

Call-Off Contract under the HealthTrust Europe LLP Framework Agreement for the supply of Horsefly Analytics Subscription (reference number: ecm_60781 dated 1st March 2021)

Award Type: Direct Award

The Authority	Department for Environment, Food and Rural Affairs (DEFRA) , Nobel House, 17 Smith Square, London, SW1P 3JR
The Supplier	Specialist Computer Centres PLC with company number 01428210 whose registered office is at James House, Warwick Road, Birmingham, B11 2LE
HealthTrust Europe Contract Reference	HTE-005708
Supplier Contract Number	OPP-3277277

The Supplier and the Authority hereby agree as follows:

1. The Authority wishes to enter into a Contract in respect of the Goods and/or Services pursuant to the framework agreement between Health Trust Europe LLP and Supplier dated 27th September 2019 (the "Framework Agreement").

2. The Contract incorporates, and the Supplier agrees to abide by, the following documents:

- (a) The Specification of the Authority's requirements / Mini Competition Specification as appended at Appendix 1 overleaf;
- (b) the Contract Price / Mini- Competition Response, as appended at Appendix 2 overleaf; and
- (c) the Call-Off Terms and Conditions set out in the Schedules to this Contract.

3. Where the Call-Off Terms and Conditions set out at Schedule 1 of this Contract apply, the Authority acknowledges and agrees to the HealthTrust Europe Key Provisions, in particular as stated below for the avoidance of doubt:

In the event that the Authority terminates its agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) for convenience or otherwise, and such termination takes effect before the end of the Initial Term (as defined in the UHCW Framework) or in the event that the Authority's agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) expires without being renewed on or after such Initial Term, HealthTrust Europe shall notify the Supplier of such termination or expiry in accordance with the provisions of Clause 14 of Schedule 1 of the Framework Agreement (" **Beneficiary Withdrawal Notice** "). Upon receipt of such Beneficiary Withdrawal Notice by the Supplier, the Supplier shall cease to apply for the benefit of the Authority, the Contract Price or any

special discounts in relation to such supply which applied solely by reason of the operation of the UHCW Framework and its associated services and/or framework agreements or any contract made between the Authority made pursuant thereto and further the Authority shall no longer be permitted to place Orders or benefit from the Contract Price, save with the prior written consent of HealthTrust Europe.

(a) The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.

(b) The Authority and the Supplier agree that (in addition to the Authority's right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract as principal in respect of ABI and Management Information and as agent on behalf of the Authority in respect of all other terms.

4. The Commencement Date of the Contract shall be 1st March 2021

5. The Term of this Contract shall be one (1) year from the Commencement Date and may be extended in accordance with Clause 15.2 of Schedule 2 of the Call -Off Terms and Conditions provided that the duration of this Contract shall be no longer than seven (7) years in total.

6. Data Protection

6.1 In performing its obligations under this Contract, the Supplier does not expect to process personal data for the Authority or any other person and will only process personal data on behalf of the Authority or any other person hereunder upon receiving a separate formal written instruction from the Authority to the Supplier requesting the Supplier to do so. In the event that the Authority separately instructs the service provider or third party contractors or suppliers (including any sub-contractors of the Supplier) whether verbally or in writing to process personal data or makes personal data available to them without instructing the Supplier to process that data then it engages those entities directly for those separate processing purposes and the Supplier shall not be a data processor for those separate processing arrangements.

7. Not Used

8. Not Used

9. The payment profile for this Contract shall be as stated in Appendix 2 (Contract Price / Mini-Competition Response).

10. The Authority may terminate this Contract forthwith by notice in writing to the Supplier at any time on three (3) months' written notice. Such notice shall not be served within one (1) year of the Commencement Date.

11. The provision of Services – Not Used

12. Use of Subcontractors

The Authority grants permission for the Supplier to Sub -contract any of its obligations under this Framework Agreement. This 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 the Framework Agreement

13. The Supplier shall implement the Services in accordance with the Implementation Plan

appended at Appendix 4 overleaf.

14. The provision of access by the Authority to the Supplier to the Premises and Locations shall be subject to the lease and/or license appended at Appendix 5.
15. Any changes to this Contract, including to the Services and Goods, may only be agreed in accordance with the Change Control Process set out in Appendix 3 overleaf.
16. The Parties believe that TUPE does not apply to the transactions which are the subject matter of this Contract.

If , notwithstanding and in addition to any the provisions set out in clause 8 of Schedule 1 of this Contract (Key Provisions), it is subsequently determined by a court or tribunal of competent jurisdiction that TUPE does apply to a service or transaction which is the subject matter of this Contract, the Authority shall indemnify and hold harmless the Supplier and any sub-contractor of the Supplier from and against all liability and loss suffered and any costs and expenses reasonably and properly incurred by the Supplier and any sub-contractor of the Supplier, as a result of TUPE applying, including all liability and loss suffered and any costs and expenses reasonably and properly incurred arising out of or in connection with the employment of former employees of the Authority and/or any employees of any the Authority's contractors, including breach of statutory duty, any claims for damages for breach of contract and/or compensation for unfair or wrongful dismissal or redundancy arising from any such employees having ceased for any reason to be employed

17. Should the Authority terminate this Contract in accordance with this Contract, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Appendix 7.
18. If the Supplier is unable to provide the Services then the Authority shall be entitled to exercise Step In Rights set out in Appendix 6.
19. The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, materials and other outputs. Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to this Clause and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. This Clause shall continue notwithstanding the expiry or earlier termination of this Contract
20. The end user license agreement (EULA) applicable to the relevant Software Product, as stipulated by the Manufacturer of that Product appended at Appendix 9. For the avoidance of doubt, these terms take precedence over any other Terms and Conditions in this Contract and these will prevail in the event of any conflict
21. The KPI's and Service Credits applicable to the Contract are detailed in Appendix 10
22. The bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for are detailed in Appendix 11
23. The Contract Managers at the commencement of this Contract are:
 - (a) for the Authority:

(b) for the Supplier:

24. Notices served under this Contract are to be delivered to:

(a) for the Authority:

FAO: [REDACTED]

(b) for the Supplier:

F.A.O.: [REDACTED]

Address: SCC, James House, Warwick Road, Birmingham, B11 2LE

25. In this Contract, unless the context otherwise requires, all capitalised words and expressions shall have the meanings ascribed to them by the Framework Agreement and/or Call-Off Terms and Conditions.



26. The following Appendices are incorporated within this Contract:

Appendix 1	Authority Specification / Mini-Competition Specification
Appendix 2	Contract Price / Mini-Competition Response
Appendix 3	Change Control Price
Appendix 4	Implementation Plan
Appendix 5	Lease and/or Licence to access Premises and Locations
Appendix 6	Step in Rights
Appendix 7	Termination Sum
Appendix 8	Staff Transfer
Appendix 9	Software and End User Licence Agreement (EULA)
Appendix 10	Key Performance Indicators
Appendix 11	Subcontractors

Signed by the authorised representative of THE AUTHORITY

Name :	[REDACTED]	Signature:	[REDACTED]
Position:	Commercial Manager	Date:	26th Feb 2021

Signed by the authorised representative of THE SUPPLIER

Name :		Signature:	
Position:		Date:	

Appendix 1
Authority Specification/ Mini-Competition Specification

Horsefly Analytics subscription for 12 months for up to 20 users

Appendix 2
Contract Price / Mini-Competition Response

Charges for 12 months are £ 36,103.10.

To be invoiced upfront in full upon Contract Commencement

Subsequent years to be invoiced as renewed.

**Appendix 3
Change Control**

CHANGE CONTROL NOTE (CCN)

**FOR CALL-OFF CONTRACT UNDER THE HEALTHTRUST EUROPE COMIT 2 FRAMEWORK
AGREEMENT**

This CCN relates solely to the Contract entered into between the Authority and the Supplier dated [enter call-off contract date] pursuant to the Information Communication Technology (ICT) Solutions 2 Framework (ComIT 2)

Issued in accordance with the Call-Off Terms and Conditions.

CCN Number :

Contract Reference :

CCN Title :

Date change first proposed:

The Supplier: Specialist Computer Centres PLC

The Authority: [to be completed]

Contract change full details:

[insert details here]

Contract change cost implications:

[insert details here]

Effective date of CCN: [insert date]

IT IS AGREED as follows:

1. With effect from the Effective Date the Contract shall be amended as set out above.
2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

Signed for and on behalf of the Authority

By

Name

Title

Date

Signed for and on behalf of the Supplier

By

Name

Title

Date

**Appendix 4
Implementation Plan**

NOT USED

Appendix 5
Lease and/or Licence to access Premises and Locations

NOT USED

**Appendix 6
Step in Rights**

NOT USED

Appendix 7
Termination Sum

NOT USED

Appendix 8 Staff Transfer

The Parties believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending those provisions (the "Transfer Regulations") do not apply to the transactions which are the subject matter of this Contract.

If it is subsequently determined by a court or tribunal of competent jurisdiction that the Transfer Regulations do apply to a transaction which is the subject matter of the Contract, the Authority shall indemnify and hold harmless the Supplier and any sub-contractor of the Supplier from and against all liability and loss suffered and any costs and expenses reasonably and properly incurred by the Supplier and any sub-contractor of the Supplier, as a result of the Transfer Regulations applying, including all liability and loss suffered and any costs and expenses reasonably and properly incurred arising out of or in connection with the employment of former employees of the Authority and/or any employees of any the Authority's contractors, including breach of statutory duty, any claims for damages for breach of contract and/or compensation for unfair or wrongful dismissal or redundancy arising from any such employees having ceased for any reason to be employed

Appendix 9 Software and EULA

For the avoidance of doubt, these terms take precedence over any other Terms and Conditions in this Contract and these will prevail in the event of any conflict

TALENT ANALYTICS TERMS AND CONDITIONS OF USE

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

"Authorised Users": those employees of the Customer who are authorised by the Customer to use the Software as further described in clause 4.2.3.

"Business Day": a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Cancellation Period" shall be a period from the Effective Date up to 60 days before the end of the Initial Subscription Term or Renewal Period as appropriate

"Change of Control": the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

"Confidential Information": information that is proprietary or confidential and is clearly labelled as such.

"Contract": the contract between the Supplier and the Customer for the Supply of Services in accordance with these terms and conditions and the Order Form.

"Customer": the Authority as defined in the Order Form.

"Effective Date": the date on which the Contract comes into effect pursuant to clause 2.2.

"Initial Subscription Term": the initial term of the Contract as set out in the Order Form.

"Normal Business Hours": 8:00 am to 6:00 pm local UK time for each Business Day or such other hours as shall be agreed as confirmed in the Order Form.

"Renewal Period": the period described in clause 16.

"Services": the subscription by the Customer to gain access to and use the Software provided by the Supplier through the Customer's account with the Supplier.

"Software": the data and search analytics online software application provided by the Supplier and described as "Talent Analytics".

"Subscription Fees": the subscription fees payable by the Customer to the Supplier as set out in the Order Form.

"Subscription Term": has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

"Supplier": means AI Recruitment Technologies Limited (Company number 07651107) whose registered office is at Upper Floor, The Granary, Stanley Grange, Ormskirk Road, Knowsley L34 4AT.

"Unauthorised Access": means access to, or use of, the Services by a third party using the Customer's or its Authorised Users' credentials whether or not deliberately facilitated by the Customer.

"Virus": anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these terms and conditions.

1.3 A person includes an individual, corporate or unincorporated body (whether or not

having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract and shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

1.6 A reference to writing or written includes e-mail (subject to clauses 18.12 and 18.13).

2. BASIS OF CONTRACT

2.1 The Order Form constitutes an offer by the Customer to subscribe for the Services in accordance with these terms and conditions.

2.2 The Order Form shall only be deemed to be accepted when the Supplier confirms acceptance of the Order Form to the Customer and the Contract shall come into existence on the Effective Date.

2.3 These terms and conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall make the software available to the Customer within 20 Business Days of the Effective Date following completion of its configuration processes to the Customer's account.

3.2 The Supplier shall at its own expense provide the Customer with training on how to use the Software either at the Customer's premises or remotely online (in each case at the Supplier's sole discretion).

4. SUBSCRIPTION

4.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right to

use the Services in accordance with these terms and conditions during the Subscription Term solely for the Customer's business operations (the "Subscription").

4.2 The Customer undertakes that:

- 4.2.1 it will not allow or suffer its Subscription to be used or accessed by anyone who is not an Authorised User;
- 4.2.2 each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than every two months and that each Authorised User shall keep his password confidential;
- 4.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five Business Days of the Supplier's written request at any time or times;
- 4.2.4 it shall permit the Supplier to audit its use of the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

4.3 The Customer shall not access, store, distribute, or transmit any Viruses, or any material during the course of its use of the Services that:

- 4.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 4.3.2 facilitates illegal activity;
- 4.3.3 depicts sexually explicit images;
- 4.3.4 promotes unlawful violence;
- 4.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.4 The Customer shall not:

4.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

4.4.1.1 and except to the extent expressly permitted under these terms and conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

4.4.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

4.4.2 access all or any part of the Services in order to build a product or service which competes with the Services; or

4.4.3 subject to clause 18.8, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or

4.4.4 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or

4.4.5 perform searches in excess of the Suppliers fair use policy from time to time. Regular breach of such policy may, in addition to clause 5, give rise to the Supplier limiting the number of searches that the Customer and/or its Authorised User are able to perform.

