

Appendix A

**CALL-OFF TERMS AND CONDITIONS FOR THE SUPPLY OF PATIENT
MONITORING EQUIPMENT, BEDSIDE EQUIPMENT ALARM MONITORING
SYSTEMS AND RELATED PRODUCTS AND SERVICES**

Where an Order Form is issued by the Authority **that** refers to the Framework Agreement, this Contract is made between the Authority and the Supplier on the date of that Order Form. This Contract is 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 and Services on the terms of this Contract.

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

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
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Schedule 5	Additional Terms
Schedule 6	Building & Preparatory Works and Installation Services
Schedule 7	Software
Schedule 8	Rental Terms (8a) and Purchase Plan Terms (8b)
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Schedule 11	Supplier Code of Conduct
Schedule 12	Operational Requirements of Suppliers

Schedule 1

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 Extra Key Provisions are only incorporated into to this Contract where the relevant circumstances set out at Clause 7 of this Schedule 1 apply to the Contract.

2 Term

- 2.1 This Contract commences on the Commencement Date.
- 2.2 The Term of this Contract shall be as set out in the Order Form.
- 2.3 The Term may be extended in accordance with Clause 21.2 of Schedule 2.

3 Contract Managers

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

4 Names and addresses for notices

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

5 Management levels for escalation and dispute resolution

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

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

6 Order of precedence

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

- 6.1.1 the Order Form;
- 6.1.2 the Extra Key Provisions (if applicable) described at Clause 7 of Schedule 1;
- 6.1.3 any applicable terms agreed in writing pursuant to a re-opening of competition;
- 6.1.4 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
- 6.1.5 the provisions on the front page of these Call-off Terms and Conditions for the Supply of Goods and Services;
- 6.1.6 Schedule 1: Key Provisions;
- 6.1.7 the Specification;
- 6.1.8 the Tender Response Documents;
- 6.1.9 Schedule 2: General Terms and Conditions;
- 6.1.10 Schedule 5: Additional Terms;
- 6.1.11 Schedule 6: Installation Services;
- 6.1.12 Schedule 7: Software;
- 6.1.13 Schedule 11: Supplier Code of Conduct;
- 6.1.14 Schedule 3: Information and Data Provisions;
- 6.1.15 Schedule 4: Definitions and Interpretations; and
- 6.1.16 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

7 Extra Key Provisions

7.1 The extra key provisions described in this Clause 7 of Schedule 1 (the “**Extra Key Provisions**”) shall be incorporated into the relevant Contract, in addition to those terms set out in Schedules 1-6 (inclusive) and 11, in the following circumstances:

- 7.1.1 **The Software Terms set out in Schedule 7:** These terms are included in a Contract where a Customer is procuring Software for use

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in connection with Goods and/or Services purchased under the Framework Agreement;

- 7.1.2 **The Rental Terms set out in Schedule 8(a):** These terms are included in a Contract where a Customer is procuring Goods on a lease or rental basis from the Supplier;
 - 7.1.3 **The Purchase Plan Terms set out in Schedule 8(b):** These terms are included in a Contract where Goods are made available to a Customer by the Supplier in consideration for the purchase of an agreed quantity or value of Equipment Outputs or Consumables from the Supplier (e.g. 'pay per scan/view').
 - 7.1.4 **The Supplemental Security Requirements set out in Schedule 9:** These terms are included in a Contract in the circumstances set out in the paragraph titled 'Application' at the head of Schedule 9;
 - 7.1.5 **The Technology and AI Principles as set out in Schedule 10:** These terms are included in a Contract where the Supplier utilises any digital or data-driven health technologies (including, without limitation, artificial intelligence (AI) techniques or solutions)¹ in, or in connection with, the Goods and/or Services provided to a Customer;
 - 7.1.6 **Any supplemental provisions and/or optional clauses that are set out in the Order Form:** Where set out in the Order Form, these are included in the Contract.
- 7.2 Without prejudice to its general obligation at Clause 1.1.5 of Schedule 2, the Supplier shall ensure that any digital Goods or Services intended to be used for clinical purposes comply with the [Clinical Safety Standards](#) referred to as [DCB0129](#) and [DCB0160](#)².
- 7.3 In the event of any conflict between the Extra Key Provisions and any of the other provisions of these Call-off Terms and Conditions for the Supply of Goods and Services, the Extra Key Provisions shall take precedence to the extent necessary to resolve such conflict.

¹ See the Department of Health & Social Care's [Guide to good practice for digital and data-driven health and care technologies](#)" (as may be updated or superseded from time to time) for an explanation of what is meant by digital and data-driven health technologies and artificial intelligence (as used in a health and care context).

² See the Department of Health & Social Care's "[Guide to good practice for digital and data-driven health and care technologies](#)" (as may be updated or superseded from time to time).

