

NHS TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS (CONTRACT VERSION)

The Authority	[Insert name and address of the Authority]
The Supplier	[Insert name, address and, where applicable, the company number of the Supplier]
Date	[Insert date when signed by both parties]
Type of Goods	[]

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

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

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Installation and Commissioning Services
Schedule 8	Maintenance Services
Schedule 9	Expert Determination

Signed by the authorised representative of THE AUTHORITY

Name:	Signature:
Position:		

Signed by the authorised representative of THE SUPPLIER

Name:	Signature
Position:		

Schedule 1

Key Provisions

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

Standard Key Provisions

1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 7 to 23 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire [insert length] years from [the Commencement Date/insert date]. The Term may be extended in accordance with Clause 15.2 of Schedule 2 provided that the duration of this Contract shall be no longer than [insert number of years] years in total.

Guidance: Insert the initial term in the first line and the maximum term including all extensions in the third line. Do remember that the initial term and maximum term must be consistent with the OJEU contract notice.

Note that the term runs from either the Commencement Date or a later date, which must be specified, if you want to build in time for a setup period.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract are:
 - 3.1.1 for the Authority:
[insert name and role]
 - 3.1.2 for the Supplier:
[insert name and role].

Guidance: This Clause sets out the name of the contract manager for each party. Insert the name and role of the Authority's contract manager. At the tender stage you will not know who the Supplier is so Clause 3.1.2 cannot be completed until preparation of the final contract for signature.

4 Names and addresses for notices

4.1 Notices served under this Contract are to be delivered to:

4.1.1 for the Authority:

[complete name and/or role and address]

4.1.2 for the Supplier:

[complete name and/or role and address].

Guidance: This Clause sets out the name of each party's recipient of notices from the other party and is relevant to the issuing of formal communications under the Contract. Insert the name and address of the Authority's recipient of notices. At the tender stage you will not know who the Supplier is so Clause 4.1.2 cannot be completed until preparation of the final contract for signature. You may prefer to insert the role of the recipient (e.g. Finance Director) rather than an actual name.

5 Management levels for escalation and dispute resolution

5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

Level	Authority representative	Supplier representative
1	[Contract Manager]	[Contract Manager]
[2]	[insert role]	[insert role]
[3]	[insert role]	[insert role]

Guidance: The Dispute Resolution Procedure sets out an internal process for dealing with Disputes. In Clause 5.1 above you must insert the number of internal levels and the name and/or role of the person who will deal with a Dispute at each level. You may include as many levels as appropriate to the project. The purpose of having a number of levels is to ensure all internal avenues of resolution have been exhausted before a Dispute is dealt with by an external third party.

Under Authority representative insert the appropriate details. Also consider how many levels are appropriate to your individual project. At the tender stage you will not know who the Supplier is so the Supplier Representatives cannot be completed until preparation of the final contract for signature.

6 Order of precedence

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

- 6.1.1 the provisions on the front page of this NHS Contract for the Supply of Goods (Contract Version);
 - 6.1.2 Schedule 1: Key Provisions;
 - 6.1.3 Schedule 5: Specification and Tender Response Document (but only in respect of the Authority's requirements);
 - 6.1.4 Schedule 2: General Terms and Conditions;
 - 6.1.5 Schedule 6: Commercial Schedule;
 - 6.1.6 Schedule 3: Information Governance Provisions;
 - 6.1.7 Schedule 4: Definitions and Interpretations;
 - 6.1.8 the order in which all subsequent schedules, if any, appear; and
 - 6.1.9 any other documentation forming part of the 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.
- 6.2 For the avoidance of doubt, the Specification and Tender Response Document shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of 0. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

Guidance: Key Provision 6 addresses the order of precedence of various parts of the Contract for construction purposes. This should be carefully checked to confirm that it is appropriate for the particular Contract with any changes made accordingly.

Optional Key Provisions

Guidance: These optional Key Provisions enable the Authority to:

(a) vary some of the default provisions in Schedule 2 as appropriate to the particular project (e.g. Key Provision 8 allows for the insurance levels and/or types to be varied from the default position set out in Clause 14 of Schedule 2); and

(b) add provisions relevant to a particular project that are not part of the default provisions in Schedule 2 (e.g. there is an option to add further Authority obligations).

If any of the optional Key Provisions apply, this must be indicated in the draft contract issued at the tender stage by checking the boxes, completing the text in square brackets as

appropriate and adding any required schedules. If a clause does not apply, leave the relevant box blank.

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

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

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

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

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

Type of insurance required	Minimum cover
[Employer's liability insurance]	[]
[Public liability insurance]	[]
[Product liability insurance]	[]
[Insert other types of insurance as appropriate]	[]

Guidance: This Clause relates to Clause 14 of Schedule 2. Clause 14.1 of Schedule 2 requires the Supplier to have in place a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law in respect of employer's liability, public liability, and product liability insurance. If this default position is not appropriate in relation to the nature and risks of the particular project, you need to check the box above and insert in the table what different types and/or levels of insurance the Supplier must have in place.

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

9.1 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 shall be an irremediable breach of this Contract.

Guidance: If you require that a third party guarantees the Supplier's performance, this must be in the tender documentation and you should check the box above. This Clause then protects your NHS body should signature of the guarantee be delayed.

10 Further Authority obligations ☐ (only applicable to the Contract if this box is checked and the Schedule inserted)

10.1 The Authority's Obligations are set out in Schedule **[insert schedule number]**.

Guidance: For some procurements, for example where prototypes or samples of any goods are to be reviewed as part of the manufacturing process, there may be further specific responsibilities on and requirements of your own staff. These could include individuals working alongside the Supplier's staff to review and comment on such prototypes / samples. If there are specific responsibilities on your own staff it is important to include these in a Schedule. This will help to avoid arguments, if delivery is late, as to who is responsible for any delay.

If there will be specific responsibilities on your staff check the box above and insert a Schedule number in this Clause and a numbered Schedule at the back of the Contract called "Authority's Obligations". The detailed obligations may need to be inserted at contract signature although you may want to outline these at the time of issue of the tender documentation.

You must then refer to this Schedule in the Table of Schedules on the front page of this Contract.

11 **Supplier as Data Processor ☒ (only applicable to the Contract if this box is checked)**

11.1 The Parties acknowledge that the Authority is the Controller and the Supplier is the Processor in respect of Personal Data Processed under this Contract and that paragraph 2.2 of Schedule 3 and the provisions of the Data Protection Protocol must be complied with by the Parties as a term of this Contract.

Guidance: If the Supplier is processing personal data as part of the supply the Goods and doing so on your behalf as a data processor you should check the above box and prepare a Data Protection Protocol based on the template that can be found at [insert link to template]. The Data Protection Protocol should then be included as part of the Contract as an annex to Schedule 3.

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

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

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

13 Pre-Acquisition Questionnaire ☐ (only applicable to the Contract if this box is checked)

checked)

- 13.1 The Supplier warrants and undertakes that its responses to the Pre-Acquisition Questionnaire issued by the Authority are correct and will remain correct and binding on the Supplier until no longer applicable notwithstanding any earlier expiry or termination of this Contract. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that the foregoing warranty and undertaking in this Clause 13.1 of this Schedule 1 has been breached or there is a risk that it may be breached. Should the Supplier be in breach of this warranty, the Supplier shall take all such actions necessary to put the Authority in such a position as if the Supplier had continued to comply fully with the warranty.

