

UKHSA Terms and Conditions for the Supply of Goods and Services

ORDER FORM AND KEY PROVISIONS

The Authority	The Secretary of State for Health and Social Care as part of the Crown through the UK Health Security Agency, 10 South Colonnade, London, E14 4PU
The Supplier	CELLECTED LTD, The Portway Centre, Old Sarum, Salisbury, Wiltshire, England, SP4 6EB
Date	As per UKHSA signing of this document
Type of Goods and Services	Services for new accession banking of the “Miami cell line” panels

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 and Services 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.

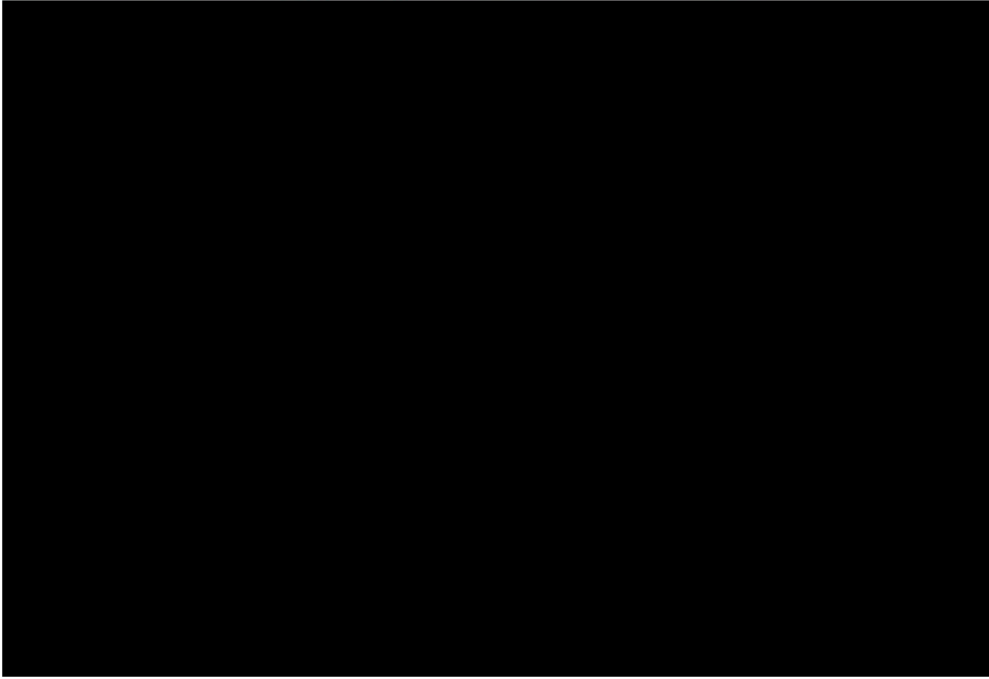




The Definitions in Schedule 3 apply to the use of all capitalised terms in this Contract.

Schedules

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

Order Form

1. Contract Reference	C244069
2. Date	As per UKHSA signing of this document
3. Authority	The Secretary of State for Health and Social Care as part of the Crown through the UK Health Security Agency, 10 South Colonnade, London, E14 4PU
4. Supplier	CELLECTED LTD, The Portway Centre, Old Sarum, Salisbury, Wiltshire, England, SP4 6EB – Co Registration No. 13529184
5. The Contract	<p>The Supplier shall supply the Goods and Services described below on the terms set out in this Order Form and the Schedules.</p> <p>Unless the Contract otherwise requires, capitalised expressed used in this Order Form have the same meanings as in Schedule 3.</p> <p>In the event of any conflict between this Order Form and the Schedules, this Order Form shall prevail.</p> <p>Please do not attach any supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</p>
6. Goods to be Supplied	<p>Goods to be Supplied:</p> <p>N/A</p>
7. Services to be Provided	<p>Services to be Supplied:</p> <p>To provide services for new accession banking of the “Miami cell line” panels.</p> <p>The panels comprise:</p> <p>- [REDACTED]</p>
8. Specification	The specification of the Services is as per the Proposal for “Miami cell line” banking dated 19 th January 2024.
9. Term	<p>The Term shall commence on:</p> <p>The date of signature of this document by UKHSA</p>

	And the Expiry Date shall be 31 st March 2024, unless it is otherwise terminated in accordance with the terms and conditions of the contract.	
10. Charges	<p>The Charges for the Services shall be set out below.</p> 	
11. Payment	<p>All invoices must be sent quoting a valid purchase order number to </p> <p>Following the countersignature of this contract by UKHSA, the Buyer will send a unique purchase order (the 'PO') Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may 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 team by email to: </p>	
12. Authority Representative(s)	<p>For general liaison your contact will continue to be </p>	
13. Supplier's Representative(s)	<p>For general liaison your contact will continue to be </p>	
14. Address for notices	Authority:	Supplier:

	<p>UK Health Security Agency, 10 South Colonnade, London, E14 4PU, United Kingdom</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>Cellected Ltd, The Portway Centre, Old Sarum, Salisbury, Wiltshire, England, SP4 6EB</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>
15. Key personnel	<p>Authority:</p> <p>[REDACTED]</p> <p>[REDACTED],</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p> <p>Email: [REDACTED]</p>
16. Supplier Staff Vetting	<p>The Authority may require the Supplier to ensure that any person employed in the delivery of the Goods and Services has undertaken a Disclosure and Barring Service check.</p> <p>The supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “Relevant conviction”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Goods and Services.</p>	
17. Procedures and Policies	<p>Pricing and individuals’ contact details shall be deemed to be 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.</p>	

Signed by the authorised representative of THE AUTHORITY

DocuSigned by: [REDACTED]

[REDACTED]

[REDACTED] SUPPLIER

Date Signed by: 30/01/24

[REDACTED]

1 Key Provisions

Standard Key Provisions

Application of the Key Provisions

The standard Key Provisions at Clauses 0 to 2 of this [REDACTED] shall apply to this Contract.

The optional Key Provisions at Clauses 3 to 12 of this [REDACTED] shall only apply to this Contract where they have been checked and information completed as applicable.

Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this [REDACTED]

Order of precedence

Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

Order Form;

[REDACTED] Key Provisions;

Schedule 2: General Terms and Conditions;

Schedule 3: Definitions and Interpretations;

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.

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.

Optional Key Provisions

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

The following quality assurance standards shall apply, as appropriate, to the provision of the Goods and Services: ***[insert standards]***.

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

The Authority shall issue a Purchase Order to the Supplier in respect of any Goods and Services 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 the 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 and Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods and Services covered by a valid Purchase Order.

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

Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 12.4 (i) of Schedule 2.

Specific time periods for inspection of Goods ☐ (only applicable to the Contract if this box is checked and Clause 6.1 of this Error! Reference source not found. is completed)

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.

Specific time periods for rights and remedies under Clause 4.6 of Schedule 2 ☐ (only applicable to the Contract if this box is checked and Clause 7.1 of this Error! Reference source not found. is completed)

The Authority's rights and remedies under Clause 4.6 of Schedule 2 shall cease ***[insert period – e.g. 12 months]*** from the date of delivery of the relevant Goods.

Termination for convenience ☒ (only applicable to the Contract if this box is checked and Clause 8.1 of this Error! Reference source not found. is completed)

The Authority may terminate this Contract or cancel any order or part order of the Goods and Services which has not been Delivered by issuing a Termination Notice to the Supplier at any time on **one (1) month's** written notice. Such notice shall not be served within six (6) Months of the Commencement Date.

Subject to Clauses 14 (Limitation of Liability) and 15 (Insurance) of Schedule 2, should the Authority terminate this Contract in accordance with this Clause 0 (Termination for Convenience) of this [REDACTED], then the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Supplier by reason of the

termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Authority shall only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under this Clause 0 (Termination for Convenience) of this [REDACTED]..

The Authority shall not be liable under this Clause 0 (Termination for Convenience) of this [REDACTED] to pay any sum which:

was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Term; or is a claim by the Supplier for loss of profit, due to early termination of the Contract.

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

Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Order Form and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods in accordance with Clause 2 of Schedule 2 in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.

For the avoidance of doubt, Clause 4 of Schedule 2 shall apply to the inspection, rejection, return and recall of the Consigned Goods.

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.

Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:

the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;

the Consigned Goods in its possession remain readily identifiable as the Supplier's property;

any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and

the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.

The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each **[week/month/quarter/other agreed period]** detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.

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).