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Schedule 2

General Terms and Conditions

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1 Supply of Goods and Services

1.1 The Supplier shall supply the Goods and Services 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 strictly in accordance with all other provisions of this Contract;
- 1.1.3 using reasonable skill and care in their delivery and supply;
- 1.1.4 in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
- 1.1.5 in accordance with the Law and with Guidance;
- 1.1.6 in accordance with Good Industry Practice;
- 1.1.7 in accordance with the Policies; and
- 1.1.8 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 the Tender Response Documents and/or the Order Form (to include, without limitation, all obligations in relation to the quality standards, performance characteristics, supply, delivery and installation and training in relation to use of the Goods and/or provision of the Services).

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 requirements set out in the Specification and the Supplier's response to such requirements in the Tender Response Documents) and any applicable manufacturers' specifications. Should the Supplier have available for purchase any used Goods, including Goods previously used for demonstration or exhibition purposes, whether or not they have been reconditioned or refurbished, it is required to submit a written statement containing the relevant details to both the Authority and (where NHS Supply Chain is not the Authority) NHS Supply Chain and to obtain written acceptance prior to the execution of any requirement to supply, so that the Authority and/or NHS Supply Chain can decide whether it wants the Supplier to supply such used Goods and the Parties will agree whether they will be provided at a reduced cost.

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

1.5 The Supplier shall notify the Customer and NHS Supply Chain forthwith in writing:

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- 1.5.1 of any pending inspection of the Goods and Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
- 1.5.2 of any failure of the Goods and Services, or any part of them, to meet the quality standards required by a regulatory body promptly and in any event within one (1) Business Day of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Goods and Services.
- 1.6 Following any inspection of the Goods and Services, or any part of them, by a regulatory body, the Supplier shall provide the Customer and (where NHS Supply Chain is not the Customer) NHS Supply Chain with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Goods and Services.
- 1.7 If there are any incidents that in any way relate to or involve the use of the Goods or provision of the Services by the Customer, the Supplier shall cooperate fully with the Customer in relation to the Customer's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation and escalation, and shall respond promptly (which, in the case of any incidents which may have an effect on patient safety, shall mean within one (1) Business Day) to any reasonable and proportionate queries, questions and/or requests for information that the Customer may have in this context in relation to the Goods and Services.
- 1.8 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly (which, in the case of any incidents which may have an effect on patient safety, shall mean within one (1) Business Day) provide the Customer and (where NHS Supply Chain is not the Customer) NHS Supply Chain with a copy of any such reports, notices, alerts or other communications.
- 1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2, the Customer shall be entitled to request further information from the Supplier and/or a meeting with the Supplier and the Supplier shall cooperate fully in all matters relating to any such request.

2 Delivery

- 2.1 The Supplier shall deliver the Goods and Services in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location (including requisition point) and delivery times) set out in the Specification, the Tender Response Documents and the relevant Order Form. In the absence of a delivery date on the face of the Order Form, the Supplier shall make contact with the Customer on receipt of the Order to agree a mutually acceptable date and time for delivery of the Goods and Services.
- 2.2 The Customer shall be entitled to refuse a delivery where the delivery is dangerous to unload, the Goods are damaged and not fit for use or the Goods show visible signs of tampering or theft.

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- 2.3 The Supplier shall remind the Customer and (where the Customer is not NHS Supply Chain) NHS Supply Chain in writing of the agreed delivery date no less than one (1) week prior to Last Call, unless the Order was placed less than one (1) week prior to Last Call.
- 2.4 The agreed delivery date may be varied by the mutual agreement of the Customer and the Supplier at any time.
- 2.5 Provision of the Services shall be complete when the Services have been performed at the delivery location, within the timescales and to the standards set out in the Specification and relevant Order Form or as otherwise agreed with the Customer in writing.
- 2.6 Delivery of the Goods shall be completed when the Goods have been unloaded at the location specified by the Customer and such delivery has been received by a duly authorised agent, employee or location representative of the Customer.
- 2.7 The Customer shall prepare the delivery location to receive the Goods in accordance with the Supplier's reasonable requirements on the agreed delivery date and the Customer shall procure that a duly authorised agent, employee or location representative of the Customer is at the delivery location at the agreed delivery date and times in order to accept such delivery.
- 2.8 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods and Services. Such delivery note shall contain the information specified in the Specification or as otherwise agreed with the Customer 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 Customer's order number, reference to the Framework Agreement, the name and address of the Customer and Supplier, the delivery location (including requisition point reference, if appropriate) a description and quantity of the Goods and any associated Services, the MPC and/or NPC codes (where required) for the Goods and any associated Services, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the sell by/use by dates, the ASN number (where required) and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned. The Supplier must ensure that no manual amendments (with the exception of the addition of a delivery booking reference) are made to the delivery documents prior to delivery to the Customer unless the manual amendment has been made by agreement with the Customer. All amendments to delivery documents must be made electronically before delivery.
- 2.9 Part deliveries may be refused unless the Customer has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Customer in accordance with this Clause 2.9 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 Customer accepts delivery more than five (5) days before the agreed delivery date, the Customer shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.10 Where the Customer agrees to accept delivery of Goods by instalments a Contract shall be construed as a single contract in respect of each instalment and a failure

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by the Supplier to deliver in accordance with the terms of this Contract shall entitle the Authority, in its reasonable discretion, to treat the whole Contract as repudiated.