Guidance: If you have asked suppliers to complete a Pre-Acquisition Questionnaire to provide information about the goods being considered for purchase, then this Clause is needed to ensure that the Supplier will be bound by any responses it provided in the Pre-Acquisition Questionnaire and the box above should be checked accordingly. If suppliers have not completed a Pre-Acquisition Questionnaire then this Clause is not required.

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

- 14.1 Time is of the essence as to any delivery dates under this Contract and if the Supplier fails to meet any delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2.

Guidance: This Clause can be used where, exceptionally, the delivery dates under the particular contract are critical and you require the right to terminate the Contract if such dates are not met. Where time of the essence is required, this clause should be checked.

15 Specific time periods for inspection ☐ (only applicable to the Contract if this box is checked and Clause 15.1 of this Schedule 1 is completed)

- 15.1 For the purposes of Clause 4.2 of Schedule 2, the Authority shall visually inspect the Goods within **[insert time period during which any inspection must be carried out]** of the date of delivery of the relevant Goods.

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

16 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 16.1 of this Schedule 1 is completed)

- 16.1 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.

Guidance: If the Authority's rights under Clause 4.6 of Schedule 2 in relation to defective goods are to be limited to a fixed time period for the purposes of Clause 4.8 of Schedule 2 (e.g. to

reflect market practice in certain industry sectors), this Clause should be checked and fixed time period should be inserted as indicated.

17 Monthly payment profile ☐ (only applicable to the Contract if this box is checked)

17.1 The payment profile for this Contract shall be monthly in arrears.

Guidance: If the payment profile for invoicing purposes is to be monthly in arrears, this Clause should be included for the purposes of Clause 9.3 of Schedule 2 and the box above checked accordingly. Otherwise, the Supplier may invoice either at any point following the supply of the Goods in compliance with the Contract or as set out in the Commercial Schedule at Schedule 6.

18 Termination for convenience ☐ (only applicable to the Contract if this box is checked and Clause 18.1 of this Schedule 1 is completed)

18.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **[one (1)/three (3)/six (6) months]** written notice. **[Such notice shall not be served within [one (1)] year of the Commencement Date].**

18.2 [Should the Authority terminate this Contract in accordance with Clause 18.1 of this Schedule 1, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Schedule **[insert schedule number]**].

Guidance: This Clause entitles you, as the Authority, to terminate the Contract for no reason on a given period of notice (e.g. 1 month, 3 months or 6 months), as proportionate to the particular Goods. Where it is important for NHS bodies to have this flexibility in contracts, for example when you are anticipating potential business change, this Clause can be used and the box above checked accordingly. The Clause should not be used as a matter of course, but exceptionally where the contracting authority considers that such flexibility is reasonable and proportionate in the given circumstances.

You can provide that this right commences after twelve months from the Commencement Date or a longer period where this is considered reasonable to give the Supplier at least some certainty at the start of the Contract. The relevant part of the highlighted text can be retained or deleted accordingly.

For some contracts, particularly where there is an initial investment from the Supplier which will be recovered in monthly charges over the contract term, Suppliers will expect to be able to recover some costs should you terminate without cause. This is reasonable and if this is not included you may find that the price of the contract is higher than anticipated to offset this risk.

Where it is appropriate for the contracting authority to pay certain costs should you terminate without cause, you will need to include the highlighted text at Clause 18.2 above (and remove the brackets) referring to this and set out in Schedule 6 what these costs will cover and how these costs will be calculated. If for your project it would not be appropriate to pay such costs, delete Clause 18.2 from the Key Provisions, but retain Clause 18.1.

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

- 19.1 The Supplier shall provide the Installation and Commissioning Services in accordance with the terms set out in Schedule 7.

Guidance: This Clause should be checked where Installation and Commissioning Services are required in connection with the Goods being supplied (to include when Installation and Commissioning Services are required in connection with any Maintenance Services to be provided by the Supplier). Where this Clause is checked, it is important that the project specific requirements of the Installation and Commissioning Services, such as any relevant timescales and KPIs, are set out as part of the Specification and Tender Response Document.

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

- 20.1 The Supplier shall provide the Maintenance Services in accordance with the terms set out in Schedule 8.

Guidance: This Clause should be checked where Maintenance Services are required in connection with the Goods being supplied. Where this Clause is checked, it is important that the project specific requirements of the Maintenance Services, such as any relevant timescales KPIs and service credit regime, are set out as part of the Specification and Tender Response Document. It should also be noted that the terms in Schedule 8 assume that no staff will transfer under TUPE at the start or at the end of the Maintenance Services. Where Installation and Commissioning Services are required in connection with any Maintenance Services to be provided by the Supplier, Clause 19 of this Schedule 1 should also be checked.

21 Right to terminate following a specified number of material breaches ☒ (only applicable to the Contract if this box is checked and Clause 21.1 of this Schedule 1 is completed)

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

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

22 Expert Determination ☐ (only applicable to the Contract if this box is checked)

- 22.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 9.

- 22.2 For the avoidance of doubt, where this Clause 22 of this Schedule 1 is checked, all Disputes shall be dealt in accordance with Clause 22.1 of this Schedule 1 above and the entirety of Clause 22 of Schedule 2 shall be deemed not to apply and deleted in its entirety from this Contract.

Guidance: This clause should be checked when the expert determination process at Schedule 9 is to be adopted in place of the dispute process set out at clause 22 of Schedule 2. Further guidance on the use of expert determination can be found at [INSERT LINK TO GUIDANCE NOTE].

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

- 23.1 Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Specification and Tender Response Document and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the Consigned Goods 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.
- 23.2 For the avoidance of doubt, Clause 4 of Schedule 2 shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 23.3 The Authority shall, or shall procure that its third party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 23.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
- 23.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
 - 23.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
 - 23.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
 - 23.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 23.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a sales report ("**Sales Report**") each **[week/month/quarter/other agreed period]** detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.
- 23.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).

- 23.7 Each **[week/month/quarter/other agreed period]** the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Specification and Tender Response Document 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:
- 23.7.1 the Contract Price of the Minimum Quantity in the relevant period; and
- 23.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 23.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use ("**Returned Goods**") by giving written notice to that effect ("**Returns Notice**"). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier's risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 23.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 23.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier's risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within **[insert period]** of their delivery to the Authority and/or which have a remaining shelf life of less than **[insert period]**.
- 23.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 3.2 of Schedule 2.
- 23.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 23.8 and 23.9 of this Schedule 1 shall then apply accordingly and this Clause,

together with Clauses 23.8 and 23.9 of this Schedule 1, shall survive the expiry or earlier termination of this Contract for these purposes.