Each **[week/month/quarter/other agreed period]** the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:

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

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

- 1.1 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.
- 1.2 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.
- 1.3 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]**.

- 1.4 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of Schedule 2.
- 1.5 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 [REDACTED] shall then apply accordingly and this Clause, together with Clauses 10.8 and 10.9 of this [REDACTED] shall survive the expiry or earlier termination of this Contract for these purposes.

Different Levels and/or Types of Insurance ☐ (only applicable to the Contract if this box is checked)

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

Type of insurance required	Minimum cover
Employer's Liability	
Public Liability	
Product Liability	

Guarantee ☐ (only applicable to the Contract if this box is checked)

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

Measures to promote tax compliance ☐ (only applicable to the contract if this box is checked)

The Procurement Policy Note: Measures to Promote Tax Compliance Action 03/14 applies and therefore all references in Clause 7.7 and Clause 12.5.5 of [REDACTED]

together with the associated definitions in (Definitions and Interpretation), shall apply.

Supply Chain Visibility ☐ (only applicable to the Contract if this box is checked)

Visibility of Sub- Contract Opportunities in the Supply Chain

The Supplier shall:

subject to clause 0, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Goods and Services above a minimum threshold of £25,000 that arise during the Term;

within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contract Finder with details of the successful Sub-Contractor;

monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

provide reports on the information at clause 0 to the Authority in the format and frequency as reasonably specified by the Authority; and

promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

Each advert referred to at clause 0 of this . shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

The obligation on the Supplier set out at clause 0 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

Notwithstanding clause 0, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

Visibility of Supply Chain Spend

In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “**SME Management Information Reports**”) to the Authority which shall include:

the total contract revenue received directly on the Contract;

the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and

the total value of sub-contracted revenues to SMEs and VCSEs.

The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Authority from time to time. The Supplier agrees that it shall provide the information detailed at clause 13.5 and acknowledges that the required information may be changed from time to time (including the data required and/or format) by the Authority. The Authority agrees to give at least thirty (30) days' notice in writing of any such change.

The Supplier further agrees and acknowledges that it may not make any amendment to any required Supply Chain Information Report template without the prior Approval of the Authority.

Without prejudice to Clause 26.6 (Assignment, novation and sub-contracting) of Schedule 2, the Supplier shall:

pay any sums which are due from it to any Sub-Contractor or Unconnected Sub-Contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or

the date that falls 60 days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and

include within the management information produced by it pursuant Clause 7 (Contract Management and Monitoring) of [REDACTED] a summary of its compliance with this Clause 13.8, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

If the Supplier fails to pay 95% or above of all Sub-Contractor or Unconnected Sub-Contractor invoices (or other notice of an amount for payment) within 60 days in either of the previous two six month periods, the Supplier shall provide to the Authority within 15 Working Days of submission of the management information required by clause 0 of this [REDACTED], an action plan (the "Action Plan") for improvement. The Action Plan shall include, but not be limited to, the following:

identification of the primary causes of failure to pay 95% or above of all Sub-Contractor or Unconnected Sub-Contractor invoices (or other notice of an amount for payment) within 60 days of receipt;

actions to address each of the causes set out in sub-paragraph 0; and

mechanism for and commitment to regular reporting on progress to the Supplier's board of directors.

The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is provided to the Authority.

Where the Supplier fails to pay any sums due to any Sub-Contractor or Unconnected Sub-Contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-Contractors or Unconnected Sub-Contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Tender (to the extent it is not already included).

Tackling Modern Slavery ☐ (only applicable to the Contract if this box is checked)

The Supplier shall, and procure that each of its Sub-Contractors shall, comply with the Authority's anti-slavery policy as provided to the Supplier from time to time ("Authority's Anti-slavery Policy").

The Supplier shall:

implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;

respond promptly to all slavery and trafficking due diligence questionnaires or any modern slavery risk assessment or identification tools issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

shall comply with all reasonable supply chain information requests from the Authority and its modern slavery requirements and obligations;

maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority regarding the Contract;

permit the Authority and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 0 (Tackling Modern Slavery) of this [REDACTED], to have access to and take copies of the [REDACTED]

Supplier's records and any other information and to meet with the Supplier Personnel to audit the Supplier's compliance with its obligations this clause;

implement annual audits of its compliance and its Sub-Contractors' and Supplier's compliance with the Authority's Anti-slavery Policy, either directly or through a third party auditor. The first set of audits shall be completed by [DATE]; and implement a system of training for its employees to ensure compliance with the Modern Slavery Act 2015 and the Authority's Anti-slavery policy.

Carbon Footprint / Net Zero Obligations ☐ (only applicable to the Contract if this box is checked)

In this clause, the following definition shall apply:

"Carbon Reduction Plan" means the template at [Annex] or otherwise agreed by the Authority.

[The parties acknowledge that the UK Government has committed to bring all greenhouse gas emissions to net zero by 2050 pursuant to the Climate Change Act 2008 (2050 Amendment) Order 2019.

As a condition of this Contract the Supplier warrants that:

it has undertaken an assessment of the Carbon Footprint; and

so far as it is aware, the Carbon Footprint projected to be incurred as set out in **[Schedule/Annex]** is true and accurate as at the date of this Contract.

The Supplier undertakes:

to develop and implement a Carbon Reduction Plan of continuous improvement with the objective of reducing the Carbon Footprint throughout the Term by **[set reduction target] [per Contract Year]** and shall provide a copy of that plan to the Authority on request;

to re-assess the Carbon Footprint every Contract Year;

to provide the Authority with a written confirmation of the results of each assessment within one month of the completion of each assessment under Clause 0 of this Schedule 1;

The Supplier shall at the Authority's request arrange for the Carbon Trust to undertake an independent assessment and verification of the Carbon Footprint and make a copy of the results of that assessment and verification available to the Purchaser as soon as reasonably practicable after receipt (but no more than once in any period of [two] Contract Years).]

[Supplier acknowledges and understands the Authority's Net Zero Target. Accordingly, the Supplier shall:

set its own Net Zero target (the "Supplier NZ Target") with a target achievement date the same as or earlier than the Net Zero Target Date (the "Supplier NZ Date");

agree the Contract Target with the Authority;

achieve the Contract Target;

ensure that this Clause 0 of this Schedule 1 will be copied into any and all of its supply chain contracts that relate to its obligations under this agreement;

introduce emission reduction technologies, processes and policies as well as offsetting and, where technologically and commercially feasible, carbon removal initiatives, to achieve the Supplier NZ Date;

undertake and keep up to date full and complete records of Carbon Reporting activity and data and provide the same to the Authority each year and more frequently as the Authority may reasonably request;

attend, on reasonable notice, meetings with the Authority Representative or other nominated representative to present the Supplier's plan to achieve, and current progress towards, the Supplier NZ Date;

not do or omit to do anything which could reasonably be expected to cause the Authority to miss its Net Zero Target Date, whether pursuant to this contract or otherwise.

If:

the Supplier fails to comply with any of the obligations in clause 0; or

the Authority, having reviewed the Carbon Reporting and discussed with the Supplier its progress to achieve the Supplier NZ Date, determines (acting reasonably) that the Supplier is making insufficient progress towards achieving the Supplier NZ Date; or

the Supplier fails to achieve the Supplier NZ Target by the Supplier NZ Date, the Authority may, without affecting any other right or remedy available to it:

terminate this agreement by giving one month's written notice to the Supplier;

require the Supplier to plant a number of Native Trees in the UK sufficient to compensate for the Authority's shortfall in progress towards the

Supplier NZ Date attributable to the production of the Goods and the delivery of the Services; and/or

recover from the Supplier any costs reasonably incurred by the Authority in achieving the Contract Target to the extent by which that Contract Target is missed by the Supplier by:

obtaining carbon credits to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the provision of the Goods and the delivery of the Services; or

planting, or arranging for the planting of, Native Trees to offset the Supplier's net Greenhouse Gas emissions footprint attributable to the production of the Goods and the delivery of the Services.

The Supplier shall, at its own cost, submit a report to the Authority within 20 Working Days identifying the emergence of new and evolving relevant technologies and processes which could accelerate the achievement of the Supplier NZ Date. Such report shall provide sufficient detail to enable the Authority to evaluate properly the benefits of the new technology or process. The Authority may only require the Supplier to provide such report no more than once in any period of **[two]** Contract Years.