- 4.5 The Customer shall use all reasonable endeavours to prevent any Unauthorised Access and in the event of any such Unauthorised Access, promptly notify the Supplier.
- 4.6 The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5. UNAUTHORISED ACCESS

- 5.1 If any of the audits referred to in clause 4.2.4 reveal, or the Supplier otherwise discovers or has reason to believe, that any password or other access have been accessed by or used by any individual who is not an Authorised User, or that the Customer has not taken sufficient steps to prevent Unauthorised Access then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.
- 5.2 If any of the audits referred to in clause 4.2.4 reveal, or the Supplier otherwise discovers or has reason to believe, that there has been Unauthorised Access, then without prejudice to the Supplier's other rights the Supplier may at its sole discretion:
 - 5.2.1 Suspend the Customer's access to the Services while it investigates the matter further; and/or
 - 5.2.2 require the Customer to pay to the Supplier an amount equal to the Subscription Fee for a period equal to the Initial Subscription Term for each third party and who has had Unauthorised Access using the Customer's (or its Authorised Users) access credentials, and/or
 - 5.2.3 suspend the Customer's access to the Services until the sum reserved to in clause 5.2.2 has been paid in full, and/or
 - 5.2.4 terminate the Contract immediately.

6. SERVICES

- 6.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Software to the Customer on and subject to the terms of these terms and conditions.
- 6.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 6.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 6.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least four Normal Business Hours' notice in advance.
- 6.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours subject to its fair use policy. If the Supplier at any time considers that the Customer is likely to be in breach of its fair use policy it shall advise the Customer and request that it reduces such usage appropriately. If usage is not reduced appropriately then any use of the Supplier's standard customer support services in excess of the fair use policy shall be invoiced separately at the Supplier's then current rates.
7. CUSTOMER DATA
- 7.1 The Supplier shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of any Customer data available at <http://www.jobsttheword.co.uk/privacypolicy> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 7.2 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- 7.2.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer

and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under these terms and conditions;

7.2.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with these terms and conditions on the Customer's behalf;

7.2.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

7.2.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services involve analysing data collected from third parties websites. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such third-party websites or data.

9. SUPPLIER'S OBLIGATIONS

9.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

9.2 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing,

the Supplier:

9.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.3 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these terms and conditions.

9.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

10.1.1 provide the Supplier with:

10.1.1.1 all necessary co-operation in relation to these terms and conditions; and

10.1.1.2 all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including security access information and configuration services;

10.1.2 comply with all applicable laws and regulations with respect to its activities under these terms and conditions;

- 10.1.3 carry out all other Customer responsibilities set out in these terms and conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 10.1.4 ensure that the Authorised Users use the Services in accordance with the terms and conditions of these terms and conditions and shall be responsible for any Authorised User's breach of these terms and conditions;
- 10.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these terms and conditions, including without limitation the Services;
- 10.1.6 comply with all local laws and regulations relating to the Services and advise the Supplier promptly if the Services breach or are in contravention of any of the same;
- 10.1.7 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 10.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11. CHARGES AND PAYMENT

- 11.1 The Customer shall pay the Subscription Fees for the User Subscriptions in accordance with this clause 11 and the Order Form.
- 11.2 The Customer shall on the Effective Date provide to the Supplier approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date

and complete contact and billing details.

11.3 All amounts and fees stated or referred to in these terms and conditions and the Order Form:

11.3.1 shall be payable in pounds sterling or other currency as confirmed in the Order Form;

11.3.2 are, subject to clause 15.4.2, non-cancellable and non-refundable;

11.3.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

11.4 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Period by no more than 5% over the Subscription Fees charged in the previous year upon 90 days' prior notice to the Customer and the Subscription Fees set out in the Order Form shall be deemed to have been amended accordingly.

12. PROPRIETARY RIGHTS

12.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Software. Except as expressly stated herein, these terms and conditions does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Software.

13. CONFIDENTIALITY

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these terms and conditions. A party's Confidential Information shall not be deemed to include information that:

13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

13.1.2 was in the other party's lawful possession before the disclosure;

13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

- 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 13.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these terms and conditions.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these terms and conditions.
- 13.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.5 No party shall make, or permit any person to make, any public announcement concerning these terms and conditions without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.6 The above provisions of this clause 13 shall survive termination of these terms and conditions, however arising.
- 14. INDEMNITY
 - 14.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or the Software.
 - 14.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Software infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of

confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 14.2.1 the Supplier is given prompt notice of any such claim;
 - 14.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 14.2.3 the Supplier is given sole authority to defend or settle the claim.
- 14.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these terms and conditions on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 14.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 14.4.1 a modification of the Services or Software by anyone other than the Supplier; or
 - 14.4.2 the Customer's use of the Services or Software in a manner contrary to the instructions given to the Customer by the Supplier; or
 - 14.4.3 the Customer's use of the Services or Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
 - 14.4.4 the Customer's use of the Services or Software in a manner which breaches or contravenes local laws or regulations.
- 14.5 The foregoing and clause 15.4.2 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. LIMITATION OF LIABILITY

15.1 This clause 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

15.1.1 arising under or in connection with these terms and conditions;

15.1.2 in respect of any use made by the Customer of the Services and Software or any part of them; and

15.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.

15.2 Except as expressly and specifically provided in these terms and conditions:

15.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Software by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

15.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these terms and conditions; and

15.2.3 the Services and the Software are provided to the Customer on an "as is" basis.

15.3 Nothing in these terms and conditions excludes the liability of the Supplier:

15.3.1 for death or personal injury caused by the Supplier's negligence; or

15.3.2 for fraud or fraudulent misrepresentation.

15.4 Subject to clause 15.2 and clause 15.3:

15.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these terms and conditions; and

15.4.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms and conditions shall be limited to the total Subscription Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

16. TERM AND TERMINATION

16.1 These terms and conditions shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these terms and conditions shall be automatically renewed for successive periods of time equal to the Initial Subscription Term (each a "Renewal Period"), unless:

- 16.1.1 either party notifies the other party of termination, in writing, before the end of the Cancellation Period relating to the Initial Subscription Term or any Renewal Period, in which case these terms and conditions shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 16.1.2 otherwise terminated in accordance with the provisions of these terms and conditions;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".

16.2 Without affecting any other right or remedy available to it, either party may terminate these terms and conditions with immediate effect by giving written notice to the other party if:

- 16.2.1 the other party fails to pay any amount due under these terms and conditions on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 16.2.2 the other party commits a material breach of any other term of these terms and conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five Business Days after being notified in writing to do so;
- 16.2.3 the other party repeatedly breaches any of the terms of these terms and conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these terms and conditions;
- 16.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- 16.2.5 the other party commences negotiations with all or any class of its creditors

with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 16.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 16.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 16.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 16.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 16.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.4 to clause 16.2.10 (inclusive);
- 16.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 16.2.13 there is a change of control of the Customer (in which circumstances only the Supplier may terminate these terms and conditions in accordance with this clause).

16.3 On termination of these terms and conditions for any reason:

- 16.3.1 all licences granted under these terms and conditions shall immediately terminate;
- 16.3.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- 16.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these terms and conditions which existed at or before the date of termination shall not be affected or prejudiced.

17. FORCE MAJEURE

The Supplier shall have no liability to the Customer under these terms and conditions if it is prevented from or delayed in performing its obligations under these terms and conditions, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

18. GENERAL

- 18.1 No variation of these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.2 No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3 Except as expressly provided in these terms and conditions, the rights and remedies

provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

- 18.4 If any provision (or part of a provision) of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.6 These terms and conditions, and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.7 Each of the parties acknowledges and agrees that in entering into these terms and conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of these terms and conditions, other than as expressly set out in these terms and conditions.
- 18.8 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 18.9 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 18.10 Nothing in these terms and conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 18.11 These terms and conditions do not confer any rights on any person or party (other than the parties to these terms and conditions and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 18.12 Any notice required to be given under these terms and conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or email to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes.
- 18.13 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 18.14 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.15 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Appendix 10
Key Performance Indicators

NOT USED

**Appendix 11
Subcontractors**

NOT USED

Appendix A

Call-off Terms and Conditions for the Supply of Goods and the Provision of Services– Public Sector

HealthTrust Europe Recitals

Background to Framework Agreement

- (A) HealthTrust Europe provides Procurement Services to the Beneficiaries on a call -off basis.
(B) HealthTrust Europe procured the Framework Agreement for the benefit of the Beneficiaries, and the Beneficiary wishes to enter into a call-off Contract pursuant to such Framework Agreement.

Definitions

The following defined terms are used within this call-off Contract, such terms differing from those used within the Framework Agreement:

- (A) HealthTrust Europe shall be referred to as “**HealthTrust Europe**”; and
(B) the Beneficiary shall be referred to as the “**Authority**”.

Terms and Conditions

- (A) The scope of these Call-off Terms and Conditions shall include both the supply of Goods and the provision of Services by the Supplier. Consequently, the Call -off Terms and Conditions shall be interpreted as follows:

- (i) “**Goods**” shall mean the “**Goods and Services**”;
(ii) “**Product Information**” shall mean the “**Product Information and/or Services Information**”;
and

- (B) Clause 14.1 of Schedule 2 shall be amended to read “*employer’s liability, public liability, professional indemnity and product liability*”.

NOW IT IS AGREED as follows:

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

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

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

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

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

Schedules

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

Schedule 4 of these Call-Off Terms and Conditions	Definitions and Interpretations
Schedule 5 of these Call- off Terms and Conditions	Installation and Commissioning Services
Schedule 5A of these Call- off Terms and Conditions	Maintenance Services
Schedule 6 of these Call- off Terms and Conditions	Logistics
Schedule 7 of these Call- off Terms and Conditions	Pharmaceuticals

Schedule 1 of these Call-off Terms and Conditions Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.

1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out.

2 Term

2.1 This Contract shall commence on the Commencement Date.

2.2 The Term of this Contract shall be as set out in the Order Form.

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

3 Contract Managers

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

4 Names and addresses for notices

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

5 Management levels for escalation and dispute resolution

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

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

6 Order of precedence

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

6.1.1 the Order Form (including the incorporated Mini-Competition Specification and Mini-Competition Response Document where applicable and appended to such OrderForm);

6.1.2 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;

6.1.3 the provisions on the front page of these Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version);

6.1.4 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;

6.1.5 the Specification and Tender Response Document (but only in respect of the requirements);

6.1.6 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;

6.1.7 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions;

6.1.8 Schedule 5 of these Call-off Terms and Conditions: Installation and Commissioning Services;

6.1.9 Schedule 5A of these Call-off Terms and Conditions: Maintenance Services

6.1.10 Not used; and

6.1.11 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations.;

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

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

7 Participating Authorities' Obligations **Contract if this box is checked)**

☐

(only applicable to the

7.1 Compliance Level

7.1.1 Subject to any exceptions expressly stated in this Call-Off Contract, for each twelve-month period commencing on the Commencement Date, the Authority shall meet or exceed the Compliance Level. For the purposes of this clause Compliance Level shall mean "in respect of all Goods and Services in each Lot purchased by the Authority, at least eighty percent (80%) of such purchases (as measured by volume) shall be made pursuant to this Call-Off Contract".

7.1.2 Failure to meet the Compliance Level by 10% or less shall not constitute a breach of this Call-Off Contract. If the Authority fails to meet the compliance level by more than 10% the Authority and

Supplier shall follow the Dispute Resolution Procedure set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions.

7.2 Data

7.2.1 The Authority shall supply a full set of its accounts payable and purchase order data within 7 days of the end of each quarter during the Term so as to enable HealthTrust Europe to calculate the Compliance Level at the end of each year. HealthTrust Europe shall use the said data to provide each Participating Authority with intelligence regarding its progress towards meeting the Compliance Level for each year.

8 Application of TUPE at the commencement of the provision of Services

8.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

8.2 If any person who is an employee of the Authority or a Third Party claims or it is determined that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:

8.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;

8.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;

8.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;

8.2.4 if after that period specified in Clause 8.2.2 of this Schedule 1 of these Call-off Terms and Conditions has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018).

9 Performance of the Services and Supply of Goods

9.1 The Supplier shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services and Supply of Goods to the Contract Standard.

9.2 To the extent that the Specification and Tender Response Document include the Turnaround Times, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services and Goods, the Supplier will abide by the same.

9.3 Time shall be of the essence with regard to the obligations of the Supplier under the Contract.

9.4 The Authority and the Supplier will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority to derive the full benefit of the Contract. At all times in the performance of the Services, the Supplier will co-operate fully with any other Suppliers appointed by the Authority in connection with other services and Goods.

9.5 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty

of the Supplier to notify the Authority's Contract Manager of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes at least one month prior to the implementation of any such revised arrangements, to the extent that such changes relate to the Services.

9.6 The Supplier shall provide information in a format, medium and at times specified by the Authority, related to the performance of the Services and Supply of Goods as maybe reasonably required.