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

Extra Key Provisions

Guidance: Insert extra project specific Key Provisions (if any) as required. Where the detail of the issue will be dealt with in a Schedule, remember to cross reference the Schedule in the Key Provisions and refer to it in the Table of Schedules on the front page of this Contract. Also remember to draft and add to Schedule 4 any new definitions as required for any extra Key Provisions added.

Schedule 2

General Terms and Conditions

Contents

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

1 Supply of Goods

- 1.1 The Supplier shall supply the Goods ordered by the Authority under this Contract:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 using reasonable skill and care in their delivery;
 - 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
 - 1.1.5 in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
 - 1.1.6 in accordance with the Law and with Guidance;
 - 1.1.7 in accordance with Good Industry Practice;
 - 1.1.8 in accordance with the Policies; and
 - 1.1.9 in a professional and courteous manner.
- In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 1.2 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
- 1.3 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 Specification and Tender Response Document and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods are in place prior to the delivery of any Goods to the Authority.
- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods.

- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

2 Delivery

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, a Consignment Request, or a Purchase Order or as otherwise agreed with the Authority in writing.
- 2.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification and Tender Response Document or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5

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

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

3 Passing of risk and ownership

- 3.1 Risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract 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 3.2.2 of this Schedule 2, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.

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

4 Inspection, rejection, return and recall

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

- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 2 and subject to Clause 4.7 of this Schedule 2, the Authority shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be set out in the Key Provisions, if any) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). 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 and/or 4.6 of this Schedule 2, the Supplier shall at the Authority's written request:

- 4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; and
- 4.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 4.5 of this Schedule 2.

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

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

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

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

- 4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 4.6.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 2.

- 4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.5 (inclusive) and/or Clause 4.6 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 Specification and Tender Response Document.
- 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 Staff and Lifescience Industry Accredited Credentialing Register

- 5.1 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff during Staff holidays or absence.
- 5.2 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.3 The Supplier shall employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed and shall maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) and has the qualifications to carry out their duties.

- 5.4 The Supplier shall comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.
- 5.5 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 Business continuity

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the supply of the Goods. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification and Tender Response Document.
- 6.2 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:
- 6.2.1 the criticality of this Contract to the Authority; and
- 6.2.2 the size and scope of the Supplier's business operations,
- regarding continuity of the supply of Goods during and following a Business Continuity Event.
- 6.3 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 6.3 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.
- 6.4 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.

- 6.5 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.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods in accordance with this Contract.

7 The Authority's obligations

- 7.1 Subject to the Supplier supplying the Goods in accordance with this Contract, the Authority will pay the Supplier for the Goods in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods.
- 7.3 The Authority shall comply with the Authority's Obligations, as may be referred to in the Key Provisions.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to 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.

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall

provide a written contract management report to the Authority regarding the supply of the Goods and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints by the Authority in relation to the supply of Goods, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification and Tender Response Document;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
 - 8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.
- 8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting

Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

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

9 Price and payment

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.

- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:

9.2.1 shall remain fixed during the Term; and

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

- (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media, and any training in relation to the use, storage, handling or operation of the Goods;
- (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with Clause 11 of this Schedule 2; and
- (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods.

- 9.3 Unless stated otherwise in the Commercial Schedule:

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 Contract Price in respect of the Goods 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 in compliance with this Contract.

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

- 9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.5 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 9.6 The Authority shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.
- 9.7 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.8 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.9 The Authority reserves the right to set-off:
- 9.9.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and

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

10 Warranties

- 10.1 The Supplier warrants and undertakes that:
- 10.1.1 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;
 - 10.1.2 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;
 - 10.1.3 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
 - 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, 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 Specification and Tender Response Document;
- 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 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 without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 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;
- 10.1.18 receipt of the Goods by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 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;

- 10.1.20 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and 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 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 and/or requests for answers to questions regarding this Contract, the Goods, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.24 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 Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
- 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 and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2, 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 13.2 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 Specification and Tender Response

Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.

- 10.6 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
- 10.7 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.7.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.7.2 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.
- 10.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual property

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

12 Indemnity

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

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal); and/or
- 12.1.3 any breach of Clause 10.1.18 and/or Clause 11 of this Schedule 2;

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

- 12.2 Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 2 and Clause 2.5 of Schedule 3 shall be unlimited. Liability under Clauses 4.9.4, 10.3, and 12.1.2 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
 - 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
 - 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

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

13 Limitation of liability

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
 - 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods.

- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
- 13.3.1 extra costs incurred purchasing replacement or alternative goods;
 - 13.3.2 costs incurred in relation to any product recall;
 - 13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
 - 13.3.4 the costs of extra management time; and/or
 - 13.3.5 loss of income due to an inability to provide health care services,
- in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.
- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to this Contract.
- 13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
 - 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
 - 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
 - 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule

2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

- 13.6 Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

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

15 Term and termination

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

- 15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier if:
- 15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
 - 15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
 - 15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2;
 - 15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; or
 - 15.5.5 the warranty given by the Supplier pursuant to Clause 10.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;

- 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
- 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4(i) of this Schedule 2.

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

- 15.7 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
 - 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
 - 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 15.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.
- 15.8 If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.1 to Clause 15.5.3 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

16 Consequences of expiry or early termination of this Contract

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.

- 16.2 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this 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. Any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.4 The expiry or earlier termination of this 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.

17 Packaging, identification and end of use

- 17.1 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.
- 17.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 17.3 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.
- 17.4 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.
- 17.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection, return and/or disposal by the Authority in accordance with Clause 17.5 of this Schedule 2.

18 Coding requirements

- 18.1 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.2 of this Schedule 2, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline

and other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling and purchase to pay transacting).

- 18.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.1 of this Schedule 2, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.3 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.

19 Sustainable development

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Goods. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
 - 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Goods and the Supplier's supply chain;
 - 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods being supplied and as proportionate to the nature and scale of the Supplier's business operations; and
 - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 2.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

20 Electronic product information

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.

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

21 Change management

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Subject to Clause 21.3 of this Schedule 2, any change to the Goods or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 21.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

22 Dispute resolution

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

with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.

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

23 Force majeure

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations

to the extent only that such performance is rendered impossible by a Force Majeure Event.

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

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

24 Records retention and right of audit

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

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

25 Conflicts of interest and the prevention of fraud

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

26 Equality and human rights

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

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

27 Notice

- 27.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

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

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

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

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

28 Assignment, novation and Sub-contracting

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

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

28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 of this Schedule 2;

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

28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's

- contact information and bank account details to which the Authority shall make payment;
- 28.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods to the extent relevant to such Sub-contracting;
- 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
- 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
- 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
- 28.4.5 requires the Supplier or other party receiving goods under the contract to consider and verify invoices under that contract in a timely fashion;
- 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
- 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the

performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2;

- 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2; and
 - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 in any Sub-contract which it awards.
- 28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
 - 28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 **Prohibited Acts**

29.1 The Supplier warrants and represents that:

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

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

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

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

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

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

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

- (i) the interpretation of Clause 29 of this Schedule 2; or
- (ii) the amount or value of any gift, consideration or commission,

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

30 General

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the

Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 3

Information and Data Provisions

1 Confidentiality

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

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

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

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

2 Data protection

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is

conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.
- 2.5 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

3 Freedom of Information and Transparency

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
 - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
 - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
 - 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information

requested by the Authority within five (5) Business Days of that request and without charge.

- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

4 Information Security

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
- 4.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

Annex 1 – Data Protection Protocol

DATA PROTECTION PROTOCOL

Guidance: This Data Protection Protocol is for use alongside the NHS terms and conditions where the Supplier will be processing personal data on behalf of the Authority. In these circumstances, the table below should be completed by the Authority setting out the nature of the processing that will be taking place under the Contract. This Protocol is based on the model provisions set out in the Procurement Policy Note – Changes to Data Protection Legislation and General Data Protection Regulation (PPN 03/17) issued by the Crown Commercial Service (December 2017).

Table A – Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the Processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), Authoritys/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

Definitions

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Contract shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

“Data Loss Event”	means any event that results, or may result, in 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 Officer” and “Data Subject”	shall have the same meanings as set out in the 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 Legislation to access their Personal Data.
“Personal Data Breach”	shall have the same meaning as set out in the GDPR;
“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 such measures adopted by it;

“Protocol” or “Data Protection Protocol”	means this Data Protection Protocol;
“Sub-processor”	means any third party appointed to Process Personal Data on behalf of the Supplier related to this Contract.

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Table A of this Protocol by the Authority and may not be determined by the Supplier.
- 1.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
 - 1.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 1.4.1 process that Personal Data only in accordance with Table A of this Protocol, unless the Supplier is required to do otherwise by **Law**. **If it is so required the Supplier** shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

1.4.3 ensure that :

- (i) the Supplier Personnel do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Protocol;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;

- 1.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination or expiry of the Contract unless the Supplier is required by Law to retain the Personal Data.
- 1.5 Subject to Clause 1.6 of this Protocol, the Supplier shall notify the Authority immediately if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under Clause 1.5 of this Protocol shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the Processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 of this Protocol (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - 1.7.1 the Authority with full details and copies of the complaint, communication or request;
 - 1.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 1.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 1.7.4 assistance as requested by the Authority following any Data Loss Event;
 - 1.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Protocol. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- 1.8.1 the Authority determines that the Processing is not occasional;
- 1.8.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- 1.8.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
 - 1.11.1 notify the Authority in writing of the intended Sub-processor and Processing;
 - 1.11.2 obtain the written consent of the Authority;
 - 1.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Protocol such that they apply to the Sub-processor; and
 - 1.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Authority may, at any time on not less than 30 Business Days' notice, revise this Protocol by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Supplier amend this Protocol to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 The Supplier shall comply with any further instructions with respect to Processing issued by the Authority by written notice. Any such further written instructions shall be deemed to be incorporated into Table A above from the date at which such notice is treated as having been received by the Supplier in accordance with Clause 27.2 of Schedule 2 of the Contract.
- 1.16 Subject to Clauses 1.13, 1.14, and 1.15 of this Protocol, any change or other variation to this Protocol shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

Schedule 4

Definitions and Interpretations

1 Definitions

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

“Authority”	means the authority named on the form of Contract on the first page;
“Authority Confirmation”	means the written confirmation provided (or deemed to be provided) by the Authority that the Goods appear to have been correctly supplied, installed and commissioned ready for use;
“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods during a Business Continuity Event;
“Business Day”	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Contract;
“Commercial Schedule”	means the document set out at Schedule 6;
“Confidential Information”	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <p>(a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;</p>

	<p>(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</p> <p>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;</p>
“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 all schedules 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;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Controller”	shall have the same meaning as set out in the GDPR;
“Data Protection Legislation”	means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions) of this Contract;
“Defective Goods”	has the meaning given under Clause 4.6 of Schedule 2;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Installation and Commissioning Services and/or Maintenance Services, any matters of

	contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 22 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 9. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 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;
“Electronic Trading System(s)”	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“eProcurement Guidance”	means the NHS eProcurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
“FOIA”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;

“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 Supplier to supply the Goods, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and (i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
“Fraud”	<p>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;</p>
GDPR	<p>means the General Data Protection Regulation (Regulation (EU) 2016/679);</p>
“General Anti-Abuse Rule”	<p>means</p>

	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
“Goods”	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract (including, without limitation, under Schedule 5 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);
“Guidance”	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Installation and Commissioning Services”	means the installation and commissioning services set out in this Contract (including, without limitation, Schedule 5, 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);
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
“Key Provisions”	means the key provisions set out in Schedule 1;
“KPI”	means the key performance indicators as set out in Schedule 5;
“Law”	means any applicable legal requirements including, without limitation,:

	<ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument); (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body as applicable in England and Wales; (f) any relevant code of practice as applicable in England and Wales; and (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
“Maintenance Inventory”	means the maintenance inventory as referred to at Clause 4.1.1 of Schedule 8;
“Maintenance Services”	means the maintenance services set out in this Contract (including, without limitation, Schedule 5, 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);
“Minimum Quantity”	has the meaning given under Clause 23.7 of Schedule 1;
“NHS”	means the National Health Service;
“Non-performed Services”	has the meaning give under Clause 11.1 of Schedule 8;
“Occasion of Tax Non-Compliance”	<p>means:</p> <ul style="list-style-type: none"> (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

	<p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Personal Data”	shall have the same meaning as set out in the GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Premises and Locations”	means the Authority’s premises and locations where the Goods are to be installed, commissioned and located.
“Pre-Acquisition Questionnaire”	means any pre-acquisition questionnaire or documents with a similar title or purpose issued by the Authority and completed by the Supplier relevant to the Goods;
“Process”	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
“Processor”	shall have the same meaning as set out in the GDPR;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
“Purchase Order”	means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions;
“Rejected Goods”	has the meaning given under Clause 4.2 of Schedule 2;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Requirement to Recall”	has the meaning given under 4.9 of Schedule 2;
“Returned Goods”	has the meaning given under Clause 23.8 of Schedule 1;
“Returns Notice”	has the meaning given under Clause 23.8 of Schedule 1;

“Sales Report”	has the meaning given under Clause 23.5 of Schedule 1;
“Specification and Tender Response Document”	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the form of Contract on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2; and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.

- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) 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 5

Specification and Tender Response Document

Not applicable

Schedule 6

Commercial Schedule

1. Definitions and interpretation

1.1. In this Schedule:

Business Day

means a day other than a Saturday, Sunday or bank or public holiday in England from 9am to 5pm GMT;

Commencement Date

means the date of this Schedule;

Confidential Information

means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including information relating to that party's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers. All information relating to the Software, the User Manual, the Description and any other technical or operational specifications or data relating to the Software shall be part of the Supplier's Confidential Information;

Description

means the description of the Software set out in Annex 1;

Intellectual Property Rights

means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) wherever existing;

Licence Fees

means the fees payable by the Authority in consideration of the licence of the Software set out in Annex 2, together with any other amounts payable under this Schedule;

Licence Restrictions

means the restrictions set out in Annex 1;

Licence Term

means the duration of this Schedule set out in Annex 1;

Permitted Purpose

means the purpose identified in Annex 1;

Specification

means the written descriptions of the functions, features, capabilities and design of the Software provided or made available by the Supplier to the Authority including the specification set out in Annex 1;

Software

means the Supplier Software and the Third Party Software;

Supplier Software

means the proprietary software of the Supplier identified in Annex 1, including any Updates or Upgrades made available by the Supplier under this Schedule;

Third Party Software

means the third party software identified in Annex 1 together with any other software program which is not Supplier Software but which is supplied to the Authority by the Supplier under this Schedule and the Support Schedule

Update

means a software maintenance update, patch or bug-fix which does not constitute an Upgrade;

Upgrade

means a version or release of software intended to have new or improved functionality or designated by the Supplier as an upgrade;

User Manual

has the meaning given in clause 12;

VAT

means United Kingdom value added tax, any other tax imposed in substitution for it; and

Warranty Period

has the meaning given in clause 15.