The Supplier warrants to Authority that:

it has sufficient resources, infrastructure and materials to achieve the Contract Target by the date of the expiry of the contract;

none of the Goods and Services supplied under this agreement will be of lower quality as a result of working towards the Contract Target;

it will not offer preferential terms to those other customers who do not require a Contract Target or similar obligations in their contracts.

For the purposes of this Clause 0, the term Net Zero Target Date shall mean the first year by which the Authority aims to achieve the Net Zero Target, being 1 January **[2050].**

Supplier name:

Publication date:

Commitment to achieving Net Zero

[Supplier name] is committed to achieving Net Zero emissions by 20XX.

Baseline Emissions Footprint

Baseline emissions are a record of the greenhouse gases that have been produced in the past and were produced prior to the introduction of any strategies to reduce emissions. Baseline emissions are the reference point against which emissions reduction can be measured.

[Instructions to Suppliers: Please provide details of your organisation's baseline emissions below. If your organisation has not previously assessed or reported emissions, please detail this below and use your first reporting period as your Baseline.]

Baseline Year: [20xx]	
Additional Details relating to the Baseline Emissions calculations.	
[Instructions to Suppliers: Add commentary regarding your Baseline Emissions as required: e.g. historic baseline which deviates from the requirements under this measure (e.g. no prior Scope 3 emissions reporting), where there is no previous reporting and the creation of a new baseline due to substantial organisational change or restructuring]	
Baseline year emissions:	
EMISSIONS	TOTAL (tCO ₂ e)
Scope 1	
Scope 2	
Scope 3 (Included Sources)	
Total Emissions	

Current Emissions Reporting

Reporting Year: [20xx]	
EMISSIONS	TOTAL (tCO ₂ e)
Scope 1	
Scope 2	
Scope 3 (Include Sources)	
Total Emissions	

Emissions reduction targets

[Instructions to Suppliers: If existing emissions reduction targets are in place for your organisation, please provide details below. If you have no previous emissions reduction commitment, or if this is your organisation's first carbon footprint, please provide targets for your organisation]

In order to continue our progress to achieving Net Zero, we have adopted the following carbon reduction targets. We project that carbon emissions will decrease over the next five years to XX tCO₂e by 20XX. This is a reduction of XX%.

Carbon Reduction Projects

Completed Carbon Reduction Initiatives

The following environmental management measures and projects have been completed or implemented since the 20XX baseline. The carbon emission reduction achieved by these schemes equate to XX tCO₂e, a XX%ge reduction against the 20XX baseline and the measures will be in effect when performing the contract

[Instructions to Suppliers: Briefly provide details of some of your completed carbon reduction projects. This is for information only. This may include environmental management measures such as certification schemes like ISO14001 or PAS 2060, signing up to SBTi or specific measures you have taken such as; the adoption of LED/PIR lighting controls, changes to policy resulting in a reduction in company travel and flights or the electrification of the company fleet.]

In the future we hope to implement further measures such as:

[Instructions to Suppliers: Briefly provide details of some of any likely/proposed future carbon reduction projects. This is for information only.]

Declaration and Sign Off

This Carbon Reduction Plan has been completed in accordance with PPN 06/21 and associated guidance and reporting standard for Carbon Reduction Plans.

Emissions have been reported and recorded in accordance with the published reporting standard for Carbon Reduction Plans and the GHG Reporting Protocol corporate standard and uses the appropriate Government emission conversion factors for greenhouse gas company reporting .

Scope 1 and Scope 2 emissions have been reported in accordance with SECR requirements, and the required subset of Scope 3 emissions have been reported in accordance with the published reporting standard for Carbon Reduction Plans and the Corporate Value Chain (Scope 3) Standard.

This Carbon Reduction Plan has been reviewed and signed off by the board of directors (or equivalent management body).

Signed on behalf of the Supplier:

.....

Date:

16 A. CARBON FOOTPRINT / NET ZERO OBLIGATIONS – KEY PERFORMANCE INDICATORS

☐ (ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

16 A.1. The Supplier shall complete the table of Environmental Key Performance Indicators (“Environmental KPIs”) for [each Contract Year] in relation its provision of the Services under this Contract and provide the Environmental KPIs to the Authority on the date and frequency outlined in Clause 16 A.4 of this Schedule 1 (Key Provisions).

Environmental KPIs

16 A.2. The Supplier shall provide to the Authority the following Environmental KPIs [insert date of which KPIs are to be sent to the Authority]. The Supplier acknowledges that the Authority may make reasonable adjustments to the Environmental KPIs during the Term.

16 A.3. The Supplier shall provide such Environmental KPIs in accordance with guidance provided by the Department for Environmental Food and Rural Affairs (“Defra”).

16 A.4. Table of Environmental KPIs

Environmental Key Performance Indicators – [for the Contract Year [x]]								
Direct Impacts (Operational)								
Greenhouse Gases	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes CO2		Normalised Tonnes CO2 per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Waste	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes Waste per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Acid Rain & Smog Precursors	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
	Definition		Quantity					

Pesticides & Fertilisers		Data source and Calculation Methods	Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Agricultural Produce	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Radioactive Waste	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Oil	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Metal emissions to [land/water/air]	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes		Normalised Tonnes per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Indirect Impacts (Supply Chain)								
Greenhouse Gases	Definition	Data source and Calculation Methods	Quantity					
			Absolute Tonnes CO2		Normalised Tonnes CO2 per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target
Water	Definition	Data source and Calculation Methods	Quantity					
			Absolute Cubic Metres		Normalised Cubic Metres Water per £M Turnover			
			[insert year]	[insert year]	[insert year]	Target	[Insert year]	Target

Sustainability Reporting ☐ (only applicable to the Contract if this box is checked)

Sustainability Reporting

The Supplier shall complete the Sustainability Report in relation its provision of the Goods and Services under this Contract and provide the Sustainability Report to the Authority on the date and frequency outlined in Clause 17.2 of this Schedule 1 (Key Provisions).

Reporting Requirements

The Supplier shall provide to the Authority the following sustainability reporting requirements (the “Sustainability Report”) at the specified intervals. The Supplier acknowledges that the Authority may make reasonable adjustments to the Sustainability Report reporting requirements during the Term.

Sustainability Report Name	Content of Report	Frequency of Report
[Sustainability - General]	<p>[as proportionate and relevant to the Contract]</p> <ul style="list-style-type: none"> a. the key sustainability impacts identified; b. sustainability improvements planned or delivered; c. actions underway or planned to reduce sustainability impacts; d. contributions made to the Authority’s sustainability policies and objectives; e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier’s operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and f. risks to the Service and SubSuppliers of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks.] 	[On the anniversary of the Commencement Date]
[Waste created]	[By type of material the weight of waste categories by each means of disposal in	[Before contract award and on the anniversary

	the Waste Hierarchy with separate figures for disposal by incineration and landfill.]	of the Commencement Date.]
[Waste permits]	[Copies of relevant permits and exemptions for waste, handling, storage and disposal.]	[Before the Commencement Date, on the anniversary of the Commencement Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose waste]
[Greenhouse Gas Emissions]	[Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses]	[On the anniversary of the Commencement Date]
[Water Use]	[Volume in metres cubed.]	[On the anniversary of the Commencement Date]
[Energy Use]	<p>[Separate energy consumption figures for:</p> <ul style="list-style-type: none"> a. assets deployed on the Supplier's site; b. assets deployed on the Authority's site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. <p>Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.]</p>	[On the anniversary of the Commencement Date]
[Transport Use]	a. [miles travelled by transport and fuel type, for goods delivered to the Authority's sites;	[On the anniversary of the

	<ul style="list-style-type: none"> b. miles travelled by staff when visiting the Authority's sites from the Supplier's sites or home; c. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees] 	Commencement Date]
Prohibited Items	<p>[Materials usage, including:</p> <ul style="list-style-type: none"> a. type of material used; b. quantity or volume of material used; and c. amount of recycled/recovered material used] 	[On the anniversary of the Effective Date]
Modern Slavery	[Reporting on due diligence and compliance with modern slavery obligations included in the Contract in relation to the Supplier and its supply chain].	[Quarterly reporting throughout the Term]
Social Value	[Include any relevant Social Value requirements from the Specification]	[On the anniversary of the Effective Date]

17 A. SOCIAL VALUE – KEY PERFORMANCE INDICATORS

☐ (ONLY APPLICABLE TO THE CONTRACT IF THIS BOX IS CHECKED)

17 A.1. The Supplier shall complete the table of Social Value Key Performance Indicators ("SV KPIs") for [each quarter of each Contract Year] in relation its provision of the Services

under this Contract and provide the SV KPIs to the Authority on the date and frequency outlined in Clause 17 A.4 of this Schedule 1.

