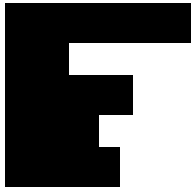




Department of Health & Social Care

DHSC
39 Victoria Street
London
SW1H 0EU

S J Pearson Consulting Ltd



25, August 2021

Dear Sirs

1. The purpose of this letter is to:
 - a. clarify and formalise the basis upon which S J Pearson Consulting Ltd ("**SJP**", "**you**" and "**your**") provided certain postcode data search services to the Department for Health and Social Care (and its related bodies, including NHS Digital)("**DHSC**") in the period from July 2020 to 10 October 2021 ("**Service Period**") to support the COVID-19 test booking system ("**Services**");
 - b. record the price payable by DHSC for the Services rendered by SJP during the Service Period ("**Service Fee**"); and
 - c. record the agreement by SJP that the payment of the Service Fee is in full and final settlement of any claims that SJP may have against DHSC (on the terms set out below).
2. As you are aware, due to the extreme urgency brought about by the onset and proliferation of the Covid-19 virus it was necessary to expeditiously engage your services to support a number of the national efforts to combat the spread of the virus.
3. At the point at which you were engaged, we agreed in principle that the provision of the Services would be subject to the DHSC Terms and Conditions for the Supply of Goods (April 2020) (as appended to this letter) ("**Contract**"). However, the Contract was never formally executed by DHSC albeit both parties have operated on the basis that the Contract is legally binding and applies to the provision of the Services.

4. The agreed term of the Contract expired on 10 October 2020 so there is no practical purpose in DHSC now formally executing the Contract as it is no longer extant. However, it is considered important so as to avoid any future misunderstanding or doubt to record formally the basis on which the Contract was performed and the terms that applied as set out at paragraph 5 below.
5. In consideration of the payment by each party to the other of the sum of **one** pound (£1), the receipt and sufficiency of which is acknowledged by each party, DHSC and SJP hereby acknowledge and agree that the:
 - a. provision of the Services during the Service Period was on the basis of, and governed by, the terms and conditions of the Contract, and the rights and obligations of the parties in respect of those Services are as set out in the Contract (without prejudice to any other rights and remedies which exist at law and in equity);
 - b. signature of this letter shall constitute acceptance of the terms of the Contract;
 - c. scope of the Services and the relevant terms applicable are as set out in the Contract; and
 - d. the Service Fee is £250,000 plus VAT.
6. SJP shall no later than 3, September 2021 render an invoice for the Service Fee. DHSC shall then pay to SJP the Service Fee in full and without set-off or any other deduction in one payment to be received not later than 1, October 2021. Payment shall be made by direct transfer in cleared funds into the Supplier's account specified on the Supplier's invoice.
7. SJP acknowledges and agrees that:
 - a. upon payment of the Service Fee, it shall not be entitled to receive any further payment for the Services;
 - b. payment of the Service Fee is in full and final settlement of any and all liability, rights, remedies or causes of action and claims or potential claims of whatever nature (whether actual or contingent whether known or unknown, whether in law or equity) that SJP can, shall or may have against DHSC (including, without limitation, any claims with regards to interest for late payment of invoices under the Contract) ("**Claims**") and SJP unconditionally and irrevocably releases, waives and absolutely discharges all or any Claims against DHSC ("**Released Claims**");
 - c. it will not sue, commence, voluntarily aid in any way or prosecute against DHSC any action, claim, suit or other proceedings arising out of or in any way connected with the Released Claims in any jurisdiction;
 - d. for the avoidance of doubt, 7.b and c. shall not apply to, and the Released Claims shall not include, any claims in respect of any breach of the terms of this letter.
8. DHSC and SJP agree that:
 - a. this letter and any disputes or claims relating to or in connection with its subject matter and formation (including all non-contractual disputes) shall be governed by and interpreted in accordance with English law; and
 - b. DHSC and SJP irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales to settle any dispute or claim (including all non-contractual disputes) that may arise out of or in connection with this letter, or its subject matter or formation.

9. This letter and the Contract constitutes the entire agreement and understanding between the parties to date in respect of the provision of the Services and the subject matter of this letter and supersedes any previous agreement, warranty, statement or representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this letter, by or on behalf of, DHSC or SJP. DHSC and SJP acknowledge that they are not relying upon any pre-contractual statement not set out in this letter and that, except in the case of fraud, neither DHSC or SJP shall have any right of action against the other arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this letter.

10. DHSC and SJP intend this letter to be legally binding and agree to be bound by it.

If you have any queries or concerns, please do not hesitate to contact me. Otherwise, please confirm your acceptance by signing the enclosed copy letter and returning it to me at your earliest convenience.

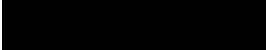
Yours faithfully

A solid black rectangular box used to redact a signature.

For and on behalf of the Secretary of State for the Department of Health and Social Care

Agreed and accepted for and on behalf of S J Pearson Consultancy Ltd. In doing so, I acknowledge and confirm (on behalf of S J Pearson Consultancy Ltd) our acceptance of the terms set out in this letter.

.....
Authorise 

Name: 

Position:

Date:

Annex – DHSC Terms and Conditions for the Supply of Goods (April 2020)

DHSC Terms and Conditions for the Supply of Goods

[For COVID-19 use only]

The Authority	Department of Health and Social Care Richmond House 79 Whitehall Greater London England SW1A 2NS
The Supplier	SJ Pearson Consulting Ltd [REDACTED] [REDACTED]
Date	[Insert date when signed by both parties]07 th August 2020
Type of Goods	Digital location/look-up search services

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[Guidance Note: Text highlighted in yellow should be amended as appropriate before publication.]