- 2.11 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other reasonable costs associated with the delivery of the Goods and Services to the delivery location and unloading of the Goods at that location and the provision of the Services. Without limitation to the foregoing provision of this Clause 2.10 of this Schedule 2, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that set out in the Specification and the Supplier's response to the Specification in the Tender Response Documents.
- 2.12 All third party carriers and sub-contractors engaged to deliver the Goods and any Services shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers and sub-contractors engaged to deliver the Goods and/or provide the Services to the Authority.

3 Passing of risk and ownership

- 3.1 Subject to Clause 3.2, 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 Where the Goods are purchased by via the E-Direct Route of Supply, risk in the Goods shall pass to NHS Supply Chain's customer (and not the Authority) when the Goods are delivered to the customer as specified in this Contract or in the case of Goods which require installation by the Supplier, when that installation process is complete.
- 3.3 Ownership of the Goods shall pass to the Authority on the earlier of:
- 3.3.1 full payment for Goods which do not require installation and acceptance testing; or
 - 3.3.2 ninety-five percent (95%) payment for Goods which require installation and acceptance testing; and,
 - 3.3.3 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use.
- 3.4 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 Customer, to inspect work being undertaken in relation to the Goods and/or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any Sub-contractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.
- 4.2 Without prejudice to the provisions of Clause 4.9 of this Schedule 2 and subject to Clause 4.10 of this Schedule 2:
- 4.2.1 for Goods which do not require installation and acceptance testing the Customer shall visually inspect the Goods within ten (10) Business Days of delivery of the Goods at the agreed delivery location; and
- 4.2.2 for Goods which require installation but no acceptance testing the Customer shall visually inspect the Goods within ten (10) Business Days of receipt by the Customer of an Installation Certificate in respect of the Goods; and
- 4.2.3 for Goods which require installation and acceptance testing in accordance with the Specification and Tender Response Documents such testing shall be carried out with the cooperation of the Supplier within ten (10) Business Days of receipt by the Customer of an Installation Certificate in respect of the Goods,
- and the Authority may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**").
- 4.3 If the Goods are not so rejected in accordance with Clause 4.2, they shall be deemed to have been accepted by the Customer following the earlier of:
- 4.3.1 completion of a visual inspection and/or acceptance testing in accordance with Clause 4.2; and
- 4.3.2 ten (10) Business Days from delivery or receipt of an Installation Certificate (as appropriate).
- 4.4 Where the Customer is unable to perform acceptance testing within ten (10) Business Days in accordance with Clause 4.2.3 of this Schedule 2 the Parties shall agree a new mutually acceptable time frame for performance of acceptance testing and Clause 4.3.2 of Schedule 2 shall be deemed to be amended to reflect the new agreed time frame.
- 4.5 Without prejudice to the provisions of Clause 4.8 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.9 of this Schedule 2, the Supplier shall at the Authority's written request:

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- 4.5.1 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; or
 - 4.5.2 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 (and install where appropriate) replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 4.8 of this Schedule 2.
- 4.6 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.
- 4.7 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, whichever is sooner. If, in the case of Clause 4.5.1, 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.
- 4.8 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.9 of this Schedule 2 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, at the Authority's request, 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.
- 4.9 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.11 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:
 - 4.9.1 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
 - 4.9.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.8 of this Schedule 2.
- 4.10 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.8 (inclusive) and/or Clause 4.9 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 Customer.