9.7 In providing the Services and supplying the Goods, the Supplier shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's hospital information systems.

9.8 If at any time the Supplier becomes aware of any act or omission or any proposed act or omission by the Authority or by any member, official or employee of the Authority which prevents or hinders or may prevent or hinder the Supplier from providing the Services and/or supplying the Goods in accordance with the Contract then the Supplier shall immediately inform the Authority's Contract Manager of that fact. For the avoidance of doubt, the Supplier's compliance with this Clause shall not in any way relieve the Supplier of any of its obligations under the Contract.

9.9 The Supplier will immediately notify the Authority's Contract Manager of any actual or potential problems relating to the Supplier's own suppliers or subcontractors (including approved subcontractors) that affects or might affect his ability to provide the Services and/or supply the Goods.

9.10 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard and KPIs at all times and will ensure continuity of supply of the Services and Goods (at no extra cost to the Authority) in accordance with the Specification and KPIs. The Supplier must have in place contingency plans and arrangements which are approved by the Authority to ensure continuity of supply of the Services and Goods.

9.11 The Supplier will immediately notify the Authority's Contract Manager of any actual or potential industrial action, including strike action, whether such action be of his own staff or others, that affects or might affect this ability at any time to provide the Services or supply the Goods.

9.12 The Supplier will be responsible for providing and maintaining the Services to the Contract Standard and Supplying Goods during industrial action, at no additional cost to the Authority. The Supplier must have in place contingency plans and arrangements which are approved by the Authority.

9.13 In the event of a major incident the Supplier shall perform the Services and Supply the Goods, together with such disaster recovery services as the Authority may require, in accordance with the relevant section of the Specification and the business continuity provisions of Clause 6 of Schedule 2 of the Call Off Terms and Conditions

10 Change Control Process

10.1 Any changes to this Contract, including to the Services and Goods, shall only be agreed in accordance with the Change Control Process set out in Schedule 8.

11 HealthTrust Europe Key Provisions

11.1 In the event that the Authority terminates its agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) for convenience or otherwise, and such termination takes effect before the end of the Initial Term (as defined in the UHCW Framework) or in the event that the Authority's agreement with HealthTrust Europe (made pursuant to the provisions of the UHCW Framework) expires without being renewed on or after such Initial Term, HealthTrust Europe shall notify the Supplier of such termination or expiry in accordance with the provisions of Clause 16 of Schedule 1 of the Framework Agreement ("**Beneficiary Withdrawal Notice**"). Upon receipt of such Beneficiary Withdrawal Notice by the Supplier, the Supplier shall cease to apply for the benefit of the Authority, the Contract Price or any special discounts in relation to such supply which applied solely by reason of the

operation of the UHCW Framework and its associated services and/or framework agreements or any contract made between the Authority made pursuant thereto and further the Authority shall no longer be permitted to place Orders or benefit from the Contract Price, save with the prior written consent of HealthTrust Europe

11.2 The Authority acknowledges and agrees that the Supplier is subject to an activity based income (ABI) management charge in relation to any Orders placed by the Authority under the Framework Agreement.

11.3 The Authority and the Supplier agree that (in addition to the Authority's right to enforce the Contract) HealthTrust Europe may enforce any term of the Contract.

12 Installation and Commissioning Services ☐ (only applicable to the Contract if this box is checked)

12.1 The Supplier shall provide the Installation and Commissioning Services in accordance with the terms set out in Schedule 5.

12.2 The Supplier shall provide all necessary Installation and Commissioning Services to the Authority (as set out within Schedule 5) within the Contract Price, at no additional cost to the Authority; such Installation and Commissioning Services shall be delivered within such timescales as may reasonably be required by the Authority and to the standards prescribed within Clause 1.2 of Schedule 5.

13 Maintenance Services ☐ (only applicable to the Contract if this box is checked)

13.1 The Supplier shall provide the Maintenance Services in accordance with the terms set out in Schedule 5A.

14 Delivery Options

14.1 **Next Day** - Provided that the Authority places its order for the Goods with the Supplier before 1pm on any Business Day, the Supplier shall, without any additional charge use reasonable endeavours for delivery of the Goods to the Authority on the following Business Day.

14.2 If the Supplier for any reason anticipates difficulty in complying with any agreed delivery timescales, the Supplier shall promptly notify the Authority of the delay, and reason for such delay. If the Supplier cannot not comply with agreed delivery schedule the Authority may in some circumstances require delivery of the Goods by the fastest means available and charges resulting from any such premium transportation to be fully pre-paid and absorbed by the Supplier.

15 Warranties

15.1 The Supplier warrants to the Authority that the Goods supplied under the Call-off Contract, whether supplied directly by Supplier or via a sub-contractor, shall be:

15.1.1 new, unadulterated and not used, remanufactured or reconditioned (unless specified in the Order and pre-approved by the Authority)

15.1.2 free from defects in design, whether patent or latent, materials and workmanship; and

15.1.3 fit and sufficient for all purposes for which such Goods are used, or to be used and for any particular purpose made known to the Supplier by HealthTrust Europe or the Authority.

15.2 The above warranties shall, apply for the standard Manufacturer/ Vendor warranty period from the date that ownership of the Goods passes to the Authority in accordance with Clause 3 of Schedule 2.

15.3 Any repaired or replaced Goods, or part thereof, shall carry warranties on the same terms as set out above, with the warranty period being the greater of the original unexpired warranty

16 Training/ Support Services/ Help Desk

a. The Supplier shall provide the Authority with details of the customer service and support telephone line within 2 days after delivery of the Goods to the Authority. The Supplier shall ensure that the customer telephone support line is manned between the hours of 9am and 5pm, Monday – Friday, by suitably qualified personnel able to resolve all day to day queries that the Authority may have in relation to the Goods.

19 Data Protection

19.1 The Parties acknowledge that the Authority is the Data Controller (as defined by the Data Protection Legislation) and the Supplier is the Data Processor (as defined by the Data Protection Legislation) in respect of any Personal Data Processed under this Framework Agreement.

19.2 The only Processing that the Supplier is authorised to do is listed in Table A of the Data Protection Protocol by the Authority and may not be determined by the Supplier

20 Definitions

20.1 For the purposes of this Contract, in addition to the definitions set out in Schedule 4, the following terms shall have the following meanings:

“Actual Services Commencement Date”	means the date the Supplier actually commences delivery of all of the Services;
“Beneficiary”	means UHCW and other Participating Authorities that are entitled to use the Framework Agreement pursuant to the UHCW Framework;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Change Control Process”	means the change control process, if any, referred to in any Key Provisions and/or the Order Form;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Direct Delivery Call-off Contract”	means the call-off Contract between the Authority and the Supplier whereby the Supplier delivers the Goods to the Authority directly and that is not the Logistics Call-off Contract;
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;

“Existing Systems”	means any process, system (electronic or manual), protocol, hardware, software or a combination of these things which the new Solution is expected to replace, interface or integrate with;
“HealthTrust Europe”	means HealthTrust Europe LLP;
“Implementation Plan”	means the implementation plan, if any, referred to in any Key Provisions and/or the Order Form;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Authority;
“Long Stop Date”	means the date, if any, specified in the Order Form;

“Mini-Competition Response Document”	means, in the case of Competed Goods and Services (as defined in the Framework Agreement), the document appended as Appendix 2 to the Order Form for Competed Goods and Services set out at Schedule 7A of the Framework Agreement;
“Mini-Competition Specification”	means, in the case of Competed Goods and Services (as defined in the Framework Agreement), the document appended as Appendix 1 to the Order Form for Competed Goods and Services set out at Schedule 7A of the Framework Agreement;
“Premises and Locations”	has the meaning given under Clause 2.1 of Schedule 7 of these Call-off Terms and Conditions;
“Procurement Services”	means the provision of core purchasing, strategic sourcing and other services by HealthTrust Europe pursuant to the UHCW Framework;
“Services”	means the services set out in this Contract;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, the services commencement date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's services catalogue from time to time;

“Solution” or “Solutions”	shall mean the product(s) or service(s) purchased or required in order to meet the needs of the Authority. This can include one product or service or a combination of multiple products and / or services;
“Solution Specification”	means the requirement listed as component parts, outcome expectations, individual elements, product characteristics or a combination of these things which the Solution will be required to deliver or achieve.
“Subsequent Transfer Date”	means the point in time, if any, at which services the same as or of a similar nature to the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services the same as or of a similar nature to the Services (either in whole or in part)
	which are to be undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services;
“Third Party”	means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date;
“Transfer Date”	means the Actual Services Commencement Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;
“UHCW”	means University Hospitals Coventry and Warwickshire NHS Trust; and
“UHCW Framework”	means the framework agreement between UHCW and HealthTrust Europe for the provision of Procurement Services.

Schedule 2 of these Call-off Terms and Conditions

General Terms and Conditions

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1 Supply of Goods and the provision of Services

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

1.1.1 promptly and in any event within any time limits as may be set out in this Contract;

1.1.2 in accordance with all other provisions of this Contract;

1.1.3 with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;

1.1.4 in accordance with the Law and with Guidance;

1.1.5 in accordance with Good Industry Practice;

1.1.6 in accordance with the Policies; and

1.1.7 in a professional and courteous manner.

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

1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, if specified in the Order Form, carry out all implementation activities fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.

1.3 Where the Supplier is providing services, the Supplier shall commence delivery of the Services on the Services Commencement Date.

1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document and/or the Order Form, including, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation and training in relation to the Goods and their use).

1.5 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.

1.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:

1.6.1 required to supply the Goods are in place prior to the delivery of any Goods to the Authority; and

1.6.2 required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

1.7 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, 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.

1.8 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.

1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

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

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

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

2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.

2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries.

Where delivery of the Goods is refused by the Authority in accordance with this Clause

2.4 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.

2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this

Clause 2.5 of this Schedule 2 of these Call-off Terms and Conditions, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and Tender Response Document.

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

2.7 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or, in the case of Goods which require installation by the Supplier, when that installation process is complete.

2.8 Ownership of the Goods shall pass to the Authority on the earlier of:

2.8.1 full payment for such Goods; or

2.8.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause

2.8.2 of this Schedule 2 of these Call-off Terms and Conditions, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.

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

3 Inspection, rejection, return and recall of the Goods

3.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or

at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.

3.2 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out as part of the Authority's requirements in the Specification and Tender Response Document, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.

3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions, upon the rejection of any Goods in accordance with Clauses

3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall at the Authority's written request:

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

3.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 3.5 of this Schedule 2 of these Call-off Terms and Conditions.

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

3.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 3.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

3.5 Where the Authority rejects any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2 of these Call-off Terms and Conditions and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

3.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.7 of this Schedule 2 of these Call-off Terms and Conditions, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:

3.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or

3.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.5 of this Schedule 2 of these Call-off Terms and Conditions.

3.7 The Supplier shall be relieved of its liabilities under Clauses 3.2 to 3.5 (inclusive) and/or Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.

3.8 The Authority's rights and remedies under Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions shall cease within a reasonable period of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification and Tender Response Document, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.

3.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Supplier shall:

3.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory

requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;

3.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 3.6 of this Schedule 2 of these Call-off Terms and Conditions;

3.9.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and

3.9.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

4 Operation of the Services

4.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing ("**Premises and Locations**").

4.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.

4.3 Subject to Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 of these Call-off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions.

4.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 4.2 and Clause 4.3 of this Schedule 2 of these Call-off Terms and Conditions, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier as referred to in any Order Form.

4.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 4.4 of this Schedule 2 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

4.6 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:

4.6.1 shall be provided at the Authority's sole discretion;

4.6.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;

4.6.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and

4.6.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

4.7 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.

4.8 The Supplier shall notify the Authority forthwith in writing:

4.8.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and

4.8.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

4.9 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.

4.10 Upon receipt of notice pursuant to Clause 4.8 of this Schedule 2 of these Call-off Terms and Conditions or any report or communication pursuant to Clause 4.9 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

4.11 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

4.12 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

4.13 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

4.14 Each Party shall inform the other of all complaints from or on behalf of patients or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

4.15 The Supplier shall be relieved from its obligations under this Contract to provide the Services to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

5 Staff and Lifescience Industry Accredited Credentialing Register

5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.

5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to supply the Goods and/or provide the Services during Staff holidays or absence.

5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.

5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.

5.5 The Supplier shall:

5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;

5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;

5.5.3 ensure all Staff have the qualifications to carry out their duties;

5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and

5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff; and

5.5.6 comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.

5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.

5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:

5.7.1 are questioned concerning their Convictions; and

5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.

5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.

5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:

5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2 of these Call-off Terms and Conditions;

5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions; or

5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions.

5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2 of these Call-off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:

5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;

5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and

5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.

5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.

5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 of these Call-off Terms and Conditions have been met.

5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.

5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be

set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

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

6.1.1 the criticality of this Contract to the Authority; and

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

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

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

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

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

7 The Authority's obligations

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

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

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

7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

8 Contract management

8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact

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

8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods, the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;

8.3.2 details of any complaints by the Authority regarding the supply of Goods or provision of Services and any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;

8.3.3 the information specified in the Specification and Tender Response Document;

8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and

8.3.5 such other information as reasonably required by the Authority.