[Notes highlighted in green are for internal guidance and must be deleted before publication.]

[Please delete all guidance notes in Green and all text above before publishing this document]

[Guidance Note: Procurement Leads must read through the following template and make changes to it where appropriate to make it specific to the procurement in question. If you are in doubt about making changes please seek guidance from your Category Lead/Account Manager.]

[These Terms and Conditions are only to be used during COVID-19 for specific goods including testing kits. If you have any further questions around the use of this template, please contact the procurement policy team.]

[Clause 5 under Schedule 1 of the Contract details a 'Time is of the Essence' Clause. If you require delivery in an expedient manner the recommendation is for this clause to be used.]

[Clause 12 under Schedule 1 of the Contract is specific to PPE. If you procure any PPE you MUST use this clause (tick this clause 12 in Schedule 1 to include).]

[In the Order Form and in Schedule 2 you will need to check and review any timeframes mentioned (see Clauses 2, 4, 6, 7, 11, 12, 15, 18, 22 and 23), as you may want to consider if these timescales are appropriate to your specific procurement requirements].

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


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

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

Schedules

Schedule 1	Key Provisions
Error! Reference source not found. Schedule 2	General Terms and Conditions
Schedule 3	Definitions and Interpretations
Schedule 4	Additional Special Conditions

Order Form

1. Contract Reference	[Insert Buyer's contract reference number]
2. Date	[Insert date on which last party signs]
3. Buyer	Department of Health and Social Care Richmond House 79 Whitehall Greater London England SW1A 2NS
4. Supplier	SJ Pearson Consulting Ltd 
5. The Contract	<p>The Supplier shall supply the deliverable described below on the terms set out in this Order Form and the Schedules.</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3.</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <p>Please do not attach any supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>
6. Deliverables	<p>(Goods)</p> <p>Location Lookup – initial block of 24 million transactions</p> <p>Delivered in accordance with the following instructions:</p> <p>Delivery Address(es): N/A</p> <p>Date(s) of Delivery: Ongoing</p> <p>Packaging Instructions: N/A</p> <p>[Guidance: If you have more than one delivery address/ date of delivery please clarify this in this section or in the specification section/ annex]</p>
7. Specification	The specification of the Deliverables is as set out below .

	<p>The Intelligex Postcode Data Search ("IPDS") is an online service from the Vendor that provides:</p> <ul style="list-style-type: none">• access to an API based service to provide geographical location data for post codes in the UK (excluding Northern Ireland); and• a secure hosted environment from which to operate;<ul style="list-style-type: none">○ will support the above Service according to current known requirement and performance, estimated at 200,000 transactions per hour during peak times.○ Will be supplied according to the required security requirements; and• performant throughput of 400,000 requests per hour, with a response under 500ms at the 99th percentile. <p>Professional Services are offered at no further cost to:</p> <ul style="list-style-type: none">○ commission the above deliverables; and○ support the above deliverables, according to the SUPPORT AND MAINTENANCE AGREEMENT provided in EXHIBIT A.																				
8. Term	<p>The Term shall commence on</p> <p>14/08/2020</p> <p>And the Expiry Date shall be 8/1/2020¹, unless it is otherwise extended or terminated in accordance with the terms and conditions of the contract.</p> <p>The Buyer may extend the Contract for a period of up to 6 months by giving not less than 5 Business days notice in writing to the supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>																				
9. Charges	<p>The Charges for the Deliverables shall be set out below</p> <p>All prices are in GBP Sterling, and exclude VAT.</p> <table><tr><th>Approved Transaction Bundle</th><th>Price</th><th>Additional Transactions</th><th>Additional Price</th></tr><tr><td>6,000,000*</td><td></td><td>1,000</td><td></td></tr><tr><td>12,000,000*</td><td></td><td>1,000</td><td></td></tr><tr><td>24,000,000*</td><td></td><td>1,000</td><td></td></tr><tr><td>60,000,000*</td><td></td><td>1,000</td><td></td></tr></table>	Approved Transaction Bundle	Price	Additional Transactions	Additional Price	6,000,000*		1,000		12,000,000*		1,000		24,000,000*		1,000		60,000,000*		1,000	
Approved Transaction Bundle	Price	Additional Transactions	Additional Price																		
6,000,000*		1,000																			
12,000,000*		1,000																			
24,000,000*		1,000																			
60,000,000*		1,000																			
10. Payment	<p>The parties agree that:</p> <p>(A) The Supplier may issue an invoice:</p> <p>Option a: [prior to/immediately following dispatch of the Goods described above]</p>																				

Commented [IU1]: This read 8/1/2020 which I believe should read 8/1/21, I've adjusted accordingly.