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- 4.11 The Authority's rights and remedies under Clause 4.9 of this Schedule 2 shall cease twelve (12) months from acceptance of the Goods in accordance with Clauses 4.2 and 4.3 or within such other period as may be set out as part of the requirements in the Specification, if any.
- 4.12 Subject to Schedule 5, any part replaced or repaired pursuant to Clause 4.9 shall then be subject to the terms of Clause 4.11 from the date of repair or replacement and "twelve (12) months" shall begin from the date of acceptance of the repaired or replaced Goods in accordance with Clauses 4.2 and 4.3.
- 4.13 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:
- 4.13.1 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 (where NHS Supply Chain is not the Authority) NHS Supply Chain in writing of the recall together with the circumstances giving rise to the recall;
 - 4.13.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.9 of this Schedule 2;
 - 4.13.3 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
 - 4.13.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.
- 4.14 Without prejudice to any other provisions of this Contract, if the Supplier fails to perform the Services in accordance with this Contract the Authority shall notify the Supplier of such failure and the Supplier shall re-perform the Services at the Supplier's own expense to the standard required by this Contract within ten (10) days of such notification. If the Supplier fails to re-perform the Services within ten (10) days or such re-performance does not render the Services in conformance with this Contract, the Authority shall be entitled, in its discretion, to either:
- 4.14.1 procure alternative services at the Supplier's expense; or
 - 4.14.2 cancel the Services and claim a full refund for the Services (and any associated Goods detailed on the same or a related Order) to be paid within thirty (30) days of the notification from the Authority.

5 **Authority Sites and Access**

- 5.1 Subject to the Supplier and its Staff complying with all relevant Policies applicable to the Authority Sites, the Authority shall (or shall use all reasonable endeavours to procure that the Customer shall) grant reasonable access to the Supplier and its Staff to such Authority Sites to enable the Supplier to provide the Goods and/or

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Services and/or deliver the Goods provided that such license is non-exclusive and revocable by the Authority (or, as the case may be, the Customer) at any time in its absolute discretion.

- 5.2 Subject to Clause 5.3 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 5.1 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) to the Authority Sites. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 5.2 of this Schedule 2.
- 5.3 Where, in order to provide the Goods and Services, the Supplier requires any greater rights to use or occupy any specific Authority Sites over and above such reasonable access rights granted in accordance with Clause 5.1 and 5.2 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority (or, as the case may be, the Customer) in accordance with any licence and/or lease entered into by the Authority (or, as the case may be, the Customer).
- 5.4 The permission given to the Supplier to access the Authority Sites is personal to the Supplier and its Staff and shall cease immediately the Contract ceases to be in force. Only the Supplier's Staff and persons making deliveries to the Supplier in connection with the provision of the Goods and Services may enter or use any part of the Authority Sites without the prior written permission of the Contract Manager.
- 5.5 The Authority (or, as the case may be, the Customer) shall always be entitled to permit third parties to use the Authority Sites, subject to the rights granted to the Supplier pursuant to the Contract.

6 Equipment

- 6.1 The Supplier shall be responsible where appropriate for the provision and installation of all equipment and materials used in connection with the Goods and Services.
- 6.2 Where required, the Supplier shall submit to the Contract Manager for approval a detailed programme of works for the installation of any equipment within the period prescribed by the Authority (or, as the case may be, the Customer) in writing together with the name of the Contract Manager appointed to act as its representative for all purposes connected with the Contract. Approval of such programme of works shall not be unreasonably withheld or delayed.
- 6.3 The programme of works shall conform to the dates and periods of the programme set out by the Authority in the offer documents (or, as the case may be, the Customer) and in particular shall ensure that the equipment is operational, fit for the purpose of delivering the Goods and Services and ready for use by the date specified by the Authority and if no date is specified, the date agreed between the Supplier and the Authority in writing (or, as the case may be, the Customer).
- 6.4 The Supplier shall ensure that all equipment used in connection with the Goods and Services is maintained in good working order in compliance with manufacturer's instructions and current legislation.

7 Deliverables

- 7.1 Wherever the provision of the Goods and Services require the Supplier to provide a Deliverable:
- 7.1.1 such Deliverable will be delivered in the form prescribed and in accordance with the Order Form. If no such form is prescribed in the Order Form, the Supplier will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Supplier by the Contract Manager;
 - 7.1.2 the Authority may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Order Form or the requirements otherwise made known to the Supplier by the Authority;
 - 7.1.3 the Authority will not reject any Deliverable (wholly or in part) without providing written reasons to the Supplier as to why such Deliverable has been rejected;
 - 7.1.4 any dispute as to whether the Authority has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
 - 7.1.5 any Deliverables which are rejected shall be replaced by the Supplier (at no extra charge to the Authority) by Deliverables which are reasonably satisfactory to the Contract Manager.