8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods and Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third

Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:

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

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

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

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

9 Price and payment

9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:

9.2.1 shall remain fixed during the Term; and

9.2.2 in respect of the Goods, is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:

(i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export

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

(ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and

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

9.2.3 in respect of the Services:

(i) shall be payable from the Actual Services Commencement Date; and

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

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

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

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

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

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

9.5 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to

the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.

9.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.

9.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 22 of this Schedule 2 of these Call off Terms and Conditions. For the avoidance of doubt, the Authority shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

9.8 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document and/or the Order Form. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document and/or Order Form. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.

9.9 The Authority reserves the right to set-off:

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

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

9.10 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for

such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.

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

10 Warranties

10.1 The Supplier warrants and undertakes that:

10.1.1 it shall comply with the Framework Agreement;

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

10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods and any products purchased by the Supplier partially or wholly for the purpose of providing the services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note – Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;

10.1.4 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;

10.1.5 without prejudice to the generality of the warranty at 10.1.4 of this Schedule 2 of these Call-off Terms and Conditions, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;

10.1.6 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;

10.1.7 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;

10.1.8 it will ensure sufficient stock levels to comply with its obligations under this Contract;

10.1.9 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;

10.1.10 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;

10.1.11 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;

10.1.12 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification and Tender Response Document;

10.1.13 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;

10.1.14 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;

10.1.15 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;

10.1.16 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;

10.1.17 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

10.1.18 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;

10.1.19 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);

10.1.20 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;

10.1.21 receipt of the Goods and Services by or on behalf of the Authority and use of the Goods and/or deliverables or of any other item or information supplied or made available to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;

10.1.22 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods and/or the provision of the Services;

10.1.23 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;

10.1.24 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;

10.1.25 without limitation to the generality of Clause 10.1.22 of this Schedule 2 of these Call-off Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;

10.1.26 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

10.1.27 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;

10.1.28 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;

10.1.29 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;

10.1.30 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause

10.1.30 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;

10.1.31 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);

10.1.32 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender Response Document and/or Order Form) and all accompanying materials is accurate;

10.1.33 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;

10.1.34 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;

10.1.35 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;

10.1.36 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;

10.1.37 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;

10.1.38 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and

10.1.39 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.

10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will

comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:

10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance

relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause

10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;

10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and

10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.

10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.

10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.

10.6 Without prejudice to the generality of Clause 10.5 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier acknowledges that a failure by the Supplier to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority.

Accordingly, the Supplier warrants that it shall submit accurate invoices and other information on time to the Authority.

10.7 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.

10.8 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has

notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

10.8.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and

10.8.2 promptly provide to the Authority:

(i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

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

10.9 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.

10.10 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

11.1 Unless specified otherwise in the Specification and Tender Response Document, 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.

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

12 Indemnity

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

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

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

12.1.3 any breach of Clause 10.1.20 and/or Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and/or

12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the supply of Goods and provision of the Services,

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

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

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

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

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

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

13 Limitation of liability

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

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

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

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

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

13.3.1 extra costs incurred purchasing replacement or alternative Goods and Services;

13.3.2 costs incurred in relation to any product recall;

13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

13.3.4 the costs of extra management time; and/or

13.3.5 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

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

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of

these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);

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

13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

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

14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement, if any.

14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 of these Call-off Terms and Conditions on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.

14.4 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the

amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

15.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority:

15.2.1 subject to Clause 15.2.2 of this 0 of these Call-off Terms and Conditions shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term referred to in the Key Provisions; or

15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions, any breach of any payment obligations under this Contract), the non-breaching Party may, without

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

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

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

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

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

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

(i) not capable of remedy; or

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

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

15.5.1 the Supplier does not commence supply of the Goods and/or delivery of the Services by any Long Stop Date;

15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction

or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

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

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

15.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions; or

15.5.6 the warranty given by the Supplier pursuant to Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.8 of this Schedule 2 of these Call-off Terms and Conditions that in the reasonable opinion of the Authority are acceptable.

15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement

process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:

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

15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

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

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

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

15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;

15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;

15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or

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

15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

15.9 Within three (3) months of the Commencement Date the Supplier shall develop and agree an exit plan with the Authority consistent with the Exit Requirements, which shall ensure continuity of the Services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within one (1) month of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

If the Parties cannot agree an exit plan in accordance with the timescales set out in this Clause 15.9 of

this Schedule 2 of these Call-off Terms and Conditions (such agreement not to be unreasonably withheld or delayed), such failure to agree shall be deemed a Dispute, which shall be referred to and resolved in accordance with the Dispute Resolution Procedure.

16 Consequences of expiry or early termination of this Contract

16.1 Subject to the provision set out in Clause 16.5 of this Schedule 2 of these Call-off Terms and Conditions, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:

16.1.1 the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and

16.1.2 the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.

16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:

16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;

16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to this Contract; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and

16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.

16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 of these Call-off Terms and Conditions for the period set out in Clause 24.1 of this Schedule 2 of these Call-off Terms and Conditions.

16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

16.5 If the Authority terminates the Contract in accordance with Clause 15.5.1 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination. Should the Authority seek a refund in respect of

Goods already delivered, the Authority shall return such Goods to the Supplier at the Supplier's written request and at the Supplier's cost and expense.

16.6 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.

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

16.8 The expiry or earlier termination of this Contract shall not affect any obligations which expressly

or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

16.9 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

17 Staff information and the application of TUPE at the end of the Contract

17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by Law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any Sub-contractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or Sub-contractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.

17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions.

17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 of these Call-off Terms and Conditions, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any Sub-contractor shall not, without the prior

written consent of the Authority, such consent not to be unreasonably withheld or delayed:

17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;

17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;

17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

17.5.4 deploy any person other than the Supplier Personnel to perform the Services;

17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;

17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel;
or

17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

17.6 Clause 17.5 of this Schedule 2 of these Call-off Terms and Conditions shall not prevent the Supplier or any Sub-contractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or Sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 of these Call-off Terms and Conditions are subject to the Data Protection Legislation, the Supplier will, and shall procure that any Sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

17.8 Having as appropriate gained permission from any Sub-contractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.

17.9 The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or Sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 17.11 to Clause 17.14 of this Schedule 2 of these Call-off Terms and Conditions and (where relevant) the requirements of Clause 1.5 of Part D of

Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.

17.10 If on the termination or at the end of the Contract TUPE does not apply, the full Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or Sub-contractor as appropriate. The Supplier will, and shall procure that any Sub-contractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any Sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.

17.12 The Supplier will and shall procure that any Sub-contractor will on or before any Subsequent Transfer Date:

17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;

17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;

17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;

17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit

share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and

17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any Sub-contractor warrant that such records are accurate and up to date.

17.13 The Supplier will and shall procure that any Sub-contractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

17.13.1 the Supplier's or Sub-contractor's failure to perform and discharge its obligations under Clause 17.2 of this Schedule 2 of these Call-off Terms and Conditions;

17.13.2 any act or omission by the Supplier or Sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;

17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;

17.13.4 any emoluments payable to a person employed or engaged by the Supplier or Sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;

17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or Sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and

17.13.6 any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.

17.14 The Supplier will, or shall procure that any Sub-contractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 of these Call-off Terms and Conditions to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.

17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or Sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any Sub-contractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:

17.16.1 the Authority will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

17.16.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such

person within twenty eight (28) days of the notification by the Authority or Successor;

17.16.3 if such offer of employment is accepted, the Authority will, or shall procure that the Successor will, immediately release the person from their employment; and

17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 of these Call-off Terms and Conditions has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Packaging, identification, end of use and coding requirements

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

18.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.

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

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

18.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 18.5 of this Schedule 2 of these Call-off Terms and Conditions.

18.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.7 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).

18.7 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.

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

19 Sustainable development

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

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

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

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

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

20 Electronic product and services information

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

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

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

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

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

20.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogues to the Supplier for approval, such approval not to be

unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any product and/or services catalogues as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.

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

21 Change management

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

21.2 Subject to Clause 21.3 of this Schedule 2 of these Call-off Terms and Conditions, any change to the Goods and Services or other variation to this Contract shall only be binding once it has been agreed (a) in accordance with any Change Control Process

if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

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

22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions as the first stage in the Dispute Resolution Procedure.

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

22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.

22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 of these Call-off Terms and Conditions or at such

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

22.6 Nothing in this Contract shall prevent:

22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or the provision of the Services; or

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

22.7 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

23 Force majeure

23.1 Subject to Clause 23.2 [Ref261972953](#) of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

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

23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;

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

23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions.

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

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

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

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

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

23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.

23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.

23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions, neither Party shall have any liability to the other.

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

24 Records retention and right of audit

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

24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.

24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.

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

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

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

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

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

of the National Audit Act 1983.

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

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

25 Conflicts of interest and the prevention of fraud

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

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

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

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

26 Equality and human rights

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer, a supplier of Goods or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its

obligations as an employer, a supplier of Goods or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

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

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

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

Conditions.

27 Notice

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

27.2 A notice shall be treated as having been received:

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

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

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

28 Assignment, novation and Sub-contracting

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

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

28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 of this Schedule 2 of these Call-off Terms and Conditions;

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

28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;

28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and

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

28.3 Any authority given by the Authority for the Supplier to Sub -contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any

authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

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

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

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

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

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

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

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

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

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

28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2 of these Call-off Terms and Conditions; and

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

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

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

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

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

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

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

29 Prohibited Acts

29.1 The Supplier warrants and represents that:

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

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

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

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

29.2.1 the Authority shall be entitled:

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

out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

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

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

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

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

30 General

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

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

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

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

30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.

30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.

30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2 of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.

30.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.

30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract,

contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods and the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

30.11 Subject to Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.

30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

31 Additional Provisions Relating to the Provision of Software as a Service (SaaS) Project Scoping and Approval of Specifications

31.1 The Supplier shall properly identify and document the requirements of the Authority and the Authority's staff (if required) for the Solution. This shall include without limitation the carrying out by the Supplier of all of the activities required by the Authority. As a minimum this process shall include; Scoping the projects, assessing customer requirements and project management. Where there is any conflict between the requirements of individual members of staff or departments within the Authority, the Supplier shall identify these to the Authority and refer them to the Authority for resolution.

31.2 Without limiting the generality of clause 31.1, the Supplier shall ensure that, prior to the start of the Implementation Services, it has:

- I. conducted such due diligence on the Existing Systems; and
- II. made such inquiries of the Authority and its requirements, objectives, operating procedures/ policies and security controls/ policies

as are reasonably required to enable the Solution to be implemented so that it properly interfaces and operates with the Existing Systems and can be successfully implemented so that it delivers all of the functionality provided by the systems, processes and procedures that it replaces (except as and to the extent expressly otherwise agreed in writing with the Authority) and meets the requirements of the Contract.

31.3 The Supplier shall prepare and provide to the Authority a draft Solution Specification that meets Authority Requirements.

31.4 The Authority shall inform the Supplier in writing within a reasonable period following receipt of the draft Solution Specification either:

- I. that the Authority approves it; or
- II. of the amendments that the Authority requires to be made to it.

31.5 However, the Authority shall not be entitled to require changes to be made where they fall outside the scope of the Authority Requirements and Specification, Call off Contract and/or Tender Response Document.

31.6 The Supplier shall incorporate the comments and requests for amendment made by the Authority under Clause 31.4 in a revised version of the draft Solution Specification and deliver it to the Authority as soon as reasonably practicable. The process described in this Clause 31 shall be repeated until the draft Solution Specification has been approved in writing by the Authority. On written approval by the Authority Representative, the draft Solution Specification shall become the Solution Specification.

For the avoidance of doubt the approval of the Solution Specification by the Authority shall not affect the Supplier's obligation to properly ascertain the Authority's requirements or operate as any waiver of that obligation.

32 Solution Supply and Implementation

32.1 Within ten Business Days (or such longer period as may be agreed in writing by the parties) after the Commencement Date, the Supplier shall develop and supply a draft solution project plan to the Authority. The Supplier shall ensure that the draft project plan clearly sets out each party's responsibilities and the timescales within which they are required to be carried out and in particular shall ensure that it:

32.1.1 complies with all Legislation and Good Industry Practice

32.1.2 enables the Solution to be supplied and implemented in accordance with the Contract and Ready for Use on or before the Ready for Use Date;

32.1.3 identifies in reasonable detail all of the activities (including any data transfer, formatting and cleansing) required to enable the Authority to transition from its existing systems, policies and procedures to the use of the Solution without any disruption to the Authority's activities;

32.1.4 accommodates the availability of those of Authority's resources that will be required for the implementation of the Solution; and

32.1.5 complies with those of the Authority's reasonable requirements notified to the Supplier in writing prior to the completion of the draft project plan.

32.2 The Authority shall either approve the draft project plan, or make such alterations to it as the Authority reasonably considers appropriate to render it compliant with the requirements set out in Clause 32.1. Immediately following such approval or amendment it shall become the Project Plan.