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	<p><i>(B) The Supplier's invoice shall be paid by the Authority:</i></p> <p><i>Option a: within 30 days of receipt of a valid invoice (and the payment term in clause 6.6 of Schedule 2 shall be adjusted accordingly)</i></p> <p>Provided always that such invoice is undisputed and validly issued in accordance with the invoicing requirements set out below and elsewhere in this Contract.</p> <p>The parties agree that the payment terms set out above shall apply only be in respect of this Order Form, and that nothing set out herein shall relieve the Supplier of its obligations to comply with, or otherwise vary the remaining terms of this Order Form or any other provision of this Contract.</p> <p>The Supplier acknowledges and agrees that any advance payment of Charges as set out in this Order Form may be recovered by the Authority in accordance with the terms and conditions (including (without limitation) in the event that the Goods are delivered late or are rejected or otherwise in the event of the expiry or early termination of this Contract prior to the acceptance of any such Goods by the Authority).]</p> <p>Department of Health and Social Care Richmond House 79 Whitehall Greater London England SW1A 2NS [REDACTED]</p> <p>Non- compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section by email</p>	
11. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>[REDACTED]</p>	
12. Seller's Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>[REDACTED]</p> <p>or, in their absence,</p> <p>[REDACTED]</p>	
13. Address for notices	<p>Buyer:</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>SJ Pearson Consulting Ltd</p>

	Department of Health and Social Care Richmond House 79 Whitehall Greater London England SW1A 2NS Attention: [REDACTED] [REDACTED] Email: [REDACTED]	[REDACTED] [REDACTED] Attention: [REDACTED] atted: Font: Bold [REDACTED] Email: [REDACTED] [REDACTED] Formatted: Font: Bold
14. Key personnel	Buyer: DHSC Department of Health and Social Care Richmond House 79 Whitehall Greater London England SW1A 2NS Attention: [REDACTED] Email: [REDACTED]	Supplier: <u>Supplier:</u> <u>SJ Pearson Consulting Ltd</u> [REDACTED] <u>Attention:</u> [REDACTED] <u>Email:</u> [REDACTED] [REDACTED] [REDACTED]
15. Procedures and Policies	The Buyer may require the Supplier to ensure that any person employ Formatted Table delivery of the Deliverables has undertaken a Disclose and Barring Service check. The supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "Relevant conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.	

Signed by the authorised representative of THE AUTHORITY

Name:	Signature:
Position:	Date

Signed by the authorised representative of THE SUPPLIER

Name:		Signature	
Position:	<u>Director</u>	Date	<u>07/08/2020</u>

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Schedule 1

Key Provisions

[Guidance: These Key Provisions enable the Authority to complete project specific details and to add any optional and/or extra provisions applicable to the relevant project.]

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 2 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 3 to 12 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Order of precedence

- 2.1 Subject always to Clause [Error! Reference source not found.1.9](#) of Schedule 3 should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
 - 2.1.1 Order Form
 - 2.1.2 Schedule 1: Key Provisions;
 - 2.1.3 [Error! Reference source not found.Schedule 2](#): General Terms and Conditions;
 - 2.1.4 Schedule 3: Definitions and Interpretations;
 - 2.1.5 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
- 2.2 For the avoidance of doubt, the Order Form shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included In these Terms and Conditions. Should there be a conflict between these parts of the Order Form, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

[Guidance: Clause 2 of this Schedule addresses the order of precedence of various parts of the Contract for construction purposes. This should be carefully checked to confirm that it is appropriate for the particular Contract with any changes made accordingly.]

[Guidance: Below are additional clauses that you may wish to add if relevant to the procurement. If a clause does not apply, leave the relevant box blank.]

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

- 3.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply, and/or installation of the Goods: **[insert standards]**.

[Guidance: If you have any project specific quality assurance requirements, such as compliance with and maintenance of ISO 9001, check the box above and insert the requirements in the second line.]

4 Purchase Orders ☐ (only applicable to the Contract if this box is checked)

- 4.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract and shall ensure that any Purchase Order is clearly noted on each delivery. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.

[Guidance: If your financial systems and/or governance arrangements require you to issue a purchase order to the Supplier prior to the commencement of delivery of the Goods as is good practice, then this Clause is needed to set out the timing and status of these purchase orders and the box above should be checked accordingly.]

5 Time of the essence ☐ (only applicable to the Contract if this box is checked)

- 5.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 12.4 (i) of [Error! Reference source not found.](#) Schedule 2.

6 Specific time periods for inspection ☐ (only applicable to the Contract if this box is checked and Clause 6.1 of this Schedule 1 is completed)

- 6.1 The Authority shall visually inspect the Goods within **[insert time period during which any inspection must be carried out]** of the date of delivery of the relevant Goods.

[Guidance: If you are to visually inspect the Goods within a fixed period of time for the purposes of Clause 4.2 of Schedule 2 (e.g. to reflect market practice in certain industry sectors), this Clause should be checked and the time period inserted as indicated.]

7 Specific time periods for rights and remedies under Clause 4.6 of [Error! Reference source not found.](#) Schedule 2 ☐ (only applicable to the Contract if this box is

checked and Clause 7.1 of this Schedule 1 is completed)

- 7.1 The Authority's rights and remedies under Clause 4.6 of [Error! Reference source not found.Schedule-2](#) shall cease **[insert period – e.g. 12 months]** from the date of delivery of the relevant Goods.

8 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 8.1 of this Schedule 1 is completed)

- 8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **[one (1)/three (3) months]** written notice

[Guidance: This Clause entitles you, as the Authority, to terminate the Contract for no reason on a given period of notice (e.g. 1 month or 3 months), as proportionate to the particular Goods. Consider using this clause only where necessary or appropriate. Given the current COVID-19 situation and potential specific purchases being made this clause may not be generally appropriate to use. This clause may be more appropriate in any such circumstances of medium or long term investment or commitment by DHSC]

9 Right to terminate ☐ (only applicable to the Contract if this box is checked)

- 9.1 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of this Contract in circumstances where it is served with a valid Breach Notice having already been served with at least **[two (2)]** previous valid Breach Notices within the last twelve (12) calendar month rolling period as a result of any previous material breaches of this Contract which are capable of remedy (whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal). The twelve (12) month rolling period is the twelve (12) months immediately preceding the date of the **[third]** Breach Notice.