SV KPIs

17 A.2. The Supplier shall provide to the Authority the following SV KPIs [insert date of which KPIs are to be sent to the Authority]. The Supplier acknowledges that the Authority may make reasonable adjustments to the SV KPIs during the Term.

17 A.3. The Supplier shall provide such SV KPIs in accordance with guidance provided by the Guide to using the Social Value Model by the Government Commercial Function.

17 A.4. Table of SV KPIs

SV KPI Description	Quarter	Year	Target	Rating	Ratings based on the total percentage of full-time equivalent (FTE) [insert SV KPI Description] employed under the contract, as a proportion of the total FTE contract workforce			
					Good	Approaching target	Requires improvement	Inadequate
Number of ethnic minorities in the contract workforce	January - March	2022	2%	The rating the Supplier has achieved in that 3-month period is [good/approaching target/requires improvement/inadequate]	1.5 %>	1.0%	0.5%	<0.5%
	April – June	2022	2.5%	The rating the Supplier has achieved in that 3-month period is [good/approaching target/requires improvement/inadequate]	2%>	1.5%	1.0%	<1.0%

Schedule 2**General Terms and Conditions for the Supply of Goods and the Provision of Services****Contents**

1.	Supply of Goods	1.1.5	in accordance with any quality assurance standards as set out in the Key Provisions and/or in the Order Form.
2.	Delivery of the Goods	1.1.6	in accordance with the Law and with Guidance;
3.	Passing of risk and ownership of the Goods	1.1.7	in accordance with Good Industry Practice;
4.	Inspection, rejection, return and recall of the Goods	1.1.8	in accordance with the Policies; and
5.	Provision of the Services	1.1.9	in a professional and courteous manner.
6.	The Authority's obligations		
7.	Term		
8.	Contract Management and Monitoring		
9.	Price and payment		
10.	Warranties		
11.	Intellectual property		
12.	Protection of Personal Data	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, installation and training in relation to use of the Goods).
13.	Records retention and right of audit		
14.	Indemnity	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.
15.	Limitation of liability		
16.	Insurance		
17.	Termination		
18.	Consequences of expiry or early termination of this Contract	1.4	The Supplier shall ensure that all relevant rights, consents, authorisations, licences and accreditations (including in relation to IPRs) to enter into this Contract, enable the Supplier to perform its obligations under the Contract and required to supply the Goods are in place prior to the delivery of any Goods to the Authority.
19.	Packaging, identification and end of use		
20.	Dispute resolution		
21.	Coding requirements		
22.	Conflict of interest		
23.	Change Management		
24.	Force majeure		
25.	Equality and diversity		
26.	Notice		
27.	Assignment, novation and Sub-contracting	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.
28.	Prevention of Fraud and Bribery		
29.	Confidential Information		
30.	Freedom of Information Act		
31.	Transparency		
32.	Corporate Social Responsibility		
33.	Official Secrets Acts and Finance Act		
34.	Publicity		
35.	Supply of PPE Goods		
36.	Business Continuity and Disaster Recovery		
37.	Application of TUPE		
38.	General		
1.	<u>Supply of Goods</u>		
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;	1.6	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.
1.1.2	in accordance with all other provisions of this Contract;		
1.1.3	using reasonable skill and care to a professional standard in their delivery and supply;		
1.1.4	using reasonable skill and care to a professional standard in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;	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 be subject to Clause 1 of Schedule 4 (Additional Special Conditions), where applicable.

2. Delivery of the Goods

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

Delivery and collection

- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority (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 Charges 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 Charges 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 of the Goods

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

- 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 Charges 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 of the Goods

- 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) Working 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) Working 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) Working Days from the Authority issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Working 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) Working 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) Working 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. **Provision of the Services**

- 5.1 The Supplier shall from Services Commencement Date and for the duration of the Contract supply the Services to the Authority in accordance with the terms of the Contract.

- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order Form, or that the Authority notifies to the Supplier [and time is of the essence in relation to any of those performance dates].

- 5.3 In providing the Services, the Supplier shall:

5.3.1 co-operate with the Authority in all matters relating to the Services, and comply with all reasonable instructions of the Authority;

5.3.2 perform the Services with the best care, skill and diligence in accordance with Good Industry Practice;

5.3.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification;

5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.3.6 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.3.7 observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;

5.3.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier (the "**Authority Materials**") in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation; and

5.3.9 not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission, and the Supplier acknowledges that the Authority may rely or act on the Services.

- 5.1 where the Order Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Authority Third Party and act at all times in accordance with the following principles:

5.1.1 proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";

5.1.2 being open, transparent and responsive in sharing relevant and accurate information with Authority Third Parties;

5.1.3 adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Authority Third Parties;

5.1.4 providing cooperation, support, information and assistance to Authority Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and

5.1.5 identifying, implementing and capitalising on opportunities to improve Service and deliver better solutions and performance throughout the relationship lifecycle

6. **The Authority's obligations**

- 6.1 Subject to the Supplier supplying the Goods and the Services in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 9 of this Schedule 2.

6.2 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 and the Services.

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

6.4 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.

7. Term

7.1 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.

7.2 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.

8. Contract Management and Monitoring

8.1 The Authority Representative and the Supplier Representative shall meet at least monthly (unless otherwise notified by the Authority or agreed by the Parties) to discuss the Supplier's performance and other matters connected to the delivery of the Contract.

8.2 The Supplier shall comply with any and all of the monitoring arrangements that the Authority shall reasonably require from time to time. This shall include, but shall not be limited to, providing such information about the provision of the Goods and the Services or the obligations imposed on the Supplier under this Contract as the Authority may require the Supplier to produce under the Contract.

8.3 At the Authority's request, within five (5) Working Days of such request, the Supplier shall supply such management information to the Authority as the Authority may reasonably request from time to time (including without limit any information about the Supplier's supply chain and its compliance in relation to sustainability requirements).

8.4 The Supplier shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Supplier's levels of performance.

9. Price and payment

Charges

9.1 The Charges shall be calculated as set out in the Order Form.

9.2 Unless otherwise stated in the Order Form the Charges:

9.2.1 shall remain fixed during the Term; and

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

(a) 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;

(b) 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

(c) 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.

(ii) in respect of the Services:

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

(b) shall be the full and exclusive remuneration of

the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services;

Invoices

9.3 Unless stated otherwise in the Order Form:

9.3.1 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 Charges in respect of the Goods and the Services supplied in compliance with this Contract in the preceding calendar month;

9.3.2 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

9.3.3 where Clauses 9.3.1 or 9.3.2 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 and Services in compliance with this Contract.

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

9.4 The 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.

9.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 9.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

9.6 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.

9.7 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. If there is undue delay in verifying the invoice in accordance with this Clause 9.7 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.7 after a reasonable time has passed.

9.8 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 9.8 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

9.9 The Authority reserves the right to retain or set-off:

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

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

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

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

10. Warranties

10.1 The Supplier warrants and undertakes that:

10.1.1 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;

- 10.1.2 if confirmed by the Authority in writing (to include, without limitation, as part of the Order Form), it will ensure that the Goods and the Services comply with requirements five (5) to nine (9), 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 and/or Services;
- 10.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care to a professional standard and in accordance with Good Industry Practice;
- 10.1.4 without prejudice to the generality of the warranty at 10.1.3 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;
- 10.1.5 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;
- 10.1.6 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.7 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.8 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.9 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;
- 10.1.10 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;
- 10.1.11 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Order Form;
- 10.1.12 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.13 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and/or Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.14 it shall not make any significant changes to the Goods and/or Services 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 and/or services, if accepted, shall not lead to an increase in the Charges
- 10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods and or Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.16 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;
- 10.1.17 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods and Services;
- 10.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods and Services (including any deliverables) or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.19 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 and the Services;
- 10.1.20 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/or Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

- 10.1.21 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;
- 10.1.22 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 10.1.22 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy.
- 10.1.23 it will fully and promptly respond to all requests for information regarding this Contract and the Goods and/or Services at the frequency and in the format that the Authority may reasonably require;
- 10.1.24 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;
- 10.1.25 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;
- 10.1.26 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;
- 10.1.27 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.28 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;
- 10.1.29 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;
- 10.1.30 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.31 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.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance (or be subject to a Product Authorisation, as such term is defined in Schedule 4) and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of Clause 10.1 and 10.2 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;
- 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2, 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 15.2 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.