8 Service inspection, spares and support

- 8.1 As a minimum, all Orders for Goods shall include (as part of the Contract Price) all service inspections for the first twelve (12) months following completion of the steps to be taken by the Parties in accordance with Clauses 4.2 and 4.3 of this Schedule 2.
- 8.2 A service inspection for the purposes of Clause 8.1 of this Schedule 2 shall mean:
- 8.2.1 any routine maintenance and services in relation to the Goods as would normally be undertaken by the Supplier in accordance with the manufacturer's published maintenance schedules;
 - 8.2.2 any maintenance, supply and fitting of parts not covered by Clauses 4.9 or 4.11 of this Schedule 2.
- 8.3 A service report shall be submitted to the Customer following each inspection giving details of work carried out. These reports are to be signed by the Supplier's service engineer and an authorised representative of the Customer.
- 8.4 Unless the Parties agree otherwise in writing, the Supplier shall make available for purchase by the Customer, its agents or (where NHS Supply Chain is not the Customer) NHS Supply Chain, any necessary spare parts and components to ensure that the Goods can be maintained in safe working operation for a period of not less than seven (7) years from the later of inspection and acceptance testing in accordance with Clauses 4.2 and 4.3 of this Schedule 2 and, thereafter, shall use

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all reasonable endeavours to provide the said spare parts and component for a further period of three (3) years.

- 8.5 If after the initial seven (7) year period referred to in Clause 8.4 of this Schedule 2, the production of any component ceases, the Supplier shall make all reasonable efforts to notify the Customer in writing, inviting an all time stock order before production ceases.
- 8.6 Further to Clause 8.5 of this Schedule 2, the Supplier shall take all reasonable steps to obtain compatible items in the event of an item becoming obsolete.

9 Point of Sale Maintenance

Unless otherwise agreed between the Supplier and the Authority, where Point of Sale Maintenance is purchased as part of an Order such Point of Sale Maintenance shall be provided in accordance with the Supplier's terms and conditions. However, for the avoidance of doubt, the Point of Sale Maintenance shall commence no sooner than twelve (12) months from the date of completion of the steps set out in Clauses 4.2 and 4.3 of this Schedule 2 (as appropriate to the Order for the Goods) to prevent overlap with the Supplier's obligations set out in Clause 8.

10 Staff

- 10.1 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.
- 10.2 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies and when on the Authority Sites shall act in a responsible manner with full regard to the health and safety of all persons at such premises.
- 10.3 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 and the Supplier shall be able to evidence such licences, registrations and qualifications upon reasonable request of the Customer. The Supplier shall ensure all Staff understand and comply with the need to keep confidential all information howsoever acquired whether relating to the Customer or its business.
- 10.4 As a condition of employment in the contract, Supplier's Staff:
- 10.4.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract assignments;
 - 10.4.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Contract assignment instructions;
 - 10.4.3 shall not act in a manner reasonably likely to bring discredit upon the Customer;

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- 10.4.4 shall maintain proper standards of appearance and deportment whilst at work;
 - 10.4.5 shall not at any time be on duty under the influence of alcohol or drugs;
 - 10.4.6 shall on being charged with any criminal offence, notify the Supplier immediately;
 - 10.4.7 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
 - 10.4.8 shall not misuse or abuse the Authority Sites; and
 - 10.4.9 shall not smoke while on the Authority Sites, except in those areas where smoking is expressly permitted.
- 10.5 The Supplier shall provide its Staff with a form of identification that is acceptable to the Customer and which Staff shall display on their clothing at all times when they are at the Premises and Locations.
- 10.6 The Supplier and its Staff shall confine themselves to the locality of their work and shall cause as little interference and disruption as possible with other personnel and activities at the Authority Sites.
- 10.7 Unless alternative arrangements have been agreed in writing with the Customer prior an Order being placed, the Supplier shall comply with such of the Customer's staff vetting procedures, and other staff protocols, as may be relevant to this Contract and which have been notified to the Supplier by the Customer in writing. If the Customer does not notify the Supplier of any specific vetting procedures applicable to the Supplier's Staff, the Supplier shall ensure that such Staff have been subject to (at a minimum) a Basic DBS Check.
- 10.8 The Supplier acknowledges and agrees that it shall be vicariously liable for all acts or omissions of persons employed or engaged by the Supplier to perform the Supplier's obligations under this Contract, including its employees, contractors, sub-contractors, agents and representatives.
- 11 Health and safety**
- 11.1 While at any Authority Site, the Supplier shall comply, and shall ensure that its Staff comply with the requirements of relevant health and safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Customer's own policies and procedures.
- 11.2 The Supplier will be required to nominate a health and safety representative to liaise with the Contract Manager on all health and safety matters.
- 11.3 The Supplier's Staff shall follow a system of accident recording in accordance with the Customer's accident recording procedure and the Supplier's own accident reporting procedures.
- 11.4 All notifiable accidents shall immediately be brought to the attention of the Contract Manager.

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- 11.5 The Supplier shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Customer of any change in the Supplier's working practices or other occurrences likely to increase such risks or to cause new hazards.

12 Business continuity

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

12.1.1 the criticality of this Contract to the Customer; and

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

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

- 12.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Customer and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Customer, at the Customer'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 12.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Customer 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.