[Guidance: This Clause is aimed at providing a termination right where one of the Parties has committed a number of material breaches whether or not they have been remedied. The aim of this Clause is to avoid a situation where one Party can keep breaching the Contract so long as it rectifies each material breach, as this can lead to nagging poor performance and additional time and resources being incurred by the non-breaching Party to manage such breaches. The numbers in square brackets can be changed to suit the requirements of the particular contract. The square brackets should then be removed prior to issue.]

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

- 10.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause [Error! Reference source not found.2](#) of [Error! Reference source not found.Schedule-2](#) in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.
- 10.2 For the avoidance of doubt, Clause 4 of [Error! Reference source not found.Schedule-2](#) shall apply to the inspection, rejection, return and recall of the Consigned Goods.

- 10.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 10.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
- 10.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
 - 10.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
 - 10.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
 - 10.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 10.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each **quarter** detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.
- 10.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).
- 10.7 Each **quarter** the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:
- 10.7.1 the Contract Price of the Minimum Quantity in the relevant period; and
 - 10.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 10.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the

costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.

- 10.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 10.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within **[insert period]** of their delivery to the Authority and/or which have a remaining shelf life of less than **[insert period]**.
- 10.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of **Error! Reference source not found.**Schedule 2.
- 10.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 10.8 and 10.9 of this Schedule 1 shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this Schedule 1, shall survive the expiry or earlier termination of this Contract for these purposes.

[Guidance: This Clause can be used where a stock of Goods is to be provided by the Supplier to the Authority on a consignment basis. This clause reflects a relatively straightforward approach to consignment stock. To the extent a different approach is required for your particular Contract, you should include appropriate Extra Key Provisions rather than checking this Clause.]

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

[Guidance: only use this section of the Terms and Conditions if procuring electronic equipment. Delete section if unnecessary.]

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

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

[Guidance: you must use this clause of the Terms and Conditions if procuring PPE. Delete section if unnecessary.]

Regulatory Requirements

- 12.1 The Supplier acknowledges and understands that when procuring PPE the Authority is required to ensure the PPE Goods are compliant with and meet applicable legal and regulatory requirements.
- 12.2 The Supplier shall supply the PPE Goods to Authority in accordance with the terms of this Contract and in accordance with the relevant requirements of applicable laws and regulations applicable to the supply of PPE, including, as applicable, the EU PPE Regulation 2016/425, the Personal Protective Equipment (Enforcement) Regulations 2018 and the Medical Device Regulations 2002 (together the "PPE Laws").

12.3 Save in relation to any PPE Goods for which the Supplier has approval in accordance with the cross-Government Decision Making Committee and without prejudice to the generality of clause 12.2, the Supplier shall ensure for PPE Goods supplied:

12.3.1 the appropriate conformity assessment procedure(s) applicable to the PPE Goods have been followed;

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

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

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

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

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

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

Goods bought to the market before 21 April 2019

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

Other Specific Requirements

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

- 12.7 The Supplier shall ensure that each delivery of PPE Goods shall be properly labelled in accordance with PPE Laws and such labelling and any user instructions relating to the use of the PPE Goods is clearly legible and in English.

Schedule 2

General Terms and Conditions

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1. Supply of Goods

- 1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:

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

- 1.2 The Supplier shall comply fully with its obligations set out in the Specification and any Proposal Document and/or the Order Form (to include, without limitation, all obligations in relation to the quality standards, performance characteristics, supply, delivery and training in relation to use of the Goods).

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

- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.

- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.

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

- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

- 1.8 The Supplier's supply of the Goods may depending on the nature of the Goods in question be subject to Clause 1 of Schedule 4.

2 Delivery

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

Delivery and collection

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

delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the (or by third party collection agents appointed directly by the Authority from time to time ("Authority Collection Agents")) 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, the Supplier shall (subject to any confidentiality obligations set out in this Contract) work directly with the Authority Collection Agents to ensure that they provide necessary support and assistance to the Authority Collection Agents in order to arrange such collection, and collection is deemed delivery for the purposes of the Contract.

Delivery note

- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information, or as otherwise agreed with the Authority in writing including (without limitation) any Purchase Order.. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description, the quantity and specific storage instructions (if any) of the Goods, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the manufactured on and use by dates, the ASN number (where required) and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.

Part deliveries

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

Transport and other related costs

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

Use of third party carriers

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

3 Passing of risk and ownership

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

4 Inspection, rejection, return and recall

- 4.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the Authority, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 and subject to Clause 4.7 of this Schedule 2, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions, if any) and may by written notice reject any Goods found to be damaged, or delivered late, or otherwise not in accordance with the requirements of this Contract ("Rejected Goods"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 4.2 Schedule 2, the Supplier shall at the Authority's written request:
- 4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods and reimburse the Authority for any Charges paid in connection with the Goods (including without limitation any pre-payment or advance payments) along with any costs

reasonably incurred by the Authority as a result of any such rejection; and

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

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

- 4.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

- 4.5 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 2 and the Authority no longer requires replacement Goods, the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid (in whole or in part) for such Rejected Goods the Supplier shall refund such payment along with any costs reasonably incurred by the Authority as a result of any such rejection to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods.

- 4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:

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

- 4.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2.

- 4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 and/or Clause 4.5 of this Schedule 2 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.

