25 Conflicts of interest and the prevention of fraud

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 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.	26.11	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.
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.	26.12	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.
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	<u>General</u>	26.13	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.
26.1	Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event.	26.14	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 26.8 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
26.2	Not used.		
26.3	Not used.		
26.4	Not used.		
26.5	Not used.	26.15	A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
26.6	Not used.		
26.7	Not used.	26.16	This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
26.8	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.	26.17	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.
26.9	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.	26.18	Subject to Clause 15 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 Contract or its subject matter.
26.10	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.	26.19	All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Definitions and Interpretations

1 Definitions

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

“ASN”	means advance shipping notice;
“Authority”	means the authority named on the form of Contract on the first page;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods ;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England, Scotland and Wales;
“Commencement Date”	means the date of this Contract;
“Component Part”	means any constituent element or part of the Goods including any raw materials which when processed or combined become part of the Goods or which are used in the process of the production or assembly of the Goods; and “Component Parts” shall be construed accordingly;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: (a) Personal Data (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;
“Consigned Goods”	means Goods delivered by the Supplier in response to a Consignment Request prior to their use by the Authority;
“Consignment Request”	the Authority’s request for Goods to be delivered on a consignment basis;
“Contract”	means the form of contract at the front of this document and includes the Order Form, the Schedules and Annexes attached to the form of contract;
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Controller”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“Charges”	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;
“cross-Government Decision Making Committee”	means the committee as referred to in the Guidance for new high volume manufacturers of COVID-19 Personal Protective Equipment, Office for Product Safety & Standards, April 2020;
“Data Protection Laws”	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;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 2;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;

“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 15 of Schedule 2. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 24.2.3 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers 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;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (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; (f) government requisition or impoundment to the extent such

	<p>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;</p> <p>(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;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <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>(j) pandemics, quarantines or regional medical crises,</p>
“Fraud”	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
“General Anti-Abuse Rule”	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
“Goods”	means all goods (including PPE Goods), materials or items that the Supplier is required to supply to the Authority under this Contract (including, without limitation, as stated in the Order Form which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier's response to these

	requirements) and shall include parts of such Goods which have been repaired or replaced by or on behalf of the Supplier;
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, Monitor, NHS England, NHS Improvement, the Medicines and Healthcare Products Regulatory Agency, the Health & Safety Executive, the Office for Product Safety & Standards, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Key Provisions”	means the key provisions set out in Schedule 1;
“Law”	means any applicable legal requirements including, without limitation: <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions

	(to include, without limitation, as referred to in (a) to (f) above);
“NHS”	means the National Health Service;
“Occasion of Tax Non-Compliance”	means: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (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;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“Processing”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“PPE”	shall mean personal protective equipment as defined in the EU PPE Regulation 2016/425.
“PPE Goods”	means PPE products supplied to the Authority under this Contract, as further described in the Order Form
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
“Purchase Order”	means the purchase order required by the Authority's financial systems, if a purchase order is referred to in the Key Provisions;

“Rejected Goods”	has the meaning given under Clause 4.2 of Schedule 2;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 12.3 of Schedule 2;
“Requirement to Recall”	has the meaning given under 4.9 of Schedule 2;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the form of Contract on the first page;
“Term”	means the term as set out in the Order Form;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

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

- 1.3 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Annex”, or to a “Clause” are to schedules, annexes 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 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.7 Words denoting the singular shall include the plural and vice versa.
- 1.8 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.
- 1.9 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in the order form) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.10 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.11 Any guidance notes in grey text do not form part of this Contract.
- 1.12 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.13 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 4

Additional Special Conditions

1 Not used

2 **Exceptional circumstances as a result of the Covid-19 pandemic**

2.1 The Parties recognise that the circumstances created as a result of the Covid-19 pandemic are exceptional and fast-moving. As a consequence, the Parties agree that they will act reasonably and in good faith together to seek to resolve any difficulties or challenges which may impact upon the manufacture and supply of Goods and in relation to the wider Covid-19 issues so as to ensure that public health is protected and preserved.

2.2 In this context:

2.2.1 the Supplier recognises that there may be a shortage of supply of Component Parts and accordingly, the Supplier shall take all reasonable steps to safeguard and protect all stocks of Component Parts held by it and its Group from time to time which may be required to manufacture the Goods;

2.2.2 the Supplier recognises and agrees that the exceptional circumstances referred to above may mean that it is necessary for the Authority to involve itself in the Supplier's inbound supply chain for Component Parts solely in relation to the Goods manufactured under the Contract. The Authority shall notify the Supplier in advance if it considers that this step is reasonably necessary and, if the Supplier consents to this (such consent not to be unreasonably withheld or delayed) the Supplier shall provide all information and assistance as the Authority may require in order for it to take this step;

2.2.3 the Supplier agrees to provide transparency to the Authority to ensure that the Authority has sufficient visibility of the Supplier's manufacturing processes and timelines for the manufacture and

supply of Goods to allow it to plan and adjust order scheduling across the Authority's supply chain for products equivalent to or similar to the Goods;

- 2.2.4 the Supplier shall notify the Authority promptly of any exceptional events or circumstances which may impact upon the Supplier's ability to manufacture and supply Goods in accordance with this Contract and the Authority's requirements ("**Relevant Circumstances**").