32.3 Each party shall comply with the obligations, perform the responsibilities and provide the deliverables specified as being its responsibility in the Project Plan by the applicable date assigned to that particular task in the Project Plan (or promptly if no date is specified). Without limiting the generality of the foregoing, the Supplier shall perform its obligations under the Contract within the timescales specified in the Project Plan (or promptly where no timescale for performance is specified), and shall co-operate with the Authority in connection with the transition and migration of the Authority's data and operations to the SaaS Services and in all other respects, such that there is a seamless transition to the SaaS Services with minimal disruption to the Authority's business.

32.4 The Supplier acknowledges that the Authority is relying on the Supplier to manage the implementation of the Solution and provision of the SaaS Services efficiently and on time. Accordingly, if the Supplier foresees any delays in delivering any aspect of the Solution and implementation of the SaaS Services in accordance with the Project Plan, the Supplier shall immediately notify the Authority of the fact of the delay, the reasons for the delay, the consequences of the delay for the rest of the Project Plan and how the Supplier proposes to mitigate the delay.

32.5 Without limiting the generality of Clause 32.4, if the Authority breaches the Contract and this directly results in a delay for the Supplier in meeting any agreed deadline, the Supplier shall give written notice to the Authority of such breach and the impact on the Project Plan within 2 Business Days of becoming aware of the breach. Where the Supplier notifies the Authority of any delay caused by the Authority in accordance with this Clause 32.5 then the Supplier shall be entitled to a reasonable extension to

the times for performance with its obligations under the Contract and the Project Plan shall be adjusted accordingly. Unless otherwise agreed in writing by the parties the extension shall be equivalent to the duration of the delay caused by the Authority.

The Supplier shall not be entitled to any extension of time where it fails to notify the Authority in

accordance with the terms of this clause 32.5.

32.6 Whether the delay is due to an Authority's breach of the Contract or not, the Supplier shall deploy all additional resources and efforts, and take all reasonable steps, to eliminate (or where that is not possible, to minimize the consequences of) the delay.

32.7 Any disputes about or arising out of delays shall be resolved through the dispute resolution procedure specified in the Contract. Pending the resolution of the dispute, both parties shall continue to work together to resolve the causes of, and mitigate the effects of, the delay.

33 Testing

33.1 Once the Supplier has satisfied itself that it has completed an agreed phase of the Implementation Services, the Supplier shall allow the Authority to conduct the applicable Acceptance Tests in relation to the part of the Solution that is required to be delivered during such phase (together with relevant previously delivered and tested elements where relevant).

33.2 The Supplier shall ensure that the relevant parts of the Solution are ready for the commencement of the applicable Acceptance Tests by the relevant date set out in the Project Plan. The Supplier shall provide the Authority with such assistance as the Authority reasonably requires enabling the Acceptance Tests to be completed.

33.3 If the Authority requests that the Supplier is to conduct the applicable Acceptance Tests in relation to the part of the Solution that is required to be delivered during such phase, this will be agreed within the Project Plan and will be delivered during such phase.

33.4 If, in the reasonable opinion of the Authority, the Solution (or relevant elements of it) meet all of the Acceptance Criteria for the applicable Acceptance Tests, the Authority shall notify the Supplier of this in writing.

33.5 If the Solution or relevant elements of the Solution (as the case may be) fail to pass any one or more of the Acceptance Tests, the Authority shall, within [ten] (10) Business Days from the completion of the relevant Acceptance Tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies at the Supplier's own cost (unless agreed in writing beforehand) within [ten] (10) Business Days or such longer period as may be agreed between the Supplier and the Authority and the relevant test(s) shall be repeated within a reasonable time.

33.6 Except as otherwise described in this Clause 33.6, each party shall bear its own costs in respect of the Acceptance Testing process. However, if an Acceptance Test does not satisfy the Acceptance Criteria applicable to it; the Authority shall be entitled to recover from the Supplier any reasonable additional costs it may incur as a direct result of any further review or further Acceptance Testing to achieve the Acceptance Criteria. In such circumstances and without prejudice to the Authority's other rights and remedies, the Supplier shall bear all costs related to amending the relevant elements of the Solution and re-submitting them for Acceptance Testing.

33.7 If the Solution or relevant elements of the Solution (as the case may be) fail to pass any repeated Acceptance Tests, then the Authority shall, by written notice to the Supplier, choose at its sole discretion:

33.7.1 to fix (without prejudice to the Authority's other rights and remedies) a new date for carrying out further tests on the Solution or relevant elements of the Solution (as the case may be). The provisions of this Clause 33 shall apply to each of such repeated tests except that the Supplier shall bear the Authority's reasonable costs incurred in the performance of such additional tests in addition to the Supplier's own costs; or

33.7.2 to accept the Solution or relevant elements of the Solution (as the case may be) subject to such change of Acceptance Criteria, amendment of the Specifications and reduction in the Contract Price

(including any ongoing subscription charges) as, after taking into account all the relevant circumstances, is reasonable.

33.8 Where the whole or any part of the Solution passes the Acceptance Tests, this shall not affect the Authority's right to subsequently reject the Solution (or any part of it) if it fails to pass any subsequent Acceptance Tests. Regardless of the successful completion of the applicable Acceptance Tests, the Supplier shall remain responsible for ensuring that the Solution and the rest of the SaaS Services function and perform in accordance with the Specifications and the Service Levels at all times during the Term.

33.9. If the Supplier fails to implement the Solution as a whole so that all of the Acceptance Criteria for it have been met by the Long Stop Date (as extended in accordance with the Contract), the Authority shall be entitled, in addition to its other rights and remedies, to terminate the Contract by written notice to the Supplier and recover from the Supplier all sums previously paid by the Authority in respect of the SaaS Services.

34 Key Staff

34.1 The Supplier shall ensure that, except in the case of sickness or injury, compassionate leave, termination of employment or engagement ("**Unforeseen Circumstances**"), the Key Personnel are and remain assigned to provide the Implementation Services and are not replaced or removed from the performance of the Implementation Services except as expressly otherwise provided under the Contract.

34.2 If at any time any Key Personnel are unavailable through Unforeseen Circumstances, the Supplier shall allocate alternative personnel reasonably acceptable to the Authority and of equivalent expertise and experience to provide the Implementation Services for the duration of the unavailability of such Key Personnel.

With effect from their appointment, such alternative personnel shall become Key Personnel.

34.3 The Authority reserves the right, acting reasonably, to require the Supplier to remove any or all members of Staff (including any Key Personnel) at any time. The Supplier will promptly comply with any such instruction and provide a replacement who is acceptable to the Authority (acting reasonably).

35 Charges and Pricing

35.1 Services and equipment, together with VAT, are to be invoiced at the price as set out in the Call off Contract and/ or Order Form. Unless stated in writing within the Call off Contract and/ or Order Form the contract price in respect of services shall remain fixed during the contract term

35.2 Where the Call off Contract and/ or Order Form specifies an amount as being payable for the provision of any Services (including any Implementation Services) then, unless the Call off Contract and/ or Order Form specifically states that that amount is only an estimate, that amount shall be treated as either:

35.2.1 the maximum capped fee payable for the Services concerned if the Call off Contract and/ or Order Form states that the fees payable for those Services are to be charged on a time and materials basis; or

35.2.2 a fixed fee for the Services concerned in all other cases.

35.3 Any estimates made for the cost of any services and equipment must be clearly detailed and identified as 'estimates' within the Call off Contract and/ or Order Form.

35.4 Whenever estimated prices are quoted, the Supplier shall use all reasonable efforts to perform

the relevant services at the estimated price but in no event shall such estimates constitute a fixed price or a not-to-exceed price agreement unless stated otherwise in the Specification, Call off Contract and/ or Order Form.

35.5 Services charged on a time and materials basis shall be properly accounted for by way of detailed internal records of time spent and materials used by Staff, in the form of signed off timesheets of worked time according to named Staff and details of other costs incurred in connection with the provision of the Services (such records to be available to Authority for inspection at reasonable times on request).

35.6 For the avoidance of doubt, charges shall not be payable for time spent

- (i) remedying any breach of the Supplier's obligations;
- (ii) attending customer relationship or management meetings, dealing with disputes or other customer relationship matters or in producing standard management reports;
- (iii) by replacement staff getting up to speed with progress on the Project and their responsibilities under it; or
- (iv) carrying out any of the Supplier's other obligations under this Framework Agreement or any Contract that do not constitute the supply of Services.

35.7 Unless otherwise specified in the Call off Contract and/ or Order Form, the amounts specified in the Contract shall be inclusive of all expenses that may be incurred by the Supplier in performing the Services (including the provision and use of the Solution) and no additional amounts shall be payable by the Authority in respect of such expenses. Where the Authority has agreed to pay any expenses, the Authority shall only reimburse expenses if these are reasonable, properly incurred and agreed in writing in advance. Any such expense shall be invoiced to the Authority at cost without any additional fee or mark-up, together with valid receipts or other appropriate evidence of payment and the Supplier shall comply with the Authority's expenses and/ or travel policy or any preferred supplier arrangements.

35.8 Where Services are to be provided on a time and materials basis, the Supplier shall provide the Authority with fee estimates for the Services concerned where requested by the Authority from time to time. The Supplier shall not make a charge for providing fee estimates. Where the Supplier provides or has provided any fee estimates (whether provided before, on or after the commencement of the Contract), it shall:

35.8.1 ensure that they have been calculated with reasonable skill and care and in accordance with Good Industry Practice; and

35.8.2 continuously monitor its performance against these estimates and notify the Authority immediately if the Supplier anticipates the estimate being exceeded. In such circumstances the Parties shall immediately meet and consult with each other in good faith to seek to agree a revised estimate or changes to the scope of the Services or the manner in which they will be executed to avoid (or where that is not possible to minimise) any cost overrun.

35.9 Where the Supplier charges on a time and materials basis for the provision of Implementation Services then, unless otherwise agreed in writing by the parties, [10%] of invoice value for such Implementation Services shall be held back and shall only become due on final Acceptance of the Solution as a whole in accordance with clause 33.

36 Service Levels

36.1 The service levels (including Service Level Agreement) set out in the Call off Contract and/ or Order Form shall apply to the Contract. In addition, if the Order Form specifies that the parties are to agree service levels for one or more of the Services, the parties shall agree such service levels in accordance with the process set out in the Specification, Call off Contract and Tender Response Document.

36.2 Throughout the term of the Contract, the Supplier shall perform and provide the Services in a manner that shall meet or exceed the Service Levels stipulated. The Supplier will measure and report its performance against these Service Levels to the Authority on a [monthly basis] in such format as the Authority reasonably requests from time to time. In addition with effect from the Ready for Use Date and for the remainder of the Term the Supplier shall make the Solution available for use so that it meets the Authority Requirements, the Solution Specification, the Solution

Documentation, Service Level Agreement and the Specification and Tender Response Document.

37 Helpdesk, Error Correction & Problem Resolution

37.1 The Supplier shall make the Helpdesk Services available throughout the Helpdesk Hours, which will be documented in writing within the Call off Contract and/ or Order Form. The Supplier shall ensure that the User Manual or any relevant training materials are structured so users can easily locate relevant content.

37.2 The Supplier shall Respond to all Error notifications and service requests made by the Authority within the Response Times and shall Fix all Errors within the Fix Times applicable to them. The Supplier may Fix an Error by providing a Temporary Workaround. Where the Supplier provides a Temporary Workaround, it shall provide a Permanent Fix as soon as reasonably practical and within a reasonable period that is agreed with the Authority.

37.3 The Authority shall use reasonable endeavours to provide the Supplier with such information as the Supplier reasonably requests in relation to each Error or service request reported to it by the Authority.

37.4 The Supplier shall pro-actively monitor the systems used to provide the SaaS Services (including monitoring their capacity, availability and performance) to identify any Errors and potential issues and shall seek to resolve any issues identified before they affect the SaaS Services.

37.5 Where any Error occurs or the Services fail to meet any Service Level then, in addition to its obligations under clause 37.2, the Supplier shall carry out root cause analysis to identify the cause of the failure. The Supplier shall provide the Authority with the results of its analysis together with details of the cause of the failure and a corrective action plan to remedy this. The Supplier shall implement such plan immediately at the Supplier's own cost.

37 Solution Compatibility, Updates & Upgrades

37.1 The Supplier shall ensure that throughout the term of the Contract the Solution is maintained, updated and upgraded from time to time (at no additional cost to the Authority unless agreed otherwise in writing); so that at all times it:

37.1.2 is and remains fully compatible with (and interfaces with) the Existing Systems as they may be modified, updated and replaced from time to time;

37.1.2 complies with (and do not put the Authority in breach of): (i) any applicable Laws; (ii) Government Requirements; and

37.1.3 provides at least the functionality, capacity and performance specified in the Call off Contract, Order Form, Specification and/or Tender Response Document.

37.2 Subject to clause 37.3, the Supplier shall make available to the Authority at no additional charge any updates or upgrades to the Solution that the Supplier makes

generally available to other customers. If the Authority elects to take any such update or upgrade the Supplier shall implement it promptly at no additional charge (unless agreed otherwise in writing). The provisions of clause 33 shall apply to any material update or upgrade except that if the relevant

Acceptance Tests are not satisfied the Authority shall also have the option to roll back to the previous version/release of the Solution.