- 4.8 The Authority's rights and remedies under Clause 4.6 of this Schedule 2 shall cease within a reasonable period of time from the date on which the Authority discovers or might

reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out in the Key Provisions, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Order Form.

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

- 4.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;

- 4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 2;

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

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

5. The Authority's obligations

- 5.1 Subject to the Supplier supplying the Goods in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 6 of this Schedule 2.

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

- 5.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.

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

6. Price and payment

Charges

- 6.1 The Charges shall be calculated as set out in the Order Form

- 6.2 Unless otherwise stated in the Order Form the Charges:

- 6.2.1 shall remain fixed during the Term; and
- 6.2.2 is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
 - (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority
 - (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

Invoices

- 6.3 Unless stated otherwise in the Order Form:
- 6.3.1 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods supplied in compliance with this Contract in the preceding calendar month;
- 6.3.2 where Consigned Goods are to be provided by the Supplier in accordance with the Key Provisions, the Supplier shall invoice the Authority in relation to such Consigned Goods in accordance with the relevant Key Provision applicable to such Consigned Goods; or
- 6.3.3 where Clauses 6.3.1 or 6.3.2 of this Schedule 2 do not apply, the Supplier shall invoice the Authority for Goods at any time following completion of the supply of the Goods in compliance with this Contract.
- Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.
- 6.4 The Charges are exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 6.5 Where any Charges are or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 6.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 6.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 6.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 6.6 after a reasonable time has passed.
- 6.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 6.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 6.8 The Authority reserves the right to set-off:
- 6.8.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
- 6.8.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 6.9 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 6.10 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7. Warranties**
- 7.1 The Supplier warrants and undertakes that:
- 7.1.1 the Goods shall be suitable for the purposes and/or treatments as referred to in the Order Form, be of satisfactory quality, fit for their intended purpose and shall comply with the

	standards and requirements set out in this Contract;		Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
7.1.2	if confirmed by the Authority in writing (to include, without limitation, as part of the Order Form), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;	7.1.13	it shall not make any significant changes to its system of quality controls and processes in relation to the Goods without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
7.1.3	it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;	7.1.14	it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, unless otherwise set out in the Order Form, any such changes or substitute goods, if accepted, shall not lead to an increase in the Charges
7.1.4	without prejudice to the generality of the warranty at 7.1.3 of this Schedule 2, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;	7.1.15	any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
7.1.5	it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;	7.1.16	where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
7.1.6	it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;	7.1.17	it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
7.1.7	it will ensure sufficient stock levels to comply with its obligations under this Contract;	7.1.18	receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
7.1.8	it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;	7.1.19	it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods;
7.1.9	where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;	7.1.20	it will promptly (and in any event within one (1) Business Day) notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
7.1.10	where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, such information shall be in English and it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;	7.1.21	it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
7.1.11	all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Order Form;	7.1.22	it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority that is notified to the Supplier and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 7.1.22 and/or as
7.1.12	it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this		

	may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.		distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of Clause 7.1 and 7.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;
7.1.23	it will fully and promptly respond to all requests for information regarding this Contract and the Goods at the frequency and in the format that the Authority may reasonably require;		
7.1.24	all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Order Form) and all accompanying materials is accurate and in English;	7.2.2	at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 7.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
7.1.25	it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;		
7.1.26	it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;		
7.1.27	all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;	7.2.3	it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
7.1.28	there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;		
7.1.29	there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;		
7.1.30	it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and	7.3	If the Supplier is in breach of Clause 7.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 10.2 of this Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
7.1.31	it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.		
7.2	Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:	7.4	The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
7.2.1	at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance (or be subject to a Product Authorisation, as such term is defined in Schedule 4) and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage,	7.5	The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Order Form shall be submitted to the Authority in the format and in accordance with any timescales set out in the Order Form.
		7.6	The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
		7.7	The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it is not and throughout the

Term of this Contract it will not be, involved in any Occasion of Tax Non-Compliance.

7.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 7 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

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

8. Intellectual property

8.1 Unless specified otherwise in the Order Form, the Supplier hereby grants to the Authority, for the life of the use of Goods by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract.

9. Indemnity

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

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

9.1.2 any loss of or damage to property (whether real or personal); and/or

9.1.3 any breach of Clause 7.1.18 and/or Clause 8 of this Schedule 2;

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

9.2 Liability under Clauses 9.1.1 and 9.1.3 of this Schedule 2 shall be unlimited. Liability under Clauses 4.9.4, 7.3 and 9.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 10 of this Schedule 2.

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

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

9.3.2 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).

10. Limitation of liability

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

10.1.1 for death or personal injury resulting from its negligence;

10.1.2 for fraud or fraudulent misrepresentation; or

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

10.2 Subject to Clauses 9.2, 10.1, 10.3 and 10.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.

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

10.3.1 extra costs incurred purchasing replacement or alternative goods;

10.3.2 costs incurred in relation to any product recall;

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

10.3.4 the costs of extra management time; and/or

10.3.5 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.