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

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

10.6 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. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

10.6.2 promptly provide to the Authority:

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

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

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

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

11. Intellectual property

11.1 Unless specified otherwise in the 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.

11.2 The Supplier hereby grants to the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both receive and use the Services.

11.3 Each Party keeps ownership of its own Existing IPRs. Any New IPR created under the Contract is owned by the Authority. The Authority gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Term.

11.4 Where a Party acquires ownership of Intellectual Property Rights which is inconsistent with the allocation specified under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

12. Protection of Personal Data

12.1 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):

12.1.1 administer and provide the Goods;

12.1.2 request and receive the Goods;

12.1.3 compile, dispatch and manage the payment of invoices relating to the Goods;

12.1.4 manage the Agreement and resolve any disputes relating to it;

12.1.5 respond and/or raise general queries relating to the Goods; and

12.1.6 comply with their respective regulatory obligations.

12.2 Processing of Personal Data relating to each Party's representatives for the purposes set out in Clause 12.1 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 referred to in Clause 12.1 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 12.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.

12.3 In respect of Personal Data for which the Authority is the Controller, the Supplier shall only process Personal Data if authorised to do so in accordance with Schedule 5 (Authorised Processing) by the Authority.

- 12.4 The Supplier shall give all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- 12.4.1 a systematic description of the expected processing and its purpose;
 - 12.4.2 the necessity and proportionality of the processing operations;
 - 12.4.3 the risks to the rights and freedoms of Data Subjects;
 - 12.4.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 12.5 The Supplier must notify the Authority immediately if it thinks the Authority's instructions breach the Data Protection Laws.
- 12.6 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Authority.
- 12.7 If lawful to notify the Authority, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 12.8 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
- 12.8.1 are aware of and comply with the Supplier's duties under this Clause 12;
 - 12.8.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 12.8.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Supplier or as otherwise allowed by the Contract; and
 - 12.8.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 12.9 The Supplier must not transfer Personal Data outside of the EU, other than to the Authority, unless all of the following are true:
- 12.9.1 it has obtained prior written consent of the Authority;
 - 12.9.2 the Authority has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);
 - 12.9.3 the Data Subject has enforceable rights and effective legal remedies when transferred;
 - 12.9.4 the Supplier meets its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred;
 - 12.9.5 where the Supplier is not bound by Data Protection Laws it must use its best endeavours to help the Authority meet its own obligations under Data Protection Laws; and
 - 12.9.6 the Supplier complies with the Authority's reasonable prior instructions about the processing of the Personal Data.
- 12.10 The Supplier must notify the Authority immediately if it:
- 12.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 12.10.2 receives a request to rectify, block or erase any Personal Data;
 - 12.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - 12.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 12.10.5 receives a request from any third party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; or
 - 12.10.6 becomes aware of a Data Loss Event.
- 12.11 Any requirement to notify under Clause 12.10 includes the provision of further information to the Authority in stages as details become available.
- 12.12 The Supplier must promptly provide the Authority with full assistance in relation to any Party's obligations under Data Protection Laws and any complaint, communication or request made under Clause 12.10 This includes giving the Authority:
- 12.12.1 full details and copies of the complaint, communication or request;
 - 12.12.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Laws;
 - 12.12.3 any Personal Data it holds in relation to a Data Subject on request;
 - 12.12.4 assistance that it requests following any Data Loss Event;
 - 12.12.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

12.13 The Supplier must maintain full, accurate records and information to show it complies with this Clause 12 (Protection of Personal Data) of this Schedule 2. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Authority determines that the processing:

12.13.1 is not occasional;

12.13.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

12.13.3 is likely to result in a risk to the rights and freedoms of Data Subjects.

12.14 The Supplier shall appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Authority their contact details.

12.15 Before allowing any Sub-processor to process any Personal Data, the Supplier must:

12.15.1 notify the Authority in writing of the intended Sub-processor and processing;

12.15.2 obtain the written consent of the Authority;

12.15.3 enter into a written contract with the Sub-processor so that this Clause 12 applies to the Sub-processor; and

12.15.4 provide the Authority with any information about the Sub-processor that the Authority reasonably requires.

12.16 The Supplier remains fully liable for all acts or omissions of any Sub-processor.

12.17 At any time the Authority can, with 30 Working Days notice to the Supplier, change this Clause 12 to:

12.17.1 replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;

12.17.2 ensure it complies with guidance issued by the Information Commissioner's Office.

12.18 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.

12.19 The Supplier:

12.19.1 must provide the Authority with all Government Data in an agreed open format within 10 Working Days of a written request;

12.19.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

12.19.3 must securely destroy all storage media that has held Government Data at the end of life of that media using Good Industry Practice;

12.19.4 securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and

12.19.5 indemnifies the Authority against any and all losses incurred if the Supplier breaches this Clause 12 (Protection of Personal Data) and any Data Protection Laws.

13. Records retention and right of audit

13.1 Subject to any statutory requirement and Clause **Error! Reference source not found.** of this Schedule 2, the Supplier shall in accordance with the GDPR 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 including records and accounts which the Authority has a right to audit.

13.2 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.

13.3 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) Working Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.

13.4 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) Working 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.

13.5 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:

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

13.5.2 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.

13.6 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 13 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.

13.7 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.

13.8 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.

13.9 The Parties will bear their own costs when an audit is undertaken unless the audit identifies a material Default by the Supplier, in which case the Supplier will repay the Authority's reasonable costs in connection with the audit.

14. Indemnity

14.1 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:

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

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

14.1.3 any breach of Clause 10.1.18 and/or Clause 11 of this Schedule 2; and/or

14.1.4 failure by the Supplier to commence the provision of the Services on the Services Commencement Date;

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

14.2 Liability under the indemnities provided in Clauses 9.5, 14.1.1, 14.1.3 and 14.1.4 of this Schedule 2, Schedule 6 (Staff Transfer) and the Annexes to Schedule 6 (Staff Transfer) shall be unlimited. Liability under Clauses 4.9.4, 10.3 and 14.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 15 of this Schedule 2.

14.3 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:

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

14.3.2 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).

15. Limitation of liability

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

15.1.1 for death or personal injury resulting from its negligence;

15.1.2 for fraud or fraudulent misrepresentation; or

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

15.2 Subject to Clauses 14.2, 15.1, 15.3 and 15.5 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 Charges paid or payable by the Authority to the Supplier for the Goods and Services.

15.3 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:
- 15.3.1 extra costs incurred purchasing replacement or alternative goods;
 - 15.3.2 costs incurred in relation to any product recall;
 - 15.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 15.3.4 the costs of extra management time; and/or
 - 15.3.5 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.
- 15.4 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.
- 15.5 If the total Charges paid or payable by the Authority to the Supplier over the Term:
- 15.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 15.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
 - 15.5.2 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 15.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
 - 15.5.3 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 15.2 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 15.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
 - 15.5.4 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 15.2 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 15.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 15.6 Clause 15 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
- 16. Insurance**
- 16.1 Subject to Clause 11 of Schedule 1, if applicable, and 16.2 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, the Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
- 16.2 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 16.1 of this Schedule 2 or Clause 11 (Different levels and/or types of insurance) of Schedule 1, as applicable, 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.
- 16.3 The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
- 16.4 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.
- 16.5 The Supplier shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 16 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.
- 16.6 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 until the expiry or earlier termination of this Contract.. Except for professional indemnity insurance (where required) shall continue for the period of six (6) 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.

17. Termination

17.1 In the case of a breach of any of the terms of this Contract by the Supplier that is capable of remedy (including and not limited to any breach of any payment obligations, under this Contract), the Authority may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Supplier the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Supplier ("**Remedial Proposal**") before exercising any right to terminate this Contract. Such Remedial Proposal must be agreed with the Authority (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Supplier 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 Supplier to:

17.1.1 put forward and agree a Remedial Proposal with the Authority in relation to the relevant default or breach within a period of ten (10) Working Days (or such other period as the Authority may agree in writing) from the deemed date of receipt of the Breach Notice;

17.1.2 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

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

shall be deemed a material breach of this Contract by the Supplier not remedied in accordance with an agreed Remedial Proposal.

17.2 The Authority may terminate this Contract, or terminate the supply of any part of the Goods and Services, with immediate effect by issuing a Termination Notice to the Supplier:

17.2.1 if the Supplier commits a material breach of any of the terms of this Contract which is:

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

17.2.2 if the Supplier has been 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 Supplier 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.