2 Licence

2.1 Subject to the terms of this Schedule and payment of the Licence Fee, the Supplier grants the Authority a non-exclusive, revocable, non-assignable and non-transferable licence to install and use the Software for the Licence Term.

2.2 Without prejudice to any other rights or obligations of either party, if the Authority at any time has or obtains additional copies of the Software beyond those licensed under this Schedule (including duplicate deliveries), it shall promptly destroy the additional copies.

2.3 Any Third Party Software supplied as part of, or in addition to, the Software shall be subject to any additional terms and conditions set out in Annex 3 or otherwise notified to the Authority. The Authority agrees to comply with any terms and conditions relating to such Third Party Software.

3 Limitations on use

3.1 Except as expressly permitted under this Schedule or by law, the Authority shall not:

3.1.1 use, copy, modify, adapt, correct errors, or create derivative works from, the Software;

3.1.2 decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software;

3.1.3 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber the Software;

3.1.4 remove or modify any copyright or similar notices, or any of the Supplier's or any other person's branding, that the Software causes to be displayed when used or that is displayed in the User Manual or on any packaging accompanying the Software if delivered on physical media;

3.1.5 install or use the Software, or permit it to be installed or used, on behalf of any third party or otherwise than for Permitted Purpose; or

3.1.6 attempt to circumvent or interfere with any security features of the Software.

3.2 The Authority shall not exceed the Licence Restrictions and acknowledges that it shall be required, without prejudice to any other rights or remedies to which the Supplier may be entitled, to pay the Supplier at the Supplier's then-current rates for any additional usage of the Software, as set out in Annex 1.

3.3 The Authority shall use the Software at all times in accordance with the User Manual and all other terms of this Schedule.

3.4 The Authority shall notify the Supplier in writing as soon as it becomes aware of any actual or suspected unauthorised use of the Software (including any use in excess of the Licence Restrictions).

3.5 The Authority agrees to use, access or seek access to the Software only strictly in accordance with the terms of this Schedule and any operating instructions given from time to time by the Supplier and agrees to only use the Software solely for the Permitted Purpose, as set out in Annex 1.

3.6 The Authority shall not provide, sub-licence or otherwise make available the Software to any third party or person other than the Authority's employees, agents or other personnel and the Authority shall procure that such employees and personnel shall use and access the same in accordance with the provisions of this Schedule only.

3.7 The Authority undertakes during the continuance of this Schedule at its own expense to establish and maintain reasonable and appropriate safeguards against the destruction, loss or unauthorized alteration of the Software and shall institute reasonable security and disaster recovery procedures (including, but not limited to, the adoption of a security firewall and anti-spyware protection up-to-date virus protection procedures and software or any such items as may be requested by, or provided by the Supplier from time to time) to restrict the destruction, corruption or unauthorized access to the Software and/or data and data files.

4 Delivery and installation

4.1 The Supplier shall use reasonable endeavours to deliver the Software to the Authority in the manner and on the date specified in Annex 1 or as otherwise agreed in writing but, unless specified in writing, time is not of the essence.

4.2 The Supplier will configure and, where necessary, modify the package programs to meet the Authority's requirements set out in Annex 1. An additional Fee will be charged by the Supplier for any bespoke requirements of the Authority as set out in Annex 2.

4.3 The risk in the whole or any part of the Software will pass to the Authority upon delivery to the Authority or its agent or representative. The Authority shall properly record that the Software is licenced by the Supplier and shall not account for the same in its books in any

way as assets of the Authority, nor shall it sell or subject any part of the Software to any lien, pledge, mortgage, charge or other encumbrance.

5 Support Services

5.1 The Supplier shall:

5.2.1 ensure that the Support Services are performed with reasonable care and skill;

5.2.2 use its best endeavours to meet any time for completion of any part of the Support Services but time shall not be of the essence.

5.3 The provision of the Support Services does not imply that the Supplier shall be successful in correcting errors or that the Supplier shall be able to assist the Authority in achieving any results from the Software which are not technically feasible.

5.4 If the Authority fails to comply with any of the provisions of this Schedule, then the Supplier may (without prejudice to any of its other rights or remedies) suspend the provision of Support Services until such failure has been remedied.

5.5 All Support Services shall be within reasonable limits, as determined by the Supplier (the Usage Limits). The Supplier shall not be obliged to provide any Support Services in excess of the Usage Limits.

5.6 If a reported problem or error is found upon investigation to be caused by any of the circumstances referred to in clause 9 or to otherwise be outside of the scope of the Support Services, the Authority is liable to the Supplier for the charges, time, materials, costs and expenses (the 'Support Fees') (if any) incurred in connection with that investigation and any attempt to remedy the Error in accordance with Annex 2 as an Additional Service.

5.7 The Supplier's obligation to provide Support Services is only in respect of the Software and no earlier or other versions, releases, Updates, Upgrades or copies that are not part of the Software.

5.8 The Supplier shall be under no obligation to provide any Additional Services in relation to the Software or otherwise.

5.9 Unless otherwise agreed, all Additional Services provided by the Supplier shall be deemed provided on, and subject to, the terms of this Schedule. The Supplier may invoice and the Authority shall pay for any Additional Services in accordance with clause 5 and Annex 2.

6 Helpdesk

6.1 The Supplier shall provide technical advice and assistance during Business Days via the Helpdesk.

6.2 The Helpdesk may be contacted using the following details (as amended by the Supplier from time to time):

Telephone:	
Email:	
Web portal:	

7 Error resolution

7.1 The Supplier shall use reasonable endeavours to provide the Target Resolution within the relevant Target Resolution Time set out in the following table (in descending order of priority):

Priority Level	Error description	Target Resolution	Target Resolution Time
1 (Critical)	Means an Error rendering the Software entirely non-functional for which there is no known workaround	Respond with a patch, workaround or fix to resolve the Error so that it is no longer Priority Level 1	[insert figure, eg a number of Support Hours]
2 (Severe)	Means an Error that is not a Priority Level 1 Error which results in either: (a) a major feature or function of the Software being unusable for which there is no practical workaround; or (b) one or more major feature or function of the Software being	Respond with a patch, workaround or fix to resolve the Error so that it is no longer Priority Level 2	[insert figure, eg five] Business Days

	unusable without a workaround that would have a severe impact on the work of the Authority in the medium to long term		
3 (Minor)	Any other Error, including cosmetic Errors and Errors with a practical workaround	The Supplier shall consider whether the Error shall be resolved in any future Updates made available to the Authority	As determined by the Supplier

7.2 Progress against Target Resolution Times shall be measured from the Helpdesk's initial receipt of the support request.