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

10.5	If the total Contract Price paid or payable by the Authority to the Supplier over the Term:	arrangement is insufficient to cover the settlement of any claim.
10.5.1	is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 10.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);	11.4 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
10.5.2	is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 10.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);	11.5 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 11 of this Schedule 2 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
10.5.3	is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 10.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 10.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and	11.6 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.
10.5.4	is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 10.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 10.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).	12. <u>Term and termination</u>
10.6	Clause 10 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.	12.1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
11. <u>Insurance</u>		12.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than one (1) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
11.1	Subject to Clause 11.2 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law, however, the Supplier shall have responsibility for ensuring that it is adequately insured to cover all potential liability under this Contract.	12.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including and not limited to any breach of any payment obligations, under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("Remedial Proposal") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
11.2	Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clause 11.1 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.	12.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
11.3	The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance	12.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be ten (10) days unless otherwise agreed between the Parties); and/or

12.3.3	remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,	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:
	shall be deemed a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.	
12.4	Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is: <ul style="list-style-type: none"> (i) not capable of remedy; or (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal. 	12.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
12.5	The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:	12.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 12.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
12.5.1	Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;	13. <u>Consequences of expiry or early termination of this Contract</u>
		13.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract. The Supplier shall within thirty (30) days of the expiry or early termination of this Contract, reimburse the Authority for any Charges paid in connection with Goods (including without limitation any pre-payment or advance payments) not delivered at the date of expiry or earlier termination of this Contract
		13.2 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
		13.3 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
12.5.2	the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract pursuant to and in accordance with the Key Provisions; or	14. <u>Packaging, identification and end of use</u>
12.5.3	the warranty given by the Supplier pursuant to Clause 7.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 7.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 7.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.	14.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
12.6	If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement	14.2 Unless otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom. and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such regulations and other legislation.
		14.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Order Form; (b) agreed with the Authority in writing; and/or (c) required to

	comply with Law or Guidance and shall ensure that any labelling in respect of the Goods is in English.	15.6.1	the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods; or
14.4	The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.	15.6.2	either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
15.	<u>Dispute resolution</u>		
15.1	During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).	15.7	Clause 15 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
15.2	In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 15.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.	16.	<u>Coding requirements</u>
15.3	If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels (if applicable) as set out in the Order Form. Respective representatives at each level, as set out in the Order Form shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.	16.1	Unless otherwise confirmed and/or agreed by the Authority in writing the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and 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).
15.4	If the procedure set out in Clause 15.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 15.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.	16.2	Once compliance with any published timelines has been achieved by the Supplier pursuant to the Order Form, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
15.5	The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 15.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.	16.3	Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.
15.6	Nothing in this Contract shall prevent:	17.	<u>Change Management</u>
		17.1	The Supplier acknowledges to the Authority that the Authority's requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Contract, as may be requested by the Authority from time to time.
		17.2	Any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
		18.	<u>Force majeure</u>
		18.1	Subject to Clause 18.2 of this Schedule 2 Neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
		18.2	The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 18 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
		18.2.1	the Supplier has fulfilled its obligations pursuant to the Order Form;

18.2.2	the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and	(d)	manage the Agreement and resolve any disputes relating to it;
18.2.3	the Supplier has complied with the procedural requirements set out in Clause 18 of this Schedule 2.	(e)	respond and/or raise general queries relating to the Goods; and
		(f)	comply with their respective regulatory obligations.
18.3	Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.	19.2	Processing of Personal Data relating to each Party's representatives for the purposes set out in Clause 19.1 shall only be done by each Party in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 19.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.
18.4	Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.		
18.5	If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.	20.	Records retention and rights of audit
18.6	Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.	20.1	Subject to any statutory requirement and Clause 20.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
18.7	The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.	20.2	Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
18.8	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.	20.3	The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
18.9	Following such termination in accordance with Clause 23 of this Schedule 2 and subject to Clause 18.10 of this Schedule 2, neither Party shall have any liability to the other.	20.4	Should the Supplier Sub-contract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
18.10	Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 18.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.	20.5	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:
19.	<u>Contacts Data</u>	20.5.1	the examination and certification of the Authority's accounts; or
19.1	The Parties each acknowledge and agree that they may need to undertake Processing of Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate):	20.5.2	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.
(a)	administer and provide the Goods;		
(b)	request and receive the Goods;	20.6	The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 20
(c)	compile, dispatch and manage the payment of invoices relating to the Goods;		

of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

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

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

21. Equality and human rights

21.1 The Supplier shall:

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

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

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

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

22 Notice

22.1 Subject to Clause 15.5, of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

22.2 A notice shall be treated as having been received:

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

22.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second

Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

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

23 Assignment, novation and Sub-contracting

23.1 The Supplier shall not, except where Clause 23.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this 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.

23.2 Notwithstanding Clause 23.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 23.2 of this Schedule 2 shall be subject to:

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

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

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

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

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

23.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

23.4 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, the Supplier shall include

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

- 23.4.1 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 to the extent relevant to such Sub-contracting;
- 23.4.2 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;
- 23.4.3 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);
- 23.4.4 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;
- 23.4.5 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;

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

23.5.1 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

23.5.2 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.

23.6 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.

23.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods 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.

23.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this

Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

24

Prohibited Acts

24.1

The Supplier warrants and represents that:

24.1.1 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

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

24.2

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:

24.2.1 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;

24.2.2 any termination under Clause 24.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

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

- (i) the interpretation of Clause 15 of this Schedule 2; or

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

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

25. **Confidentiality**

25.1 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 25 of this Schedule 2, 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:

25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

25.1.2 the provisions of Clause 25 of this Schedule 2 shall not apply to any Confidential Information:

25.1.2.1 which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

25.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

25.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;

25.1.2.4 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

25.1.2.5 which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

25.2 Nothing in Clause 25 of this Schedule 2 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

25.3 The Authority may disclose the Supplier's Confidential Information:

25.3.1 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);

25.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;

25.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;

25.3.4 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;

25.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

25.3.6 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 25.3 of this Schedule 2.