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

17.2.4 if 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;

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

17.2.6 pursuant to and in accordance with the Key Provisions and Clauses 17.3, 22.2, 24.7, 28.2, and 28.4 of this Schedule 2;

17.2.7 if the warranty given by the Supplier pursuant to Clause 10.6 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.6 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.6 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable; or

17.2.8 any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Public Contracts Regulations 2015 applies.

- 17.3 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-Contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 17.3.1 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; and
- 17.3.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 17.3 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.
- 17.4 Notwithstanding any other provision in the Contract, the Authority shall be entitled to terminate this Contract with immediate notice should any information supplied by the Supplier, contained in this Contract or obtained by the Authority (including but not limited to certifications of the Goods and/or Services, financial or other due diligence information provided by the Supplier or obtained by the Authority) be inaccurate, misleading and/or otherwise give rise to reasonable suspicion by the Authority of fraud.
- 17.5 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £30,000 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights to set-off under Clause 89.9 of this Schedule 2.
- 18. Consequences of expiry or early termination of this Contract**
- 18.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods and Services 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 and Services (including without limitation any pre-payment or advance payments) not delivered at the date of expiry or earlier termination of this Contract
- 18.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 18.3 Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with Data Protection Laws.
- 18.4 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.
- 18.5 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.
- 19. Packaging, identification and end of use**
- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 Unless otherwise set out in the Order Form or agreed with the Authority in writing, the Supplier

shall collect without charge any returnable containers and/or packages (including pallets) within twenty-one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 19.5 of this Schedule 2.

20. Dispute resolution

- 20.1 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).
- 20.2 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 20.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 20.3 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) Working 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) Working Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 20.4 If the procedure set out in Clause 20.3 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) Working Days following the exhaustion of all levels of the escalation procedure at Clause 20.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 20.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 20.4 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.

- 20.6 Nothing in this Contract shall prevent:

20.6.1 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 and Services; or

20.6.2 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.

- 20.7 Clause 20 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

21. Coding requirements

- 21.1 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).
- 21.2 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.
- 21.3 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.

22. Conflict of interest

- 22.1 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.
- 22.2 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 32.2 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.

23. Change Management

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

23.2 Any change to the Goods and/or Services 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.

Change in Law

23.3 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

23.3.1 a General Change in Law; or

23.3.2 a Specific Change in Law where the effect of that Specific Change in Law on the Goods and Services is reasonably foreseeable at the Commencement Date.

23.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 23.3.2 of this Schedule 2), the Supplier shall:

23.4.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

- (i) whether any variation is required to the Goods and Services, the Charges or this Contract; and
- (ii) whether any relief from compliance with the Supplier's obligations is required; and

23.4.2 provide the Authority with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (a) as to how the Specific Change in Law has affected the cost of providing the Goods and Services; and

- (b) demonstrating that any expenditure that has been avoided has been taken into account in amending the charges.

23.5 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 23.3.2 of this Schedule 2) shall be implemented in accordance with the Clause 23.2 of this Schedule 2.

24. Force majeure

24.1 Subject to the remaining provisions of this Clause 24 (Force Majeure) (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 36 (Business Continuity and Disaster Recovery) of Schedule 2), a Party may claim relief under this Clause 24 (Force Majeure) from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

24.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

24.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 24 (Force Majeure) to the extent that consequences of the relevant Force Majeure Event:

24.3.1 are capable of being mitigated, but the Supplier has failed to do so;

24.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods and services similar to the Goods and Services, operating to the standards required by this Contract; or

24.3.3 are the result of the Supplier's failure to comply with its Business Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Business Continuity Plan).

24.4 Subject to Clause 24.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and Services affected by the Force Majeure Event.

24.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

24.6 Where, as a result of a Force Majeure Event:

24.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 22.7; and
- (ii) neither Party shall be liable for any default arising as a result of such failure;

24.6.2 the Supplier fails to perform its obligations in accordance with this Contract the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Goods and Services (or part of the Goods and Services) continue to be supplied in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

24.7 If the Supplier is prevented from complying with its obligations under this Contract as a result of a Force Majeure Event, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier if the Force Majeure Event endures for a continuous period of thirty (30) days and this Contract shall terminate on the date specified in the Termination Notice.

24.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

24.9 Relief from liability for the Affected Party under this Clause 24 (Force Majeure) shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 22.8.

25. Equality and diversity

25.1 The Supplier shall:

25.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and Services 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

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;

25.1.2 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

25.1.3 the Supplier shall impose on all its Sub-Contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 25 of this Schedule 2.

25.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 25 of this Schedule 2.

26. Notice

26.1 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.

26.2 A notice shall be treated as having been received:

26.2.1 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

26.2.2 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

26.2.3 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.

27. Assignment, novation and Sub-contracting

27.1 The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the

- whole or any part of this Contract without the prior consent in writing of the Authority.
- 27.2 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.
- 27.3 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.
- 27.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 27.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services to the extent relevant to such Sub-contract;
- 27.4.2 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;
- 27.4.3 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);
- 27.4.4 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;
- 27.4.5 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;
- 27.5 The Authority may require the Supplier to terminate a Sub-contract where:
- 27.5.1 the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 17 (Termination) of this Schedule 2;
- 27.5.2 the relevant Sub-Contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;
- 27.5.3 the relevant Sub-Contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- 27.5.4 the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 27.6.
- 27.6 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-Contractor, then:
- 27.6.1 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
- 27.6.2 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.
- 27.7 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.
- 27.8 If the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or, where Clauses 14.9 to 14.12 of Schedule 1 apply, that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-Contractors within 60 days after the date on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 27.9 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/or Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Working 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.

27.10 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.

27.11 The Supplier shall not without the prior written consent of the Authority change the Sub-Contractor listed in the Order Form. If, due to unforeseen reasons, the replacement is requested by the Supplier, the Supplier shall inform the Authority via email as soon as possible. The Supplier shall be liable to provide the Authority with an updated Specification and shall ensure that the products to be provided pursuant to that Specification by the replaced Sub-Contractor are of the same quality standard as the Goods and Services and the agreed delivery schedule remains unchanged. Should the updated Specification fail to meet the Authority's requirements, the Authority shall reserve the right to terminate the Contract.

28. Prevention of Fraud and Bribery

28.1 The Supplier warrants and represents that:

28.1.1 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

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

28.2 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:

28.2.1 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;

28.2.2 any termination under Clause 28.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

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

- (i) the interpretation of Clause 20 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.

28.3 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.

28.4 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.

29. Confidential Information

29.1 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 29 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:

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

- 29.1.2 the provisions of Clause 29 of this Schedule 2 shall not apply to any Confidential Information:
- 29.1.2.1 which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - 29.1.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 29.1.2.3 which is authorised for disclosure by the prior written consent of the Discloser;
 - 29.1.2.4 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
 - 29.1.2.5 which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 29.2 Nothing in Clause 29 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**").
- 29.3 The Authority may disclose the Supplier's Confidential Information:
- 29.3.1 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);
 - 29.3.2 on a confidential basis, to any consultant, Supplier or other person engaged by the Authority, a Contracting Authority, or by any of the entities described in Clause 29.3.3 (or any benchmarking organisation) receiving such information for any purpose relating to or connected with this Contract;
 - 29.3.3 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 29.3.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 29.3.5 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
 - 29.3.6 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights under Clause 13 (Records retention and right of audit) or 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;
 - 29.3.7 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
 - 29.3.8 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 29.3 of this Schedule 2.
- 29.4 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 29 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.
- 29.5 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.

29.6 Clause 29 of this Schedule 2 shall remain in force:

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

29.6.2 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.

30. Freedom of Information Act

30.1 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.

30.2 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:

30.2.1 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;

30.2.2 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;

30.2.3 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) Working Days) provide a copy of the request and any response to the Authority;

30.2.4 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) Working Days) transfer the request to the Authority;

30.2.5 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

30.2.6 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) Working Days of that request and without charge.

30.3 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.

31. Transparency

31.1 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.

31.2 In preparing a copy of this Contract for publication under Clause 31 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.

31.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

31.4 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 30 of this Schedule 3, as if such Sub-Contractor were the Supplier.

32. Sustainability

32.1 The HM Government Supplier Code of Conduct setting out the standards and behaviours expected of Suppliers who work with government shall apply for the purposes of this Contract (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) ("Code").