37.3 Where the Supplier makes any new version of the Solution commercially available to other customers for an additional charge and such new version includes material additional functionality to the Solution then the Supplier shall make such version available to the Authority under the Contract. The Supplier shall be entitled to make an additional charge to the Authority for the supply and implementation of such a new version provided that it notifies the Authority of this charge in writing at the same time that it offers to make the version available to the Authority. The Authority shall not be obliged to acquire any such new version and it shall only be provided where the Authority issues a new written order form and/or new Call off Contract for that version. If the Authority elects not to take the new version, the Supplier shall continue to provide and support the existing version of the Solution. For the purposes of this clause 37.3:

37.3.1, a new version shall include any solution that is designed as a replacement for or upgrade to the standard solution used to provide the Solution whether or not it is known by a different name.

37.4 The Supplier shall ensure that all upgrades, updates and new versions of the Solution made available to the Authority are fully backwards compatible with all previous versions and releases and contain at least the same core functionality, performance and capacity as previous versions and releases.

37.5 The Supplier shall ensure that the systems used to provide and/or host the Solution and any third party software that is incorporated into or forms part of the Solution shall at all times be:

- (i) subject to valid support and maintenance agreements with the relevant third party manufacturer/support (or an authorised representative of it); and
- (ii) maintained at release levels within one release of the then -current release of the software concerned and at a version for which support has not been withdrawn by the relevant third party manufacturer/supplier.

37.6 The Supplier shall also ensure that any hardware used to provide and/or host the Solution adheres to all security legislation and is refreshed regularly in accordance with Good Industry Practice.

38 Hosting, Back-up & Disaster Recovery

38.1 The Supplier shall host the Solution (and any associated Authority data) solely at such locations within the UK, European Economic Area (EEA) or in the US where covered by Privacy Shield. If a Supplier is intending to host any Solution outside of the UK, this must be agreed with the Authority in writing within the Specification, Call off Contract and Tender Response Document; prior to the Commencement Date.

38.2 The Supplier shall ensure that the Solution is designed and implemented on a fully resilient basis so that it does not contain any single point of failure.

38.3 The Supplier shall ensure that proper measures, systems and processes (including the Business Continuity Plan) are in place to enable continuation of the SaaS Services in the event of unexpected disruptive events.

38.4 The Supplier shall maintain the Business Continuity Plan so that it is able to meet:

- (i) the Recovery Time Objective that has been agreed with the Authority and detailed within writing within the Specification, Call off Contract and/or Tender Response Document
- (ii) the Recovery Point Objective that has been agreed with the Authority and detailed within writing within the Specification, Call off Contract and/or Tender Response Document

38.5 The Supplier shall ensure that all information and data (including Authority data) under its

responsibility is properly backed up and also that arrangements are made for recovery processes to be installed and maintained throughout the term of the Contract to minimise any potential disruption to the Authority's operations.

39 IT Security & Virus Protection

39.1 The Supplier shall:

39.1.1 keep up-to-date with all national government cybersecurity standards, guidance and legislation.

39.1.2 maintain and enforce appropriate safety and security systems and procedures to prevent unauthorised access or damage to the Solution, the Services and any Authority data hosted by the Supplier in accordance with Good Industry Practice and legislation,

39.1.3 ensure that the SaaS Services provide for the secure hosting and transfer of all data (including Authority Data) submitted to and/or transmitted via the SaaS Services; and that will meet or exceed Cyber Essentials Certification requirements as a minimum.

39.1.4 design, maintain and upgrade the Solution at all times so as to minimise the risk of attack or contamination by Viruses; and

39.1.5 use comprehensive and up to date security methods and processes to check all aspects of the Services and shall use all reasonable endeavours to ensure that the Services shall be free from all security risks and attacks that may be or will be used to access, modify, delete or damage any data files or other computer programs used by the Authority.

40 Compliance with IT policies and Standards

40.1 The Supplier shall at all times:

40.1.1 maintain compliance with (and shall not place the Authority in breach of) all relevant legislation, regulations and standards including but not limited to; General Data Protection Regulation (GDPR), Information Governance, Data Protection Act 2018, Data Security, 14 Cloud Security Principles from the National Cyber Security Centre (NCSC) and Security legislation.

40.1.2 maintain compliance with (and shall not place the Authority in breach of) government guidance, requirements and policies; as these may be amended, supplemented or replaced from time to time;

40.1.3 maintain compliance with (and shall not place the Authority in breach of) the information governance requirements specified by NHS Digital, NHS England, the Department of Health and Social Care, NHS Improvement, the National Cybersecurity Centre (NCSC) and all other relevant bodies; as these may be amended, supplemented or replaced from time to time;

40.1.4 hold a valid PSN compliance certificate and/or a valid Data Security and Protection Toolkit (DSPT) Assessment, where required by an Authority

40.1.5 maintain and comply with all Authority Policies; and

40.1.6 obtain and maintain in force any authorisations, consents, agreements and/or permissions required to enable the Solution to connect with any relevant NHS systems (including the N3 network and any replacement for this)

41 Software Usage Restrictions

41.1 Where the Supplier provides the Authority with any software or access to any software as part of the Services then the Authority shall not be entitled to and shall not:

41.1.1 reverse engineer, decompile, disassemble or otherwise seek to obtain the source code to the Software except as and to the extent permitted by law; or

41.1.2 copy, modify or adapt the Software other than to the extent reasonably required to enable the Authority to obtain the full benefit of the Services.

41.2 Where the Supplier provides the Authority with remote access to any element of the Software that is hosted by or on behalf of the Supplier as part of the Solution, the Authority shall not seek to download such Software onto its own systems (unless agreed otherwise in writing).

41.3 Any copies made in accordance with this clause 21 and the media on which they are stored will, as between the Supplier and the Authority, be the property of the Supplier and the Authority will ensure that all such copies bear the Supplier's (or, where applicable, the relevant third party proprietor's) proprietary notice.

42 Change Control

42.1 Subject to Clause 42.6, if a Party wishes to change the Services, that Party shall provide the other with written particulars of the proposed alteration in the form set out in Schedule 10, together with such further information as the receiving Party may reasonably request (immediately following its receipt) to evaluate it.

42.2 Where a Change Request is submitted by the Authority then, within 5 (five) Business Days (or such other period as may be agreed in writing with the Authority) after receipt of a Change Request, the Supplier shall provide the Authority with a written quotation for the alterations, specifying what changes (if any) will be required to the Contract Price and the reasons for such changes and what other adjustments (if any) will be required to the Contract. The Supplier shall ensure that the quotation provided by it minimises the adjustments required to the Contract other than those contained in the Change Request and shall ensure that any proposed changes to the Contract Price are calculated in accordance with the relevant time and materials rates specified in the Framework Agreement.

42.3 Where a Change Request is submitted by the Supplier then the Supplier shall include with the Change Request a quotation that complies with the provisions of Clause 42.2.

42.4 If the Authority elects, by written notice to the Supplier to accept a quotation provided under Clauses 42.2 or 42.3 then the Contract concerned shall be amended in accordance with the quotation with effect from the date of such notice. Subject to Clause 42.5, neither Party shall be obliged to agree to any Change Request or quotation and the Contract shall continue unchanged unless and until any quotation is accepted by the Authority in writing.

42.5 Where a Change Request is submitted as a result of any change in Laws or Government Requirements that results in a change being required to the SaaS Services then the Parties shall be obliged to implement the Change Request. Where the change is required as a result of a change in laws and regulations that are specific to the Authority then the change shall be carried out at the Authority's reasonable cost. Where the change is required as a result of any other change in laws and regulations then the Supplier shall carry out the change at its own cost and shall not be entitled to any increase in the Charges to reflect the change.

42.6 Operational Changes may be agreed in writing by the Authority and the Supplier and shall not be subject to the change control mechanism set out above.

42.7 Each Party shall bear their own costs incurred in preparing and considering any Change Request or quotation or Operational Change requested or required under this Clause 42.

43 Escrow

43.1 Where requested by the Authority, the Supplier shall enter into a standard escrow agreement with such reputable third-party escrow agent as the Authority reasonably specifies. This may be for a single escrow license agreement or a multi license escrow agreement.

Such escrow agreement shall extend to:

- 43.1.1 the source code to the Solution;
- 43.1.2 the Authority data hosted by or on behalf of the Supplier; and
- 43.1.3 the configuration of the Solution

43.2 The escrow agent's charges shall be agreed between the Supplier and Authority in writing within the Call off Contract and/or Specification, Call off Contract and/or Tender Response Document. As a general rule (and unless agreed otherwise in writing), the charges should be apportioned between the Supplier and the Authority on a 50:50 basis except that the Authority shall be responsible for payment of any escrow release fee. The Supplier shall bear its own costs incurred in preparing and supplying any materials (including source code to software) to the escrow agent.

43.3 If the Escrow Agreement terminates for any reason then the Authority shall be entitled to nominate an alternative escrow agent and this clause 43 shall apply to any such replacement agent.

44 Additional Termination & Exit Provisions

44.1 In addition to the rights and obligations set out in Conditions 35 and 36 (Term and termination and Consequences of expiry or earlier termination of this Contract) of the Contract, the following provisions shall apply

44.2 The Authority shall be entitled to terminate the Contract immediately (or on such longer period of notice at the Authority may specify) if:

44.2.1 the parties have failed to agree in writing the Specification and/or the Implementation Plan by the date(s) specified for this in the Order Form and/or Call off Contract or (by the expiry of 30 days following the date of the Order Form and/or Call off Contract if no other date has been specified); or

44.2.2 the Solution has not been Accepted by the Long Stop Date.

[Note: Authority to consider whether or not to look to include other termination rights if e.g. an agreed estimate is exceeded]

44.3 Within 30 days after Acceptance of the Solution, the Supplier shall produce a draft exit plan for the orderly transition of the Services from the Supplier to the Customer and/or any replacement Supplier on termination or expiry of the Contract. This exit plan shall be presented in a reasonable format with agreement by the Authority; that is capable of being utilised by any New Service Provider.

44.4 The Supplier shall ensure that the draft exit plan sets out in reasonable detail the steps to be taken by each party to enable the Services to be transferred to a new provider without and adverse impact on the Authority's operations.

44.5 The Authority shall review the draft exit plan and provide the Supplier with any recommended changes to the draft. The parties shall discuss such recommended changes in good faith and the Supplier shall incorporate any agreed changes into a final exit plan which shall be the Exit Plan. The Supplier shall update the Exit Plan no less than once in every 12-month period to reflect changes in the Services and shall keep the Exit Plan under continuous review. For the avoidance of doubt, the Supplier shall not charge for the production or updating of the Exit Plan.

44.6 Upon receipt of any termination notice in respect of the Contract (or on termination of the Contract if this occurs prior to any termination notice being issued):

44.6.1 the parties shall comply with their respective responsibilities and obligations under the Exit Plan; and

44.6.2 where requested by the Customer, the Supplier shall provide the Customer with copies of any Customer data or information in the possession or control of the Supplier in such format as the Customer

may reasonably request.

44.7 Where the Supplier terminates as a result of the material breach or insolvency of the Customer or the Customer terminates for convenience, the Customer shall pay the reasonable additional costs incurred by the Supplier in performing the Supplier's obligations, provided such costs are calculated in accordance with the rates specified in the Contract.

44.8 Where the Customer terminates as a result of the breach (actual or deemed) or insolvency of the Supplier then the Supplier shall bear its own costs and shall pay the Customer's reasonable costs of termination as well as the Customer's reasonable additional costs incurred in engaging a new provider.

44.9 Where the Customer terminates the Contract for the Supplier's breach or insolvency then the Customer shall be entitled (in addition to its other rights and remedies) to reject the Solution if it has not been finally Accepted. Where the Customer rejects the Solution then the Supplier shall refund to the Customer any amounts previously paid by the Customer in respect of the rejected Solution and any licence granted to the Customer to use the Solution shall terminate.

45 Additional Obligations

The Supplier shall:

45.1 maintain the capacity to meet existing and future requirements of Authority;

45.2 not (and shall ensure that the Staff shall not) access or use any of the Authority's Systems or Sites except as and to the extent expressly permitted by the Authority in writing and shall limit such access and use to that which is required for the purposes of providing the Services;

45.3 perform its obligations so that they do not cause any fault or interruption to the Authority's operations other than any agreed and unavoidable minor interruptions required to perform its obligations in a proper and efficient manner (such agreement by the Authority not to be unreasonably withheld or delayed);

45.4 provide the Authority with comprehensive user documentation that provides all of the information reasonably required to enable the Authority to properly understand, operate and maintain the Solution;

45.5 supply the SaaS Services so that, for the term of the Contract, they meet and satisfy (and provide all of the functionality and performance specified in) the Solution Specifications; and

45.6 ensure that each element of the SaaS Services is compatible with and does not adversely affect the Existing Systems (including ensuring that it is compatible with the browsers and other systems used by the Authority) or any other part of the SaaS

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

1 Confidentiality

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

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

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

(i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

(ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(iii) which is authorised for disclosure by the prior written consent of the Discloser;

(iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or

(v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

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

1.3 The Authority may disclose the Supplier’s Confidential Information:

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

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

1.3.3 to any relevant party for the purpose of the examination and certification of the Authority’s accounts;

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

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

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

Contract;

and for the purposes of this Contract, references to disclosure “on a confidential basis” shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3 of these Call-off Terms and Conditions.