25.4 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 25 of this Schedule 2 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.

25.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 2, 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.

25.6 Clause 25 of this Schedule 2 shall remain in force:

25.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and

25.6.2 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.

26 **Freedom of Information and Transparency**

26.1 The Supplier acknowledges the duties of the Authority 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.

26.2 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:

26.2.1 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;	26.7	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 26 of this Schedule 3, as if such Sub-contractor were the Supplier.
26.2.2	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;	27	<u>Conflicts of interest and the prevention of fraud</u>
26.2.3	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;	27.1	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.
26.2.4	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;	27.2	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 27.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
26.2.5	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	27.3	The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
26.2.6	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.	27.4	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.
26.3	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.	28	<u>General</u>
26.4	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.	28.1	The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the supply of the Goods. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Contract. 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:
26.5	In preparing a copy of this Contract for publication under Clause 26.4 of this Schedule 2, 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.	28.1.1	the criticality of this Contract to the Authority; and
26.6	The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.	28.1.2	the size and scope of the Supplier's business operations,
			regarding continuity of the supply of Goods during and following a Business Continuity Event. 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. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods in accordance with this Contract.
		28.2	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.

- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 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.
- 28.6 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.
- 28.7 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 28.8 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.

- 28.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 28.9 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 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.
- 28.10 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.
- 28.11 Subject to Clause 15 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 28.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Definitions and Interpretations

1 Definitions

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

“ASN”	means advance shipping notice;
“Authority”	means the authority named on the form of Contract on the first page;
“Authority's Obligations”	means the Authority's further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods 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 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;
“Codes of Practice”	shall have the meaning given to the term in Clause 25.2 of Schedule 2;
“Commencement Date”	means the date of this Contract;
“Component Part”	means any constituent element or part of the Goods including any raw materials which when processed or combined become part of the Goods or which are used in the process of the production or assembly of the Goods; and “Component Parts” shall be construed accordingly;
“Confidential Information”	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: (a) Personal Data (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or

	(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;
“Consigned Goods”	means Goods delivered by the Supplier in response to a Consignment Request prior to their use by the Authority;
“Consignment Request”	the Authority's request for Goods to be delivered on a consignment basis;
“Contract”	means the form of contract at the front of this document and includes the Order Form, the Schedules and Annexes attached to the form of contract;
“Contracting Authority”	means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
“Controller”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“Charges”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“cross-Government Decision Making Committee”	means the committee as referred to in the Guidance for new high volume manufacturers of COVID-19 Personal Protective Equipment, Office for Product Safety & Standards, April 2020;
“Data Protection Laws”	means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 2;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;

“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 15 of Schedule 2. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 24.2.3 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under 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;
“Environmental Regulations”	shall have the meaning given to the term in Clause 25.2 of Schedule 2;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“FOIA”	shall have the meaning given to the term in Clause 25.2 of Schedule 2;
“Force Majeure Event”	means any event beyond the reasonable control of the Party in question to include, without limitation: (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Contract; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have

	planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such 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; (g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; but excluding, for the avoidance of doubt, the Covid 19 crisis and any related circumstances, events, changes or requirements;
“Fraud”	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
“General Anti-Abuse Rule”	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;

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

	<ul style="list-style-type: none"> (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“NHS”	means the National Health Service;
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“Processing”	shall have the same meaning as set out in the General Data Protection Regulation (Regulation (EU) 2016/679);
“PPE”	shall mean personal protective equipment as defined in the EU PPE Regulation 2016/425.
“PPE Goods”	means PPE products supplied to the Authority under this Contract, as further described in the Order Form
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 11 of

	Schedule 1 for inclusion in the Authority's product catalogue from time to time;
"Purchase Order"	means the purchase order required by the Authority's financial systems, if a purchase order is referred to in the Key Provisions;
"Rejected Goods"	has the meaning given under Clause 4.2 of Schedule 2;
"Relevant Tax Authority"	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Remedial Proposal"	has the meaning given under Clause 12.3 of Schedule 2;
"Requirement to Recall"	has the meaning given under Clause 4.9 of Schedule 2;
"Staff"	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
"Sub-contract"	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
"Sub-contractor"	means a party to a Sub-contract other than the Supplier;
"Supplier"	means the supplier named on the form of Contract on the first page;
"Term"	means the term as set out in the Order Form;
"Termination Notice"	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

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

- 1.3 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a "Schedule", "Annex", or to a "Clause" are to schedules, annexes and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.7 Words denoting the singular shall include the plural and vice versa.
- 1.8 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.9 Where there is a conflict between the Supplier's responses to the Authority's requirements (the Supplier's responses being set out in the order form) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.10 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.11 Any guidance notes in grey text do not form part of this Contract.
- 1.12 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.13 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 4
Additional Special Conditions

1 **Specific approval processes for medical devices that are not CE marked**

1.1 The provisions of this Clause 1 of Schedule 4 applies where Goods are in-vitro diagnostic medical devices or general medical devices to which CE marking is not currently applied pursuant to Regulations 36 (CE marking of in-vitro diagnostic medical devices) and Regulation 10 (CE marking of general medical devices) of the Medical Device Regulations 2002 (the “MDR”). It is recognised by the Parties that such Goods, having only recently been developed, may not necessarily meet the requirements that an in-vitro diagnostic medical device that bears CE marking in accordance with Regulation 36 and a general medical device that bears CE marking in accordance with Regulation 10 MDR would meet (and shall not in any event be labelled with Conformity Marking) and instead must receive an authorisation from the Secretary of State for Health and Social Care pursuant to Regulation 39(2) and/or 12(5) MDR to be placed on the market in the United Kingdom and supplied to the Authority for use in a healthcare environment (“**Product Authorisation**”).