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

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

13 The Authority's obligations

- 13.1 Subject to the Supplier supplying the Goods and Services in accordance with this Contract, the Authority will pay the Supplier for the Goods and Services in accordance with Clause 15 of this Schedule 2.

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

- 13.3 The Authority shall comply with the Authority's Obligations.

14 Contract management

- 14.1 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.
- 14.2 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 intervals as may be agreed in writing between the Parties.
- 14.3 Unless otherwise agreed between the Parties, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 28.3 of this Schedule 2.
- 14.4 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 a Contracting Authority whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods and Services purchased, any payments made under this Contract and any other information relevant to the operation of this Contract.
- 14.5 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:
- 14.5.1 storing and analysing the management information and producing statistics; and
- 14.5.2 sharing the management information or any statistics produced using the management information with any Contracting Authority.

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- 14.6 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 14.5 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).
- 14.7 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.

15 **Price and payment**

Contract Price

- 15.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form (or, in the absence of an Order Form, as otherwise confirmed between the Authority and the Supplier in writing).
- 15.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:
- 15.2.1 shall remain fixed during the Term; and
 - 15.2.2 is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and Services and includes, without limitation:
 - (i) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax (excluding VAT) and duty, 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 17 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 provision of the Services, and any other costs incurred by the Supplier in association with the manufacture and supply of the Goods and provision of the Services.
- 15.3 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.

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- 15.4 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 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 reductions in price by reason of the application of such schemes.

Invoices

- 15.5 Unless stated otherwise in the Commercial Schedule or in writing by the agreement of the Authority:

15.5.1 in the case of Goods which do not require installation or acceptance testing, the Supplier may invoice the Authority or, where payment for the Goods will be made by NHS Supply Chain, NHS Supply Chain for the Goods and Services following completion of the delivery of the relevant Order in full in accordance with the Contract;

15.5.2 in the case of Goods which require installation and/or acceptance testing, the Supplier may invoice the Authority or, where payment for the Goods will be made by NHS Supply Chain, NHS Supply Chain for:

(i) ninety-five percent (95%) of the total Order value following delivery of the Goods in accordance with the Order; and

(ii) the remaining five percent (5%) of the total Order value following completion to the Authority's satisfaction of installation and acceptance testing in accordance with Clause 4.3; or

15.5.3 in the case of an Order for Services only, the Supplier may invoice the Authority or, where payment for the Services will be made by NHS Supply Chain, NHS Supply Chain:

(i) in accordance with any payment schedule agreed in writing by the Parties (subject to any payment triggers/criteria agreed in writing); or, if no such agreement has been made,

where the Services are provided on a recurring or ongoing basis during the Term, within fifteen (15) days of the end of each calendar month in which the Services or part thereof were provided for the Services provided in that calendar month; or,

(ii) where the Services are provided on a 'one off' basis, following completion of the Services

and each invoice shall contain the information required in accordance with Clause 15.13 of this Schedule 2 and shall be addressed to such individual as the Authority may inform the Supplier from time to time.

- 15.6 If the Authority is unable to accept delivery of Goods which require installation and acceptance testing, provided the delay is unattributable to the fault of the Supplier

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and the Parties are unable to agree an alternative delivery date within thirty (30) days of the original agreed delivery date, the Supplier shall be entitled to invoice the Authority (or NHS Supply Chain, as appropriate) for 95% of the total Order value no less than thirty (30) days from the original agreed delivery date (such amount being a "**Progress Payment**").

- 15.7 If the Supplier issues the Authority (or NHS Supply Chain, as appropriate) with an invoice for a Progress Payment it must immediately:
- 15.7.1 provide the Authority with a statement indicating the reason for non-delivery to substantiate the claim for the Progress Payment; and
 - 15.7.2 affix to the Goods a label stating that the property in the Goods has passed to the Authority and that no other person has the right to sell, grant security over or otherwise deal with the Goods without the consent of the Authority.
- 15.8 The payment of the Progress Payment shall be subject to the following provisions:
- 15.8.1 the Supplier shall retain responsibility for the safe custody and satisfactory storage of the Goods, notwithstanding that property in the Goods shall have passed to the Authority. The Supplier shall insure the Goods at all times against any loss or damage to their full replacement value until risk in the Goods has passed to the Authority. On request by the Authority the Supplier shall promptly provide the Authority with a copy of the insurance policy together with such evidence as the Authority may reasonably require that the premiums payable under the policy have been duly paid;
 - 15.8.2 the Supplier undertakes to store the Goods free of charge to the Authority for a period of up to four (4) months;
 - 15.8.3 the Authority or NHS Supply Chain shall have the right to inspect the Goods at the Supplier's premises prior to packing, and to be present during packing; and
 - 15.8.4 if requested by the Authority, the Supplier shall deliver promptly to the Authority the Goods at such location as the Authority may reasonably specify.
- 15.9 In respect of any Progress Payment:
- 15.9.1 if the Authority reasonably considers that the Supplier has failed to perform any of its obligations under the Contract it may wholly or in part, withhold Progress Payments or recover from the Supplier any Progress Payments already made, or both; and
 - 15.9.2 such Progress Payments will not reduce the Supplier's responsibility for completing the Contract.
- 15.10 Where NHS Supply Chain is the Authority, the Authority shall use reasonable endeavours to pay each undisputed invoice received in accordance with Clause 15.5 of this Schedule 2 within thirty (30) days of receipt of such invoice and in any event shall pay such undisputed invoices within forty five (45) days of receipt.