1.4 The Supplier may only disclose the Authority’s Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the Supplier’s obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 of these Call-off Terms and Conditions as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority’s written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this Contract.

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

1.6 Clause 1 of this Schedule 3 of these Call-off Terms and Conditions shall remain in force:

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

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

2 Data protection

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

2.2 Where the Supplier is processing Personal Data under or in connection with the Contract, the Parties shall comply with the Data Protection Protocol.

2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

2.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:

2.4.1 complete and publish an annual information governance assessment using the NHS information governance toolkit;

2.4.2 achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;

2.4.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;

2.4.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;

2.4.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;

2.4.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);

2.4.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;

2.4.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;

2.4.9 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and

2.4.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.

2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

3 Freedom of Information and Transparency

3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;

3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;

3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly

(and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;

3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.

3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.

3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3 of these Call-off Terms and Conditions, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.

3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

4 Information Security

4.1 Without limitation to any other information governance requirements set out in this Schedule 3 of these Call-off Terms and Conditions, the Supplier shall:

4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and

4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

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

4.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

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

1 Definitions

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

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

“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;
“Contract”	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2 of these Call-off Terms and Conditions;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
“Controller”	shall have the same meaning as set out in the GDPR;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;

“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document appended to the Order Form;
“Defective Goods”	has the meaning given under Clause 3.6 of Schedule 2 of these Call-off Terms and Conditions;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
“e Procurement 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;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	shall have the meaning given to the term in Clause 1.2 of Schedule 3 of these Call-off Terms and Conditions;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (d) 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; (e) acts of terrorism; (f) flood, storm or other natural disasters; (g) fire; (h) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (i) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; (j) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (k) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (l) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered
	<p>by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>

“Framework Agreement”	means the Framework Agreement referred to in the Order Form;
“Fraud”	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
GDPR	means the General Data Protection Regulation (Regulation(EU) 2016/679);
“General Anti-Abuse Rule”	means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract; including in accordance with any codes of practice published by relevant trade associations;
“Goods”	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract;
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“Implementation Plan”	means the implementation plan, if any, referred to in the Key Provisions;

“Implementation Requirements”	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
“Key Provisions”	means the key provisions set out in Schedule 1 of these Call- off Terms and Conditions and/or as part of the Order Form;
“KPI”	means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
“Law”	means any applicable legal requirements including, without limitation,: (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
	(e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);

“Long Stop Date”	means the date, if any, specified in the Specification and Tender Response Document;
“NHS”	means the National Health Service;
“Occasion of Tax Non-Compliance”	means: (m) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (n) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Order Form”	means the order form for the Goods and Services issued by the Authority in accordance with the Framework Agreement;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Premises and Locations”	has the meaning given under Clause 4.1 of Schedule 2 of these Call-off Terms and Conditions;

“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority’s product catalogue from time to time;
“Rejected Goods”	has the meaning given under Clause 3.2 of Schedule 2 of these Call-off Terms and Conditions;

“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions;
“Requirement to Recall”	has the meaning given under 3.9 of Schedule 2 of these Call-off Terms and Conditions;
“Services”	means the services set out in this Contract;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, this services commencement date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's services catalogue from time to time;
“Specification and Tender Response Document”	means the Specification and Tender Response Document set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub- contractors and person employed or engaged by such Sub - contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;

“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the Order Form;

“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Term”	means the term as referred to in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2 of these Call-off Terms and Conditions;
“Transfer Date”	means the Actual Services Commencement Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

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

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

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

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

1.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off Terms and Conditions, the Supplier shall bear the cost of complying with its obligations under this Contract.

1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.

1.8 Words denoting the singular shall include the plural and vice versa.

1.9 Where a term of this Contract provides for a list of one or more items following the word “including”

or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.10 Where there is a conflict between the Supplier’s responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.

1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.

1.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

1.14 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 5 of these Call-off Terms and Conditions Installation and Commissioning Services

1 Installation and Commissioning Services

1.1 Save as provided for under Clause 5 of this Schedule 5 where the Goods or equipment to be used in connection with this Contract are licenced to the Supplier by the Authority, the Goods shall be installed and commissioned at the relevant Premises and Locations by the Supplier as set out in the Specification and Tender Response Document or as otherwise agreed by the Authority in writing.

1.2 The Supplier shall provide the Installation and Commissioning Services:

1.2.1 promptly and in any event within any time limits as may be set out in this Contract;

1.2.2 in accordance with all other provisions of this Contract;

1.2.3 using reasonable skill and care;

1.2.4 in accordance with any quality assurance standards as set out in the Contract;

1.2.5 in accordance with the Law and with Guidance;

1.2.6 in accordance with Good Industry Practice;

1.2.7 in accordance with the original manufacturer's guidelines and recommendations relating to the Goods being installed and commissioned;

1.2.8 in accordance with the Policies;

1.2.9 in a professional and courteous manner; and

1.2.10 using appropriately skilled, trained and experienced Staff.

1.3 The Supplier will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Installation and Commissioning Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

1.4 On completion of installation the Supplier shall remove its plant, equipment and unused materials and shall leave the Premises and Locations in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises and Locations, or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any of its staff or sub-contractors.

Inspection and Testing

1.5 Once the Goods have been installed and commissioned, the Supplier shall inform the Authority in writing that the Goods are ready for use. The following process will then apply:

1.5.1 within five (5) Business Days of receipt of such written confirmation from the Supplier that the Goods are ready to use, the Authority may carry out any such reasonable inspections and testing of the Goods as the Authority deems appropriate (in accordance with the relevant manufacturers' technical manuals relating to the Goods and/or as otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed by the Parties in writing) to confirm that the Goods comply with the requirements of this Contract and are ready for use;

1.5.2 as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods;

1.5.3 if the Authority on inspection and testing is of the view that the Goods have been supplied,

installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;

1.5.4 if the Authority on inspection and testing is not of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 1.7 and 1.8 of Schedule 7 shall apply; and

1.5.5 if the Authority chooses not to inspect and/or test the Goods, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6th) Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 1.5.1 of this Schedule 5 that the Goods are ready to use.

1.6 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Supplier notwithstanding any such Authority Confirmation.

1.7 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, forthwith re-supply, re-install and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the Goods are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.

1.8 In the event of any dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

1.9 In the event that the Specification and Tender Response Document states that Goods shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.8.1.4 (inclusive) of this Schedule 5 shall apply to the Goods within each phase and/or instance of supply.

1.10 In the event that the Specification and Tender Response Document stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the replacement Goods, the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.4 (inclusive) of this Schedule 5 shall apply in relation to the inspection and testing of any substitute or replacement Goods.

2 Relocation of Goods

2.1 Upon reasonable written notice from the Authority, the Supplier shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 1.1 to 1.4 (inclusive) of this Schedule 5 shall apply in relation to the inspection and testing of any relocated Goods.

2.2 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 2.1 of this Schedule 5 provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

3 Supplier's obligation to make good any damage

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

4 Licence of Authority Equipment

4.1 Where equipment and materials are supplied by the Authority these will be serviced and maintained by the Authority. However, the Authority gives no warranty that such equipment and materials used in connection with the Contract are fit for the purpose or in a good state of repair. It shall be the responsibility of the Supplier to ensure that any such equipment and materials are capable of being used for the purposes intended.

4.2 The Authority will with effect from the Commencement Date grant to the Supplier a non-exclusive, non-transferrable (save as necessary in relation to any permitted subcontractors) licence to use of any licensed equipment ("**Licensed Equipment**") (as defined in the Specification and the Tender Response Document) for the duration of the Contract.

4.3 The Supplier will indemnify and keep indemnified the Authority against all losses arising out of or in connection with the use of the Licensed Equipment by the Supplier unless such losses are caused by any negligent act or omission by the Authority.

4.4 In relation to the Licensed Equipment, the Supplier shall:

4.4.1 use the Licensed Equipment strictly in accordance with any reasonable instructions provided by the Authority;

4.4.2 store, operate and/or utilise all the Licensed Equipment in accordance with the reasonable recommendations of the Authority and of the manufacturers which are notified in writing to the Supplier by the Authority from time to time;

4.4.3 store, operate and/or utilise the Licensed Equipment in accordance with current statutory requirements and other applicable guidelines;

4.4.4 not charge or encumber the Licensed Equipment;

4.4.5 not sub-licence, assign or novate the benefit or burden of the licence set out in this Clause 4 in whole or in part;

4.4.6 notify the Authority as soon as practicable of it coming to the notice of the Supplier that any of the Licensed Equipment has developed a fault or is otherwise not operating correctly (provided that the Supplier shall notify the Authority immediately in the case of an emergency relating to the Licensed Equipment and shall take all reasonable steps to secure the relevant item to ensure it does not pose any risk or harm to any service user or employee or any other person);

4.4.7 not, nor shall it permit, any third party to modify, disassemble or alter the Licensed Equipment; and

4.4.8 ensure that the Licensed Equipment is returned to the Authority as soon as reasonably practicable in the same or similar condition as the Licensed Equipment have been provided to the Supplier (accepting fair wear and tear) at the expiry of the licence granted pursuant to this Clause 4.

4.5 Subject to the Supplier complying with its obligations pursuant to Clause 4.4 above, in relation to the Licensed Equipment the Authority shall at its discretion and own cost replace any Licensed Equipment which in its opinion (acting reasonably) ceases to be capable of being safely and effectively used for the purposes for which they are intended.

4.6 The Authority shall insure the Licensed Equipment for their full replacement value.

4.7 For the avoidance of any doubt, nothing in this Clause transfers or purports to transfer ownership of the Licensed Equipment to the Supplier.

4.8 Upon expiry or termination of the licence granted pursuant to Clause this 4 or, if earlier, upon written notice given by the Authority to the Supplier following a material breach by the Supplier of its obligations under Clause 4.4, all of the rights and licences granted by the Authority pursuant to this Clause 4 will terminate with immediate effect and the Supplier will return all the Licensed Equipment to the Authority or transfer them to a replacement Supplier as the Authority may direct within the timescales and in the manner agreed by the Parties from time to time each acting reasonably.

4.9 The Supplier shall satisfy himself that any Licensed Equipment is suitable for the purpose intended.

4.10 The Supplier's Contract Manager shall forthwith inform the Authority's Contract Manager of any defects appearing in or losses of, or damage, occurring to the Authority's equipment. The Supplier shall be liable for any damage to any Licensed Equipment caused by negligence, misdirection or misuse due to negligence on the part of the Supplier, its staff, sub- Suppliers, servants or agents.

4.11 The Authority shall not be liable for any damage to the Licensed Equipment caused by a defect in or faulty operation of the Licensed Equipment.

4.12 The Authority shall have the right to withdraw Licensed Equipment at any time and shall be under no liability whatsoever for failing to licence equipment at any time.

SCHEDULE 5A Maintenance Services

1 Maintenance Services

1.1 From the point set out in the Specification and Tender Response Document at which Maintenance Services are triggered or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to the Goods, all Goods forming part of the Maintenance Inventory shall be maintained throughout the Term by the Supplier so as to comply with:

1.1.1 any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and Tender Response Document and the Supplier's response to such requirements set out as part of the Specification and Tender Response Document); and

1.1.2 any applicable manufacturers' specifications.

1.2 The Supplier shall provide the Maintenance Services:

1.2.1 promptly and in any event within any time limits as may be set out in this Contract;

1.2.2 in accordance with all other provisions of this Contract;

1.2.3 using reasonable skill and care;

1.2.4 in accordance with any quality assurance standards as set out in the Contract;

1.2.5 in accordance with the Law and with Guidance;

1.2.6 in accordance with Good Industry Practice;

1.2.7 in accordance with the original manufacturer's guidelines and recommendations relating to the Goods being maintained;

1.2.8 in accordance with the Policies;

1.2.9 in a professional and courteous manner; and

1.2.10 using appropriately skilled, trained and experienced Staff.

2 General maintenance requirements

2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacturer's guidelines and recommendations, shall:

2.1.1 provide effective planned preventive maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing; and

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

3 Service visits

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

connection with such site visits.

4 Provision of information

4.1 Without prejudice to any specific records keeping requirements set out in this Contract, including as part of the Specification and Tender Response Document, the Supplier shall:

4.1.1 maintain a record of all Goods that are covered by the Maintenance Services ("**Maintenance Inventory**"). For the avoidance of doubt, such Maintenance Inventory shall be deemed to form part of the Specification and Tender Response Document and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time;

4.1.2 maintain records of all maintenance work carried out on any Goods in connection with this Contract; and

4.1.3 provide all required management information to the Authority promptly upon Authority's written request to demonstrate, to the Authority's reasonable satisfaction, compliance with requirements to provide planned preventative maintenance and, where applicable, remedial maintenance in connection with all Goods listed in the Maintenance Inventory.

4.2 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Maintenance Services, the Maintenance Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.

4.3 Subject always to the provisions of Clause 8 of this Schedule 5A, the Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any Goods forming part of the Maintenance Inventory:

4.3.1 the Supplier will no longer be able to maintain the item of Goods as any required third party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or

4.3.2 the Supplier will no longer be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

4.4 Where the Supplier provides information to the Authority under Clause 4.3 of Schedule 5A, it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.