1.2 In relation to such Goods, the Supplier shall by dates agreed in writing with the Authority submit to the Authority:

1.2.1 such facilities that it will use for the manufacture and storage of the Goods in question for inspection by the Authority and any regulatory authority;

1.2.2 details of any manufacturing processes and controls that it will use in connection with the manufacture and supply of any such Goods in such detail that the Authority shall reasonably require;

1.2.3 for approval agreed quantities of pre-production samples of the Goods in question (“**Pre-Production Samples**”), such samples to be manufactured in conformance with the Specification; and

1.2.4 such quantities of the Goods for testing in a healthcare environment that the Authority may reasonably require (“**Testing Samples**”).

1.3 Furthermore, the Supplier shall:

1.3.1 at the Authority's request, provide reasonable support, cooperation and information to the Authority to assist the Authority in obtaining and maintaining a Product Authorisation for the Goods in question; and

1.3.2 promptly notify the Authority if it experiences or anticipates that it may experience any difficulties or challenges with respect to manufacturing Pre-Production Samples or Testing Samples and the Authority shall provide such reasonable assistance to the Supplier as it is able (taking into account the exceptional circumstances described in Clause 2 of this Schedule 4).

1.4 It is a condition of this Contract that the Supplier shall not commence the manufacture and/or the supply of Goods for use generally by patients until the Supplier has:

1.4.1 obtained a relevant Product Authorisation and notified the Authority of the same; and

1.4.2 communicated its approval of the Pre-Production Samples to the Authority in writing (such approval not to be unreasonably withheld or delayed).

The Authority shall be entitled to waive the condition referred to in the preceding sentence by notice in writing to the Supplier subject to any requirements notified to the Supplier in writing by the Authority.

1.5 The Authority's approval of the Pre-Production Samples constitutes confirmation by the Supplier that the Goods shall be manufactured in conformity with those samples. The Supplier shall ensure that all such Goods manufactured include a type and serial number or batch number or other element allowing identification.

1.6 If the Supplier considers or has reason to believe at any stage that the Goods are no longer in conformity with the Product Authorisation it must immediately notify the Authority and take the corrective measures necessary to bring the Goods into conformity, to withdraw them or to recall them, as appropriate. Furthermore, where the Goods presents a risk, the Supplier shall immediately inform the enforcement authority in the UK to that effect, giving details, in particular, of the non-conformity and of any corrective measures taken.

1.7 The Supplier shall following the grant of a Product Authorisation for Goods strictly adhere to any conditions applying to such Product Authorisation in manufacturing and supplying those Goods and otherwise complying with this Contract, and shall cease manufacture and supply if or once the Product Authorisation in question is withdrawn or expires unless the Authority otherwise requires in writing. Following the withdrawal or expiration of the Product Authorisation for the Goods, the Supplier shall provide reasonable assistance and cooperation to the Authority in recalling the Goods and the Authority shall meet the Supplier's reasonable costs of such assistance and cooperation save where the withdrawal of the Product Authorisation in question results from any breach by the Supplier of this Contract.

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

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

2.2 In this context:

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

2.2.2 the Supplier recognises and agrees that the exceptional circumstances referred to above may mean that it is necessary for the Authority to involve itself in the Supplier's inbound supply chain for Component Parts. The Authority shall notify the Supplier in advance if it considers that this step is reasonably necessary and the Supplier shall provide all information and assistance as the Authority may require in order for it to take this step;

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

- supply of Goods to allow it to plan and adjust order scheduling across the Authority's supply chain for products equivalent to or similar to the Goods;
- 2.2.4 the Supplier shall notify the Authority promptly of any exceptional events or circumstances which may impact upon the Supplier's ability to manufacture and supply Goods in accordance with this Contract and the Authority's requirements ("**Relevant Circumstances**"). If the Supplier is or is likely to be subject to delays in manufacturing and supplying any of the Goods to the Authority, the Authority shall be entitled by notice in writing to cancel all or part of an Order;
- 2.2.5 if the Relevant Circumstances apply or if any Pre-Production Samples of the Goods fail to gain approval in accordance with Clause 1.4.2 then the Authority shall be entitled: (a) to have the Goods manufactured by an alternative manufacturer (and shall upon reasonable commercial terms be granted a licence of any relevant Intellectual Property Rights owned or licensed to the Supplier which are necessary for the manufacture of the Goods and the Supplier shall provide the Authority, upon request, with all relevant information necessary for such manufacture) and; (b) to purchase from the Supplier the Supplier's stocks of Component Parts to the extent that such quantities of Component Parts are held in line with the quantities required to fulfil an Order. The purchase price of such Component Parts shall be an amount equal to the price paid by the Supplier for such Component Parts. In addition, the Authority shall be entitled to purchase from the Supplier any tooling used or to be used exclusively for the manufacture of the Goods at the price paid by the Supplier, subject to any depreciation which would ordinarily be applied to such tooling in line with usual accounting practice; and
- 2.2.6 if the Authority exercises its rights under Clause 2.2.5 of this Schedule, the Supplier will deliver up to the Authority the Component Parts and relevant tooling and title in such Component Parts and tooling shall immediately transfer to the Authority. The Supplier shall take all such steps and complete all such additional documentation as is necessary to transfer title in the Component Parts and tooling to the Authority.