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- 15.11 Where the Authority is not NHS Supply Chain, the Authority shall pay each undisputed invoice received in accordance with Clause 15.5 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.
- 15.12 The Supplier shall ensure that payment terms no less stringent than those set out in Clause 15.11 shall be set out in any sub-contracts it awards under this Contract and shall procure that its sub-contractors include the same provisions within any further sub-contracts awarded by such sub-contractors.
- 15.13 Unless stated otherwise in the Commercial Schedule or in writing by the agreement of the Authority, the Supplier must provide one invoice per Contract rendered on the Supplier's own invoice form, sent electronically via the Electronic Trading System to the Authority. An invoice will not be valid unless it contains as a minimum requirement the following information:
- 15.13.1 NHS Supply Chain or customer order number (as appropriate);
 - 15.13.2 the period to which the invoice relates;
 - 15.13.3 the Goods and/or Services to which the invoice relates;
 - 15.13.4 the Contract Price;
 - 15.13.5 unit of purchase and unit price as stated on the Order Form;
 - 15.13.6 at least one of either the MPC code or NPC code as stated on the Order Form (where relevant);
 - 15.13.7 local reference of the Authority (if appropriate);
 - 15.13.8 separate entries for any duties and/or early settlement discounts (where applicable); and
 - 15.13.9 in relation to goods:
 - (i) the name and address of the delivery location (including the requisition point, if appropriate);
 - (ii) the description and quantity of the Goods as set out in the Order Form;
 - (iii) details of any item forming part of the relevant delivery which is not included in the Contract Price;
 - (iv) whether any containers supplied are required to be returned or collected; and
 - (v) if available, the GTIN (GS1 Code) for the Goods;
 - 15.13.10 in relation to Services:
 - (i) the name and address of the service recipient;

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- (ii) at least one of either the MPC code or NPC code as stated on the Order Form (where relevant); and
 - (iii) a description of the Services.
- 15.14 The Supplier may approach the Authority to offer discount opportunities for prompt payment of invoices. The Authority may agree such arrangements in its absolute discretion.
- 15.15 The Authority shall be entitled to deduct monies due or to become due to the Supplier under the Contract from any monies owing to the Authority from the Supplier.
- 15.16 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 Parties shall refer to dispute resolution in accordance with Clause 28 of this Schedule 2. 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 15.17 of 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.

16 Warranties

- 16.1 The Supplier warrants and undertakes that:
 - 16.1.1 it shall comply with the Framework Agreement;
 - 16.1.2 it has and shall maintain a properly documented system of quality controls covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with and make available on the Customer's and/or NHS Supply Chain's reasonable request copies of such quality controls;
 - 16.1.1 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Documents), 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;
 - 16.1.2 it shall not make any significant changes to its system of quality controls in relation to the Goods and Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
 - 16.1.3 it shall not make any significant changes to, or provide substitutes for, the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of

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doubt, unless otherwise set out in the Commercial Schedule, any such changes or substitute goods, if accepted, shall not lead to an increase in the Contract Price;

- 16.1.4 any equipment it uses in the manufacture or delivery of the Goods and provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 16.1.5 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;
- 16.1.6 it has and shall as relevant maintain all rights, consents, authorisations, licences, registrations and accreditations required to supply the Goods and Services;
- 16.1.7 receipt of the Goods and Services by or on behalf of the Customer and use of the Goods or of any other item or information supplied, or made available, to the Customer will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 16.1.8 it will comply with all Law, Guidance and Policies in so far as relevant to the Goods and/or Services;
- 16.1.9 it will promptly (and in any event within one (1) Business Day) notify the Customer and (where NHS Supply Chain is not the Customer) NHS Supply Chain of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 16.1.10 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 Customer and (where NHS Supply Chain is not the Customer) NHS Supply Chain immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 16.1.11 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Customer and shall provide to the Customer any reports or other information that the Customer may request as evidence of the Supplier's compliance with this Clause 16.1.11 and/or as may be requested or otherwise required by the Customer in accordance with its anti-slavery Policy;
- 16.1.12 it will promptly respond to all requests for information regarding the Contract and the Goods and Services at the frequency and in the format that the Customer may reasonably require;
- 16.1.13 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award

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of this Contract (to include, without limitation, as referred to in the Specification and in the Tender Response Documents and/or Order Form and all accompanying materials) is accurate;

- 16.1.14 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;
- 16.1.15 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;
- 16.1.16 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 16.1.17 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;
- 16.1.18 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;
- 16.1.19 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 16.1.20 it has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and has gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.