5 Loan Goods and replacement Goods

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

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

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

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

Where the Supplier loans Goods to the Authority and subsequently replaces the loaned Goods, the Supplier shall comply with the provisions of Clauses 5.1.2 and 5.1.3 of this Schedule 5A in relation to such replacement of the loaned Goods.

5.2 Subject to Clauses 7 and 8 of this Schedule 5A, any Goods added to the Maintenance Inventory in accordance with Clause 5.1.3 of this Schedule 5A will be covered by the Maintenance Services for the remainder of the Term from the point set out in the Specification and Tender Response Document at which Maintenance Services are triggered for such substitute Goods or as otherwise agreed by the Parties in writing taking into account any warranty period applicable to such substitute Goods. For the avoidance of doubt, this Contract shall apply in full to the supply, installation, and commissioning (as applicable) of such substitute Goods.

6 Additional warranties

6.1 The Supplier warrants and undertakes that:

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

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

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

6.1.4 it has and shall maintain a properly documented system of quality controls in respect of the Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and shall at all times comply with such quality controls;

6.1.5 any equipment it uses in the installation of any replacement parts, consumable items, replacement Goods and/or loan Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;

6.1.6 receipt of any replacement parts, consumable items, replacement Goods and/or loan Goods by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;

6.1.7 it will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods to the Authority; and

6.1.8 it will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

6.2 Where the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement Goods and/or loan Goods are supplied to the Authority, all such items which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 5A, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.

6.3 If the Supplier is in breach of Clause 6.2 of this Schedule 5A, in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall, subject to Clause 13.2 of Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

6.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement Goods in full or part.

6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 5A have been breached or there is a risk that any warranties may be breached.

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

7.1 By giving a minimum of thirty (30) days written notice to the Supplier, the Authority may remove any Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the event that:

7.1.1 it decommissions or replaces the Goods for health and safety reasons and/or for reliability reasons;

7.1.2 it sells, transfers or otherwise disposes of the Goods;

7.1.3 the Goods are lost or stolen; or

7.1.4 the Goods are replaced by the Authority and the replacement Goods are still under warranty.

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

8.1 By giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the following circumstances:

8.1.1 the Supplier will no longer be able to maintain the Goods as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or

8.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

8.2 The Parties acknowledge that:

8.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Schedule 5A notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and

8.2.2 Clause 8.1 of this Schedule 5A shall only apply where the Term of the Contract exceeds twelve (12) months.

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

9.1 Following the removal of any Goods from the Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Schedule 5A:

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

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

9.2 If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 this Schedule 5A within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to dispute resolution in accordance with Clause 22 of Schedule 2.

10 Additional termination provisions

10.1 If the Authority removes any Goods from the Maintenance Inventory in accordance with Clause 7.1 of this Schedule 5A and no Goods will remain part the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining Goods in accordance with the Clause 7.1 of this Schedule 5A or at anytime afterwards.

10.2 If the Supplier removes Goods from the Maintenance Inventory in accordance with Clause 8.1 of this Schedule 5A and no Goods will remain part of the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining Goods in accordance with Clause 8.1 of this Schedule 5A or at any time afterwards, but shall not take effect before the effective date of the removal of such Goods from the Maintenance Inventory.

10.3 Following any termination of the Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Schedule 5A, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for the Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause

9.1.2 of this Schedule 5A. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contract.

11 Non-performance

11.1 The Supplier acknowledges the critical importance that the Authority places on ensuring that all Goods used by the Authority are properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users. Therefore, without prejudice to any other provisions of the Contract, where the Supplier does not provide the Maintenance Services in accordance with any time periods and/or other requirements set out in the Contract ("**Non-performed Services**"), without prejudice to its other right and remedies under this Contract, the Authority may elect to: (i) follow the remedial process set out in Clause 15.3 of Schedule 2; or (ii) the Authority may procure alternative maintenance services from a third party.

11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Schedule 5A. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:

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

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

11.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services itself. What is a “reasonable period of time” in the particular circumstances shall be determined at the Authority’s sole discretion taking into account its obligation under this Clause 11.2 of this Schedule 5A to act reasonably.

11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Schedule 5A, the following provisions shall apply:

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

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

12 Supplier’s obligation to make good any damage

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

Schedule 7 of these Call-off Terms and Conditions Pharmaceutical Products – NOT USED

Schedule 8 Change Control Process

In this Schedule the following definitions shall apply:

“Authority’s Change Manager”	means the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative.
“Change Authorisation Note”	means the form used by the Parties to set out the agreed Contract Change and which shall be substantially in the form of Appendix 3 to the Order Form
“Change Request”	means a written request for a Contract Change which shall be substantially in the form of Appendix 3 to the Order Form
“Contract Change”	means any change to this agreement other than an Operational Change.
“Change Communication”	means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule.
“Supplier’s Change Manager”	means the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Project Manager.
“Fast-track Change”	means any Contract Change which the Parties agree to expedite in accordance with paragraph 7.2 of this Schedule.
“Impact Assessment”	means an assessment of a Change Request as detailed in Clause 4 of this Schedule

“Operational Change”	means any change in the Supplier's operational procedures which in all respects, when implemented: e) will not affect the Contract Price or the Supplier's costs of performing the Services and will not result in any other costs to the Authority; and/or f) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and/or g) will not adversely affect the interfaces or interoperability of the Services with the Authority's hospital information systems; and/or h) will not require a change to the Contract.
“Receiving Party”	means the Party which receives a proposed Contract Change.

1. General Principles of Change Control Procedure

1.1 This schedule sets out the procedure for dealing with Contract Changes.

1.2 Operational Changes shall be processed in accordance with paragraph 8 below. If either Party is in doubt about whether a change falls within the definition of an Operational Change then it will be processed as a Contract Change.

1.3 Under this Change Control Procedure:

1.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with paragraph 3;

1.3.2 the Supplier will assess and document the potential impact of a proposed Contract Change in accordance with paragraph 4 before the Contract Change can be either approved or implemented;

1.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 5;

1.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 6;

1.3.5 no proposed Contract Change shall be implemented by the Supplier until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2; and

1.3.6 if the circumstances or nature of a proposed Contract Change mean that it is a Fast-track Change then it shall be processed in accordance with paragraph 7.

1.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties will agree a process for any applicable test procedures in respect of such Contract Changes for the purposes of affected procedures.

1.5 Until such time as a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 5.2, then

1.5.1 unless the Authority expressly agrees otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of the Contract as if the proposed Contract Change did not apply; and

1.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this

Contract.

2. Costs

2.1 Subject to paragraph 2.3, each Party shall bear its own costs in relation to the preparation and agreement of each Change Request and Impact Assessment.

2.2 All Contract Changes shall be calculated and charged in accordance with the principles and rates set out in Appendix 2 of the Order Form. The Supplier will only be entitled to increase the Contract Price if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and that such additional resources are not accounted for within the scope of the Contract Price already payable by the Authority. In any event, any change to the Contract Price resulting from a Contract Change (whether the change will cause an increase or a decrease in the same) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

3. Change Request

3.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. The Change Request shall be substantially in the form of Appendix 3 to the Order Form and must state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

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

3.3 If the Authority issued the Change Request, then the Supplier shall provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Business Days of the date of receiving the Change Request provided that if the Supplier requires any clarifications in relation to the Change Request before it can deliver the Impact Assessment, then it will promptly notify the Authority and the time period shall be extended by the time taken by the Authority to provide those clarifications. The Authority shall respond to the request for clarifications as soon as is reasonably practicable and the Supplier shall

provide the Authority with sufficient information to enable it to understand fully the nature of the request for clarification.

4. Impact Assessment

4.1 Each Impact Assessment shall include (without limitation):

4.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

4.1.2 details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations under the Contract and any variation to the terms of the Contract that will be required as a result of that impact and including without limitation changes to:

(a) the Specification and Tender Response Document

(b) the Service Levels

(c) other services provided by third party suppliers to the Authority;

(d) other proposed Contract Changes which have yet to be agreed with HTE pursuant to this Change Control Process;

(e) details of the cost of implementing the proposed Contract Change in accordance with Appendix 2 of

the Order Form;

(f) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party, taking into consideration any other proposed Contract Changes and any alteration to the business practices of either Party;

(g) a timetable for the implementation, together with any proposals for the testing of the Contract Change and the impact on any other proposed Contract Changes;

(h) details of how the proposed Contract Change will ensure compliance with any applicable change in Law; and

(i) such other information as the Authority may reasonably request in (or in response to) the Change Request.

4.2 Subject to the provisions of paragraph 4.3, the Authority shall review the Impact Assessment and, within 15 Business Days of receiving the Impact Assessment, it shall respond to the Supplier in accordance with paragraph 5.

4.3 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five Business Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the

Authority within 10 Business Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this paragraph until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5. Authority's Right of Approval

5.1 Within 15 Business Days of receiving the Impact Assessment from the Supplier or within 10 Business Days of receiving the further information that it may request pursuant to paragraph 4.3, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

5.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 5.2 below;

5.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection;

5.1.3 require the Supplier to modify the Change Request and/or Impact Assessment in which event the Supplier shall make such modifications within five Business Days of such request. Subject to paragraph 4.3 above, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Business Days.

5.2 If the Authority approves the proposed Contract Change pursuant to paragraph 5.1 and it has not been rejected by the Supplier in accordance with paragraph 6 below, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature, the Change Authorisation Note shall constitute a binding variation to the Contract provided that the Change Authorisation Note is signed by:

5.2.1 the appropriate person(s) specified in paragraph 9.1 of this Appendix; and

5.2.2 the Authority within 10 Business Days of receiving the Supplier's signed copy.

5.3 If the Authority does not sign the Change Authorisation Note within this time period, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five Business Days of the date of such notification, then the Supplier may refer the matter to the Dispute Resolution Procedure.

6. Supplier's Right of Approval

6.1 Following an Impact Assessment, if the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority:

6.1.1 would materially and adversely affect the risks to the health and safety of any person; or

6.1.2 would require the Services to be performed in a way that infringes any Law; or

6.1.3 is outside of the Supplier's technical capability where:

(a) the Supplier can demonstrate to the Authority's reasonable satisfaction that the proposed Contract Change is impossible to implement; and

(b) the proposed Contract Change is outside the technical scope of the Services as set out in the Specification and Tender Response Document,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five Business Days after the date on which it is obliged to deliver the Impact Assessment in accordance with paragraph 3.3.

7. Fast-Track Changes

7.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

7.2 If both Parties agree in relation to a proposed Contract Change that:

7.2.1 the Contract Change does not involve any alteration to, or deviation from the contractual principles set out in the Contract; and

7.2.2 the total number of Contract Changes in relation to which this fast track procedure has been applied does not exceed two (2) in any twelve (12) month period (or such higher number as the Parties may from time to time agree in writing); and

7.2.3 the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

7.2.4 then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 2, 3, 4, 5 and 6 above but with reduced timescales, such that any period of fifteen (15) Business Days is reduced to five (5) Business Days, any period of ten (10) Business Days is reduced to two (2) Business Days and any period of five (5) Business Days is reduced to one (1) Business Day.

7.2.5 The parameters set out in paragraph 7.2 may be revised from time to time by agreement between the Parties in writing.

8. Operational Change Procedure

8.1 Any changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

8.1.1 have an impact on the Authority;

8.1.2 require a change to the Contract;

8.1.3 have a direct impact on use of the Services; or

8.1.4 involve the Authority in paying any additional charges or other costs.

8.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("RFOC") to the Supplier Representative.

8.3 The RFOC shall include the following details:

8.3.1 the proposed Operational Change; and

8.3.2 time-scale for completion of the Operational Change.

8.4 The Supplier shall inform the Authority of any impact on the System or the Services that may arise from the proposed Operational Change.

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

9. Change Authorisation

9.1 Any proposed Contract Change processed in accordance with this schedule will not be authorised and the Supplier shall not implement any proposed Contract Change until the Change Authorisation Note is signed and executed by the Parties in accordance with the Authority's Contract Change authorisation and sign off procedure(s), as notified to the Supplier in writing from time to time.

10. Communications

10.1 For any Change Communication to be valid under this schedule, it must be sent to either the Authority's Change Manager or the Supplier's Change Manager, as applicable. All Change Communications may be hand delivered or sent by first-class post, email or facsimile. Change Communications shall be deemed to have been received at the following times:

10.1.1 if hand delivered, then at the time of delivery or, if delivered after 16.00 hours on the next Business Day;

10.1.2 if posted first class from within the UK, at 10.00 hours on the second Business Day after it was put into the post; or

10.1.3 if sent by facsimile or email, then at the expiration of 4 (four) hours after the time of despatch, if despatched before 15.00 hours on any Business Day, and in any other case at 10.00 hours on the next Business Day following the date of despatch.

10.2 In proving delivery of a Change Communication, it will be sufficient to prove that delivery was made, or that the envelope containing the Change Communication was properly addressed and posted (by prepaid first class recorded delivery post) or that the facsimile or email was properly addressed and despatched, as the case may be.