32.2 Without affecting its other obligations under the Contract, the Authority expects the Supplier and any Sub-Contractors to meet the standards set out in that Code. In addition, the Authority expects its Supplier and any Sub-Contractors to comply with the standards set out in this Clause 32.

32.3 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause 32

(Sustainability) within fourteen (14) days of such request, provided that such requests are limited to two each year.

Equality and Accessibility

32.4 In addition to legal obligations, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

32.4.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

32.4.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

32.5 In delivering the Goods and Services, the Supplier shall comply with the Authority's equality, diversity and inclusion requirements, to be provided to the Supplier by the Authority.

32.6 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

Employment Law

32.7 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Modern Slavery

32.8 The Supplier:

32.8.1 shall, and shall procure that each of its Sub-Contractors shall, comply with the Modern Slavery Act 2015;

32.8.2 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour or any practice that is considered to be an indicator of force labour as defined by the International Labour Organisation;

32.8.3 shall not require its Staff or Sub-Contractor Staff to lodge deposits or identify papers with the Supplier or Sub-Contractor as their employer and shall be free to leave their employer after reasonable notice;

32.8.4 warrants and represents that it has not been convicted of any slavery or human tracking offenses anywhere around the world;

32.8.5 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to

any allegation of slavery or human tracking offenses anywhere around the world;

32.8.6 shall make reasonable enquiries to ensure that its Staff and Sub-Contractors Staff have not been convicted of slavery or human tracking offenses anywhere around the world;

32.8.7 shall have and maintain throughout the Term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;

32.8.8 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;

32.8.9 shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Clause 32.8;

32.8.10 shall not use, nor allow its Staff or Sub-Contractors Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Staff or Sub-Contractors Staff;

32.8.11 shall not use or allow child or slave labour to be used by its Sub-Contractors; and

32.8.12 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and Modern Slavery Helpline.

32.9 The Supplier shall notify the Authority as soon as it becomes aware of:

32.9.1 any breach, or potential breach, of the Anti-slavery Policy and if Clause 15 of Schedule 1 applies, any breach, or potential breach, of the Authority's Anti-slavery Policy;

32.9.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

32.10 The Supplier shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Authority as a result of any breach of the Anti-slavery Policy and if Key Provision 15 applies, as a result of any breach of the Authority's Anti-slavery Policy.

Environmental Requirements

32.11 The Supplier shall comply in all material respects with all applicable environmental laws, permits and regulations in force in relation to the Contract.

32.12 The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.

32.13 The Supplier shall meet the applicable Government Buying Standards applicable to services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

32.14 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Goods and Services.

32.15 The Supplier shall ensure that any Goods and Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.

32.16 In delivering the Goods and Services, the Supplier must comply with the Authority's sustainability requirements, to be provided to the Supplier by the Authority.

32.17 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority:

32.17.1 avoid consumable single use items (including packaging) unless otherwise agreed with the Authority, and unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Goods and Services;

32.17.2 demonstrate that the whole life cycle impacts (including end of use) associated with the Goods and Services that extend beyond direct operations into that of the supply chain have been considered and reduced;

32.17.3 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;

32.17.4 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;

32.17.5 enhance the natural environment and connecting communities with the environment; and

32.17.6 achieve continuous improvement in environmental (and social) performance.

32.18 The Supplier shall inform the Authority within one Working Day in the event that a permit, licence or

exemption to carry or send waste generated under this Contract is revoked.

Sustainability

32.19 The Supplier shall:

32.19.1 meet the applicable Government Buying Standards applicable to the Goods and Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>; and

32.19.2 perform its obligations under the Contract in a way that:

- (i) conserves energy, water, wood, paper and other resources;
- (ii) reduces waste and avoids the use of ozone depleting substances; and
- (iii) minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

32.20

33. Official Secrets Acts and Finance Act

33.1 The Supplier shall comply with, and shall ensure the Staff comply with, the provisions of:

33.1.1 the Official Secrets Acts 1911 to 1989; and

33.1.2 section 182 of the Finance Act 1989.

33.2 The Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier or any of the Staff do not comply with Clause 33.1 (Official Secrets Acts and Finance Act) of this Schedule 2.

34. Publicity

34.1 The Supplier shall not and shall procure that its Sub-Contractors shall not:

34.1.1 make any press announcements or publicise the Contract in any way; or

34.1.2 use the Authority's name or brand in any promotion or marketing or announcement,

without the prior written consent of the Authority.

34.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract, by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

34.3 The provisions of this Clause 34 (Publicity) shall apply during the Term and indefinitely after its expiry or the earlier termination of the Contract.

35. Supply of PPE Goods

Regulatory Requirements

35.1 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.

35.2 The Supplier shall supply the PPE Goods to Authority in accordance with the terms of this Contract and in accordance with the relevant requirements of applicable laws and regulations applicable to the supply of PPE, including, as applicable, the EU PPE Regulation 2016/425 and the European Commission Recommendation 2020/403 dated 13 March 2020, the Personal Protective Equipment (Enforcement) Regulations 2018 and the Medical Device Regulations 2002 (together the "PPE Laws").

35.3 The Supplier shall ensure for PPE Goods supplied:

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

35.3.2 all declarations of conformity and approvals required by PPE Laws are in place prior to the delivery of any PPE Goods to the Authority. An EU declaration of conformity (DoC) is a mandatory document that a manufacturer or its authorised representative need to sign to declare that its products comply with the EU requirements. By providing a signed DoC you take full responsibility for the product's compliance with the applicable EU law - https://europa.eu/youreurope/business/product-requirements/compliance/technical-documentation-conformity/index_en.htm ;

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

35.3.4 it is in compliance with Office of Product Safety & Standards Covid-19 Guidance for Businesses - <https://www.gov.uk/guidance/opss-coronavirus-covid-19-guidance-for-business-and-local-authorities#opss-covid-19-guidance-for-businesses> ; and

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

35.4 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

35.5 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

35.6 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.

35.7 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.

36. Business Continuity and Disaster Recovery

36.1 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 and Services. 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.

36.2 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:

36.2.1 the criticality of this Contract to the Authority; and

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

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

36.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 36.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

36.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.

36.5 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 and Services in accordance with this Contract.

37. Application of TUPE

37.1 The Parties agree that:

37.1.1 Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 6 shall apply as follows:

- (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 6 shall apply;

(ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 6 shall apply;

(iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 6 shall apply; and

(iv) Part C of Schedule 6 shall not apply;

37.2 Where the commencement of the provision of the Services or a part of the Service does not result in a Relevant Transfer, Part C of Schedule 6 shall apply and Parts A and B of Schedule 6 shall not apply; and

37.3 Part D of Schedule 6 shall apply on the expiry or termination of the Services or any part of the Services.

38. General

Business Continuity Plan

Relationship of the Parties

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

Waiver

38.2 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.

38.3 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.

Severability

38.4 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.

Entire Agreement

38.5 This Contract, any variation in writing signed by an authorised representative of each Party and any

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

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

- 38.6 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.

Expenses

- 38.7 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.

Cumulative remedies

- 38.8 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 0 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.

Rights of third parties

- 38.9 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.

Law and jurisdiction

- 38.10 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.
- 38.11 Subject to Clause 20 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.

Communications

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:

“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event;
“ASN”	means advance shipping notice;
“Authority”	means the authority named on the form of Contract on the first page;
“Authority’s Anti-slavery Policy”	any anti-slavery policy of the Authority that is notified to the Supplier as provided to the Supplier.
“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 and Services including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event;
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change in Law”	Means any change in Law which impacts on the supply of the Goods and Services (including taxation or

	duties of any sort affecting the Supplier) which comes into force after the Commencement Date;
“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;
“Codes of Practice”	shall have the meaning given to the term in Clause 29.2 of Schedule 2;
“Commencement Date”	means the date of this Contract;
“Comparable Supply”	means the supply of goods and services to another customer of the Supplier that are the same or similar to any of the Goods and Services;
“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;
“Supplier”	means the Supplier named on the form of Contract on the first page;
“Controller”	shall have the same meaning as set out in the UK GDPR;
“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 Loss Event”	any event that results, or may result, an unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
“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 UK GDPR; (iii) the Data Protection, Privacy and Electronic Communication (Amendments etc) (EU Exit) Regulation 2019 and any applicable national implementing Law as amended from time to time; and (iv) all applicable Law about the processing of personal data and privacy;
“Data Subject”	shall have the same meaning as set out in the UK GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to their Personal Data;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 2;
“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(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 20 of Schedule 2. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 28.2.3 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;
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Environmental Regulations”	shall have the meaning given to the term in Clause 29.2 of Schedule 2;
“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;