7.3 In respect of any Target Resolution Times time shall not be of the essence.

8 Support services charges

8.1 The Support Fees and any other Charges shall be paid by the Authority at the rates and in the manner described in Annex 2.

8.2 The Supplier shall invoice the Authority for all sums due under this Schedule, and the invoices shall be paid within 30 calendar days of the date on the invoice.

8.3 The Support Fees and any other Charges payable under this Schedule are exclusive of VAT which shall be payable by the Authority at the rate and in the manner prescribed by law.

8.4 The Supplier shall have the right to charge interest on overdue invoices at the statutory rate of interest, that being 4% plus the Bank of England base rate, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

8.5 If any sum due to the Supplier under this Schedule (other than one which is the subject of a genuine dispute which is notified to the Supplier in writing) is in arrears for more than 30 days after the due date, the Supplier may without prejudice to any other right or remedy suspend (without liability on the Supplier's part) the provision of any or all of the Support

Services and/or Additional Services on 15 Business Days' prior written notice until all outstanding sums due to the Supplier by the Authority have been paid in full.

9 Support Services exclusions

9.1 The Supplier is not obliged to provide Support Services in respect any error resulting from, or contributed to by, any of the following:

9.1.1 any breach by the Authority of this Schedule;

9.1.2 any modification, repair or addition to the Software made by any person other than the Supplier (or any person authorised by the Supplier in writing);

9.1.3 any fault in any equipment or in any software used in conjunction with the Software;

9.1.4 failure or fluctuation of electrical supplies, inadequate cooling, fire, flood, accidents or other natural disasters;

9.1.5 installation or use of the Software other than for the purposes for which it is intended;

9.1.6 installation or use of the Software with other software or on equipment with which it is incompatible (unless the Supplier recommended or required the use of that other software or equipment);

9.1.7 incorrect operation or use of the Software (including any failure to follow the User Manual);

9.1.8 the Authority's negligent act or omission;

9.1.9 attempted repair, rectification or maintenance by any person other than the Supplier or a third party authorised by the Supplier;

9.1.10 failure to notify the Supplier of any error within a reasonable period of time of it first occurring; or

9.1.11 the failure by the Authority to implement any Update or Upgrade to the Software recommended and made available by the Supplier.

10 Updates and Upgrades

10.1 The Supplier will offer the Authority new Updates in relation to the Software from time to time.

10.2 The Authority is not obliged to install the Updates except for Updates that are necessary for the performance of the Software.

10.3 Such necessary Updates shall be provided at no additional cost to the Authority.

10.4 After the Authority has declined to install two updates, the Supplier shall not support any version of the Software other than the updated version.

10.5 The Supplier will supply any amendments to the User Manual as required.

10.6 Any Updates or Upgrades provided to the Authority under this Schedule shall:

6.4.1 result in the Software having at least the same features, functionality, characteristics, performance and compatibility with equipment and systems as the Software as it was immediately prior to the relevant Update or Upgrade; and

6.4.2 not have any adverse effect on the functionality, performance or compatibility of the Software.

11 Training

11.1 The Supplier shall provide training to the Authority on the use of the Software in the manner set out in this clause and Annex 4.

11.2 The Supplier acknowledges that the training shall be provided:

7.2.1 at the premises of the Authority or such other location as the parties may agree; and

7.2.2 at no additional cost to the Authority except for the expenses (including travel and accommodation costs), if any, expressly set out in Annex 4 in respect of which the Authority shall reimburse the Supplier.

11.3 Any additional training shall be provided on such terms as the parties may agree and at the Supplier's standard training rates from time to time.

12 User Manual

12.1 The Supplier shall provide or make available online a set of documentation (**User Manual**) containing instructions on how to use the Software and detailing any specific user

requirements or restrictions relating to the Software. Any help files supplied with the Software and information on the Supplier's websites shall be deemed to form part of the User Manual.

12.2 The User Manual shall be updated by the Supplier from time to time in such manner as the Supplier sees fit. Where updates to the User Manual are made available online, the Supplier shall not be obliged to provide updated hard copy versions of the User Manual, which shall be deemed to incorporate the online updates from the date on which they are made available.

13 Licence Fees

13.1 The Licence Fees and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Authority at the rates and in the manner described in Annex 2.

13.2 The Supplier shall invoice the Authority by email for all sums due under this Schedule, and the invoices shall be paid within 30 calendar days of the date on the invoice.

13.3 The Licence Fee and any other charges payable under this Schedule are exclusive of VAT which shall be payable by the Authority at the rate and in the manner prescribed by law.

13.4 The Supplier shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

14 Records and audit

14.1 The Authority shall maintain accurate and complete records of the number of users.

14.2 Within ten Business Days of being requested to do so by the Supplier, the Authority shall provide the Supplier with copies of the records referred to in clause 14.1 for the purpose of verifying that the Authority's treatment of the Software is in accordance with this Schedule.

14.3 The provisions of this clause shall survive termination or expiry of this Schedule for a period of 12 months.

15 Warranties

15.1 The Supplier warrants and represents to the Authority that, for the duration of the Warranty Period, the Software shall

- 15.1.1 perform in accordance with the Specification in Annex 1;
- 15.1.2 provide all of the facilities and functions set out in, the Specification; and
- 15.1.3 operate successfully on the equipment and systems specified in the Specification (if any).

15.2 The Supplier warrants that the Software shall operate materially in accordance with the Description when used in accordance with this Schedule for 60 calendar days from the date the Software is first made available for download or delivered (the **Warranty Period**).

15.3 If the Authority receives any Update or Upgrade of the Software under this Schedule during the Warranty Period, such Update or Upgrade will be covered under the warranty at clause 15.1 for the remainder of that original Warranty Period, but that Warranty Period will not be restarted or extended and no new Warranty Period shall apply as a result of any Update or Upgrade to the Software.

15.4 If there is a breach of the warranty in clause 15.1, provided the Authority notifies the Supplier in writing within the Warranty Period and provides sufficient information to enable the Supplier to reproduce any errors, the Supplier shall, at its option:

- 15.4.1** use reasonable endeavours to correct the errors in the Software within a reasonable time; or
- 15.4.2** terminate this Schedule.

15.4 For the avoidance of any doubt, no refunds will be given by the Supplier to the Authority.

15.5 The warranty in clause 15.1 is subject to the Authority complying with its obligations under, and using the Software in accordance with, this Schedule. In addition, the warranty shall not apply to the extent that any error in the Software arises as a result of:

- 15.5.1** incorrect operation or use of the Software (including any failure to follow the User Manual);
- 15.5.2** installation or use of the Software other than for the purposes for which it is intended;
- 15.5.3** modification or alteration of the Software without the written consent of the Supplier;
- 15.5.4** installation or use of the Software with other software or on equipment with which it is incompatible (unless the Supplier recommended or required the use of that other software or equipment);

15.5.5 attempted repair, rectification or maintenance by any person other than the Supplier or a third party authorised by the Supplier;

15.5.6 failure to notify the Supplier of any error within a reasonable period of time of it first occurring; or

15.5.7 failure to install any Update or Upgrade recommended and made available by the Supplier.

15.6 The Authority acknowledges that the Supplier does not give any warranty or representation and does not accept any liability (howsoever arising whether under contract, tort, in negligence or otherwise) in relation to:

15.6.1 any Third Party Software;

15.6.2 the Software meeting the Authority's individual needs or business requirements, whether or not such needs or requirements have been communicated to the Supplier;

15.6.3 the Software operating in a manner which is uninterrupted or free from minor errors or defects that do not materially affect performance; or

15.6.4 the Software being compatible with any software other than the Third Party Software or with any particular hardware or equipment.

15.7 Other than as set out in this clause 15, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable care and skill or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

16 Intellectual Property Rights

16.1 Subject to clauses 16.2 and 16.6, the Supplier shall:

16.1.1 defend at its own expense any claim brought against the Authority by any third party alleging that the Authority's use of the Supplier Software infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and

16.1.2 pay, subject to clause 16.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.

16.2 The provisions of clause 16.1 shall not apply unless the Authority:

16.2.1 promptly notifies the Supplier upon becoming aware of any actual or threatened IP Claim and provides full written particulars;

16.2.2 makes no comment or admission and takes no action that may adversely affect the Supplier's ability to defend or settle the IP Claim;

16.2.3 provides all assistance reasonably required by the Supplier subject to the Supplier paying the Authority's reasonable costs; and

16.2.4 gives the Supplier sole authority to defend or settle the IP Claim as the Supplier considers appropriate.

16.3 The provisions of clause 16 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 16.1.

16.4 If the Supplier Software is or is likely to become subject to an IP Claim, the Supplier shall use reasonable endeavours to:

16.4.1 obtain the right for the Authority to continue to use the Supplier Software; or

16.4.2 replace or modify the Supplier Software (or the part of it subject to the IP Claim) so that it becomes non-infringing without materially affecting the functionality of the Supplier Software set out in the Description.

16.5 If the Supplier is unable to achieve either of the outcomes described in clause 16.4 having used reasonable endeavours (including where the costs of doing so are commercially prohibitive) or otherwise elects to proceed under this clause 16.5 then, on receiving written notification from the Supplier, the Authority shall promptly uninstall the Software and this Schedule shall immediately terminate. The Supplier shall not refund the Authority on a pro-rata basis for any unused proportion of Licence Fees paid in advance. This clause 16.5 is without prejudice to the Authority's rights and remedies under clauses 16.1.

16.6 The Supplier shall have no liability or obligation under this clause 16 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:

16.6.1 any modification of the Supplier Software without the Supplier's express written approval;

16.6.2 installation or use of the Supplier Software otherwise than in accordance with this Schedule, the User Manual or the Supplier's instructions; or

16.6.3 installation or use of the Supplier Software in combination with any software, hardware or data that has not been supplied or expressly authorised by the Supplier.

16.7 The provisions of this clause 11 set out the Authority's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

16.8 Except for the rights to install and use the Supplier Software and the User Manual expressly granted in this Schedule, the Authority shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Supplier Software, User Manual or in any copies of them and no Intellectual Property Rights of either party are transferred or licensed as a result of this Schedule.

17 Consequences of termination

17.1 Immediately on termination or expiry of this Schedule (for any reason), the licences and rights granted by the Supplier shall terminate and the Authority shall (and shall procure that each sub-licensee shall):

17.1.1 stop using and uninstall the Software; and

17.1.2 destroy and delete or, if requested by the Supplier, return any copies of the User Manual and the Software.

17.2 The Authority shall ensure that it backs up its data regularly and extracts it from the Software prior to the termination or expiry of this Schedule. The Authority shall have three months to remove its data. The Supplier shall not be obliged to provide the Authority with any assistance extracting or recovering data whether during or after the Licence Term.

17.3 Termination or expiry of this Schedule shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Schedule that is expressly or by implication intended to continue beyond termination.

18 Assignment and sub-contracting

18.1 The Supplier may at any time assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Schedule, provided that it gives prior written notice to the Authority.

18.2 Except as expressly permitted by this Schedule, the Authority shall not assign, transfer, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Schedule (including the licence rights granted), in whole or in part, without the Supplier's prior written consent.

Annex 1 - Software

1 Description of the Supplier Software

The description (sometimes called the specification) is the statement of the functionality of the software.

2. Third Party Software

[List any Third Party Software]

3 Delivery

3.1 Estimated delivery date: *[Insert date]*

3.2 Delivery method: Remotely on a secure HSCN line

4 Licence Term

The Licence Term is annual. The subscription is paid upon commencement and then annually.

5 Licence Restrictions

Users: The Authority can have unlimited users as long as each user is officially registered with the Authority. However, If a Authority merges with another Authority, or takes on additional services from another Authority, then ...

Only that they can use it for the orgainsation that holds the license as long as they are officially registered with that orgainsation. Need something about if CCGs merge or undertake additional services from another ccg that the original license fee will change – thinking any increase of more than 20% of the number using the licenses will require an additional license? Your thoughts pls?

6 Permitted Purpose

The internal business purposes of the Authority.

Annex 2 - Fees

1 Licence Fee

[Insert Licence Fee amounts and when entitlement to invoice arises]

2 Support Service Charges

3 Any Additional Charges

Annex 3 - Third Party Software

[Insert any additional terms and conditions specifically relating to Third Party Software]

Annex 4 - Training

Schedule 7

Installation and Commissioning Services

1 Installation and Commissioning Services

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

2 Inspection and Testing

- 2.1 Once the Goods have been installed and commissioned, the Supplier shall inform the Authority in writing that the Goods are ready for use. The following process will then apply:
- 2.1.1 within five (5) Business Days of receipt of such written confirmation from the Supplier that the Goods are ready to use, the Authority may carry out any such reasonable inspections and testing of the Goods as the Authority deems appropriate (in accordance with the relevant manufacturers' technical manuals relating to the Goods and/or as otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed by the Parties in writing) to confirm that the Goods comply with the requirements of this Contract and are ready for use;

- 2.1.2 as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Goods;
 - 2.1.3 if the Authority on inspection and testing is of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;
 - 2.1.4 if the Authority on inspection and testing is not of the view that the Goods have been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 2.3 and 2.4 of Schedule 7 shall apply; and
 - 2.1.5 if the Authority chooses not to inspect and/or test the Goods, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Goods on the sixth (6th) Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 2.1.1 of this Schedule 7 that the Goods are ready to use.
- 2.2 The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Goods appear to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Goods or any endorsement of such installation and commissioning procedures. Responsibility for supplying the Goods in accordance with the requirements and standards of the Contract and the appropriateness of any installation and commissioning procedures shall remain with the Supplier notwithstanding any such Authority Confirmation.
- 2.3 Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to supply, install or commission the correct Goods in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, forthwith re-supply, re-install and/or re-commission the Goods until such time as Goods in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority's sole discretion) until the Goods are supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.
- 2.4 In the event of any Dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
- 2.5 In the event that the Specification and Tender Response Document states that Goods shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 7 shall apply to the Goods within each phase and/or instance of supply.