“Existing IPRs”	means any and all Intellectual Property Rights that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise);
“Exit Day”	shall have the meaning in the European Union (Withdrawal) Act 2018;
“FOIA”	shall have the meaning given to the term in Clause 29.2 of Schedule 2;
“Force Majeure Event”	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> (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

	<p>Supplier to supply the Goods and Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-Contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union or as a result of or in connection with the COVID-19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Goods and Services cannot be provided as set out in this Contract (in all material respects) without such Laws and/or government guidance being breached, or if the Supplier can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Goods and Services due to the levels of COVID-19 infections in the population of the United Kingdom.</p>
“Force Majeure Notice”	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“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”	<p>means</p> <ul style="list-style-type: none"> (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;
“General Change in Law”	means a Change in Law where the change is of a general legislative nature or which affects or relates to a Comparable Supply;
“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 and services similar to the Goods and the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
“Goods”	means all goods (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 and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, 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”	<p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“New IPR”	<p>means:</p> <ul style="list-style-type: none"> (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including (but not

	<p>limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR;</p>
"Occasion of Tax Non-Compliance"	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</p>
"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 UK GDPR;
"Personal Data Breach"	shall have the same meaning as set out in the UK GDPR;
"Policies"	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
"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
"Processing"	shall have the same meaning as set out in the UK GDPR;
"Product Information"	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 10 of Schedule 1 for inclusion in the Authority's product catalogue from time to time;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"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;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Remedial Proposal"	has the meaning given under Clause 17.1 of Schedule 2;

“Requirement to Recall”	has the meaning given under Clause 4.9 of Schedule 2;
“Services”	means the services to be supplied as specified in the Order Form or Specification annexed to the Contract;
“Services Commencement Date”	means the date specified in the Order Form from which the Supplier is required to commence the provision of the services;
“Specific Change in Law”	means in law a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“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;
“Specification”	means the specification for the Goods and Services as set out in the Order Form or attached to the Contract;
“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;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
“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;
“UK GDPR”	Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
“Unconnected Sub-contract”	means any contract or agreement which is not a Sub-contract and is between the Supplier and a third

	party (which is not an affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-Contractor”	means any third party with whom the Supplier enters into an Unconnected Sub-contract;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.
“Working Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;

- 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 Reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
- 1.3.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 1.3.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 1.4 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
- 1.5 References in this Contract to a “Schedule”, “Annex”, or to a “Clause” are to schedules, annexes and clauses of this Contract.
- 1.6 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.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or

"includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 1.10 Where there is a conflict between the Supplier's responses to the 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.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Any guidance notes in grey text do not form part of this Contract.
- 1.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.14 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.

Schedule 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 Supplier shall take all reasonable steps to safeguard and protect all stocks of Component Parts held by it and its Group from time to time which may be required to manufacture the Goods;

2.2.2 the Supplier recognises and agrees that the exceptional circumstances referred to above may mean that it is necessary for the Authority to involve itself in the Supplier's inbound supply chain for Component Parts. 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.

SCHEDULE 5**AUTHORISED PROCESSING****1. Processing Personal Data**

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.
- 1.2 The contact details of the Controller's Data Protection Officer are:
- 1.3 The contact details of the Processor's Data Protection Officer are:
- 1.4 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

UNLESS requirement under union or member state law to preserve that type of data	
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Description	Details
Identity of Controller for each Category of Personal Data	<p><i>The Authority is Controller and the Supplier is Processor</i></p> <p><i>The Parties acknowledge that in accordance with Clause 12.3 to 12.19 (Protection of Personal Data) and for the purposes of the Data Protection Laws, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</i></p> <p>N/A</p>
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A
Type of Personal Data being Processed	N/A
Categories of Data Subject	N/A
Plan for return and destruction of the data once the processing is complete	N/A

SCHEDULE 6**STAFF TRANSFER****1. DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

“Admission Contract”	the agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
“Supplier’s Final Supplier”	a list provided by the Supplier of all Supplier Staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Contract;
“Employee Liabilities”	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b. unfair, wrongful or constructive dismissal compensation; c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d. compensation for less favourable treatment of part-time workers or fixed term employees;

	<ul style="list-style-type: none"> e. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; f. employment claims whether in tort, contract or statute or otherwise; g. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
“Fair Deal Employee(s)”	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	a Supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Goods and Services (or any part of the Goods and Services) and shall include any Sub-Contractor of such Supplier (or any Sub-Contractor of any such Sub-Contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	means HM Treasury Guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions” issued in June 1999 including the supplementary guidance “Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues” issued in June 2004;

“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Replacement Sub-Contractor”	a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
“Replacement Supplier”	means any third party Supplier of Replacement Services appointed by the Authority from time to time and in accordance with the terms of the Contract;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <ol style="list-style-type: none"> their ages, dates of commencement of employment or engagement and gender; details of whether they are employed, self-employed Suppliers or consultants, agency workers or otherwise; the identity of the employer or relevant contracting Party; their relevant contractual notice periods and any other terms relating to termination of employment, including

	<p>redundancy procedures, and redundancy payments;</p> <ol style="list-style-type: none"> their wages, salaries and profit sharing arrangements as applicable; details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and any other “employee liability information” as such term is defined in Regulation 11 of the Employment Regulations.
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date; and
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former

Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms dis-applied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Authority Employee.

1.1.3 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Authority occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

2.1.5 a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;

2.1.6 any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

2.1.7 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under Regulation 13 of the Employment

- Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with Regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority; and
- 2.3.2 the Authority may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (i) any claim for:
- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- 2.7.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.3 shall apply only where the notification referred to in Paragraph 2.3.2.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority within six (6) months of the Services Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. **SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under Regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments

shall be made between the Authority and the Supplier.

4. INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under Regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
- 5.2.2 Old Fair Deal; and/or
- 5.2.3 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Process.

6. PENSIONS

- 6.1 The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS**1. PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Contract.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Contract) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Contract and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

- 4.1 The Supplier and the Authority respectively undertake to each other:
 - 4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Contract, and to supply the information as expeditiously as possible; and
 - 4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

- 7.1 The Supplier shall:
 - 7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
 - 7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
 - 7.1.3 for the period either:
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is

made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Contract.

**PART B: TRANSFERRING FORMER SUPPLIER
EMPLOYEES AT COMMENCEMENT OF SERVICES**

Supplier is contractually bound to honour;

1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of Regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2 the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former

2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with Regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its

- origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved, the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (i) any claim for:
- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six (6) months of the Services Commencement Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.
- 3. SUPPLIER INDEMNITIES AND OBLIGATIONS**
- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined

in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial

obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under Regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
- 5.1.2 Old Fair Deal; and/or
- 5.1.3 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Process.

6. PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

ANNEX TO PART B: PENSIONS**1. PARTICIPATION**

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority:

1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement; and

1.2.3 agree that notwithstanding sub-paragraph 1.2.2 of this Annex to Part B: Pensions the Supplier shall notify the Authority in the event that it breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2. FUTURE SERVICE BENEFITS

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which

are broadly comparable to those provided by the Schemes at the relevant date.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

4.1 The Supplier and the Authority respectively undertake to each other:

4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

5.1 The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. SUBSEQUENT TRANSFERS

7.1 The Supplier shall:

- 7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.1.3 for the period either:
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,
- 7.2 ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved;

the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in

applicable Law and subject also to Paragraph 2.4, the Authority shall:

2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(i) any claim for:

(a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Authority and, if applicable, Former Supplier within six (6) months of the Services Commencement Date.

3. PROCUREMENT OBLIGATIONS

- 3.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: EMPLOYMENT EXIT PROVISIONS**1. PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination of this Contract;
- 1.1.3 the date which is twelve (12) months before the end of the Term; and
- 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor:

- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub Supplier shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub Supplier shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of employees engaged in providing the Services;

- 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and

- 1.6.3 a description of the nature of the work undertaken by each employee by location.

- 1.7 The Supplier shall provide, and shall procure that each Sub Supplier shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement

Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and

outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

- 2.3 Subject to Paragraph 2.4 the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement

- Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to and including the Service Transfer Date;
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with Regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved;
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (i) any claim for:

- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

 - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under Regulation 13 of the Employment Regulations.

The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.