- 2.6 In the event that the Specification and Tender Response Document stipulates a refresh programme and/or that substitute or replacement Goods shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in connection with any Maintenance Services), then, following the installation and commissioning of the replacement Goods, the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 7 shall apply in relation to the inspection and testing of any substitute or replacement Goods.

3 Relocation of Goods

- 3.1 Upon reasonable written notice from the Authority, the Supplier shall, as part of the Installation and Commissioning Services, relocate such Goods within the Premises and Locations or to another location and the process for the inspection and testing of Goods set out in Clauses 2.1 to 2.4 (inclusive) of this Schedule 7 shall apply in relation to the inspection and testing of any relocated Goods.
- 3.2 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 3.1 of this Schedule 7 provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

4 Supplier's obligation to make good any damage

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

Schedule 8

Maintenance Services

1 Maintenance Services

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

2 General maintenance requirements

- 2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacture's guidelines and recommendations, shall:

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

3 Service visits

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

4 Provision of information

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

required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

- 4.4 Where the Supplier provides information to the Authority under Clause 4.3 of this Schedule 8, it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.

5 Loan Goods and replacement Goods

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

- 5.1.1 provide the Authority with such substitute Goods in accordance with the relevant provisions and timescales, as set out in the Specification and Tender Response Document;
- 5.1.2 comply with any installation, commissioning, inspection and testing processes as may be set out in this Contract or otherwise agreed by the Parties in writing; and
- 5.1.3 update the Maintenance Inventory accordingly to include any substitute Goods.

Where the Supplier loans Goods to the Authority and subsequently replaces the loaned Goods, the Supplier shall comply with the provisions of Clauses 5.1.2 and 5.1.3 of this Schedule 8 in relation to such replacement of the loaned Goods.

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

6 Additional warranties

- 6.1 The Supplier warrants and undertakes that:
- 6.1.1 when providing the Maintenance Services (including, without limitation, providing any loan or replacement Goods), it shall comply with all timescales and KPIs set out in the Specification and Tender Response Document associated with such requirements;
 - 6.1.2 any replacement parts, consumable items, replacement Goods and/or loan Goods shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;

- 6.1.3 it will ensure sufficient stock levels of any replacement parts, consumable items, replacement Goods and/or loan Goods to comply with its obligations to provide the Maintenance Services in accordance with the provisions of this Contract;
 - 6.1.4 it has and shall maintain a properly documented system of quality controls in respect of the Maintenance Services including, without limitation, covering the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and shall at all times comply with such quality controls;
 - 6.1.5 any equipment it uses in the installation of any replacement parts, consumable items, replacement Goods and/or loan Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and shall be maintained fully in accordance with the manufacturer's specification;
 - 6.1.6 receipt of any replacement parts, consumable items, replacement Goods and/or loan Goods by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;
 - 6.1.7 it will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods to the Authority; and
 - 6.1.8 it will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the Maintenance Services including, without limitation, in connection with the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 6.2 Where the supply of any replacement parts, consumable items, replacement Goods and/or loan Goods relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement Goods and/or loan Goods are supplied to the Authority, all such items which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 8, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.
- 6.3 If the Supplier is in breach of Clause 6.2 of this Schedule 8, in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall, subject to Clause 13.2 of Schedule 2, indemnify and keep the Authority

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

- 6.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement Goods in full or part.
- 6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 8 have been breached or there is a risk that any warranties may be breached.

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

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

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

- 8.1 By giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove Goods from the Maintenance Inventory and discontinue the Maintenance Services on such Goods in the following circumstances:
 - 8.1.1 the Supplier will no longer be able to maintain the Goods as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); and/or
 - 8.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.
- 8.2 The Parties acknowledge that:
 - 8.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.3 and 4.4 of this Schedule 8 notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and
 - 8.2.2 Clause 8.1 of this Schedule 8 shall only apply where the Term of the Contract exceeds twelve (12) months.

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

9.1 Following the removal of any Goods from the Maintenance Inventory in accordance with Clauses 7.1 or 8.1 of this Schedule 8:

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

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

9.2 If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 this Schedule 8 within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to dispute resolution in accordance with Clause 22 of Schedule 2.

10 Additional termination provisions

10.1 If the Authority removes any Goods from the Maintenance Inventory in accordance with Clause 7.1 of this Schedule 8 and no Goods will remain part the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining Goods in accordance with the Clause 7.1 of this Schedule 8 or at any time afterwards.

10.2 If the Supplier removes Goods from the Maintenance Inventory in accordance with Clause 8.1 of this Schedule 8 and no Goods will remain part of the Maintenance Inventory following such removal, the Authority may terminate the Maintenance Services by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining Goods in accordance with Clause 8.1 of this Schedule 8 or at any time afterwards, but shall not take effect before the effective date of the removal of such Goods from the Maintenance Inventory.

10.3 Following any termination of the Maintenance Services by the Authority in accordance with Clause 10.1 or Clause 10.2 of this Schedule 8, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for the Maintenance Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 9.1.2 of this Schedule 8. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contract.

11 Non-performance

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

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

11.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 11.1 of this Schedule 8. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:

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

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

11.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed Services itself. What is a "reasonable period of time" in the particular circumstances shall be determined at the Authority's sole discretion taking into account its obligation under this Clause 11.2 of this Schedule 8 to act reasonably.

11.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 11.1 of this Schedule 8, the following provisions shall apply:

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

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

12 Supplier's obligation to make good any damage

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

Schedule 9

Expert Determination

1 Dispute Process

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 9.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
 - 1.3.1 the material particulars of the Dispute; and
 - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
 - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
 - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
 - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in paragraph 1.4.2 of this Schedule 9.
 - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in paragraph 1.4 of this Schedule 9 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to paragraph 1.6 of this Schedule 9). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to paragraph 1.6 of this Schedule 9.
- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:

- 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
- 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an “**Expert**”). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen’s Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in paragraph 1.6.1 of this Schedule 9 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.
- 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in paragraph 1.6.5 of this Schedule 9).
- 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
- 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
- 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
- 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this paragraph 1.6.7 of this Schedule 9. The Parties will pay any such third party costs incurred pursuant to this paragraph 1.6.7 of this Schedule 9 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business Days of the

Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.

- 1.6.9 The Expert's Decision shall include reasons.
 - 1.6.10 The Parties agree to implement the Expert's Decision within five (5) Business Days of the Expert's Decision being provided to them or as otherwise specified as part of the Expert's Decision.
 - 1.6.11 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.
 - 1.6.12 The Parties will pay the Expert's costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
 - 1.6.13 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
- 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Goods and/or associated services; or
 - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to paragraph 1.7 of this Schedule 9 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 9 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This Schedule 9 shall survive the expiry of or earlier termination of this Contract for any reason.