Goods

- 16.1.21 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;
- 16.1.22 it shall ensure that prior to actual delivery to the Customer that the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 16.1.23 without prejudice to the generality of the warranty at 16.1.21 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 distribution practice, as may be defined under any Law and/or Guidance relevant to the Goods, and any specific instructions of the manufacturer of the Goods and this will include labelling all Goods with Conformity Marking which meets the relevant requirements under Law and Guidance;
- 16.1.24 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;

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- 16.1.25 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 16.1.26 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 16.1.27 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 16.1.28 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 Customer;
- 16.1.29 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 (in accordance with the Authority's requirements) and provide updated copies should the instruction information change at any time during the Term;
- 16.1.30 all Goods delivered to the Customer shall comply with any shelf-life requirements set out in the Specification;

Services

- 16.1.31 the Services shall be provided promptly and in accordance with the Specification and the Tender Response Documents and shall comply with the standards and requirements set out in this Contract;
 - 16.1.32 the Services shall be provided by appropriately qualified, experienced and trained personnel in a professional and courteous manner using reasonable skill and care and in accordance with Good Industry Practice;
 - 16.1.33 it shall comply with all health and safety processes, requirements, safeguards, controls and training obligations in accordance with its own operational procedures, Law, Guidance, Policies and Good Industry Practice and any notice or instructions given to the Supplier by the Authority and/or any competent body.
- 16.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods or provision of the Services 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:
- 16.2.1 at the point such Goods are supplied to the Customer, all such Goods which are medical devices shall have valid CE marking (or, where applicable, UKCA marking) as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance

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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 Clauses 16.1 and 16.2 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 (or, where applicable, UKCA marking), and evidence of any other authorisations, registrations, approvals or documentation required;

- 16.2.2 at the point such Goods are supplied to the Customer, 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 Customer and that all relevant authorisation, labeling, 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 16.2 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, labeling, registrations, approvals or documentation required;
- 16.2.3 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, UKCA 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.
- 16.3 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.
- 16.4 If the Supplier is in breach of Clause 16.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject the Services and reject and/or return the Goods and the Supplier shall, subject to Clause 19.2 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.
- 16.5 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 Documents shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Documents.
- 16.6 Unless the Parties otherwise agree in writing, the Supplier warrants and undertakes to the Authority that it shall comply with any E-Procurement 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 E-Procurement Guidance.

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- 16.7 The Supplier warrants and undertakes that at the Commencement Date it is not and throughout the term of this Contract it will not be, involved in any Occasion of Tax Non-compliance.
- 16.8 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 16 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 16.9 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.

17 Intellectual property

- 17.1 The Supplier warrants and undertakes to the Authority that it either owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the provision of the Goods and Services.
- 17.2 Subject to Clause 17.3, and unless provided otherwise in the Specification and/or the Order Form, the Supplier hereby grants to the Customer, for the life of the use of any Goods, Deliverables material or any other output supplied to the Customer and/or provision of the Services, an irrevocable, royalty-free, non-exclusive, transferable and sub-licensable 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 and Services, the Deliverables material and other output (to include any associated technical or other documentation and information supplied or made accessible to the Customer in any media) in accordance with this Contract.
- 17.3 The terms set out at Schedule 7, instead of Clause 17.2, shall apply to the grant of Intellectual Property Rights in Software.

18 Indemnity

- 18.1 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:
- 18.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 18.1.2 any loss of or damage to property (whether real or personal); and/or
- 18.1.3 any breach of Clause 16.1.7 and/or Clause 17 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 and provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.
- 18.2 Liability under Clauses 18.1.1 and 18.1.3 of this Schedule 2 and Clause 2.4 of Schedule 3 shall be unlimited. Liability under Clauses 4.13.4, 18.1.2 and 16.4 of

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this Schedule 2 shall be subject to the limitation of liability set out in Clause 19 of this Schedule 2.

- 18.3 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:
- 18.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
 - 18.3.2 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).

19 Limitation of liability

- 19.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 19.1.1 for death or personal injury resulting from its negligence;
 - 19.1.2 for fraud or fraudulent misrepresentation; or
 - 19.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 19.2 Subject to Clauses 18.2, 19.1, 19.3 and 19.5 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 and/or Services.
- 19.3 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:
- 19.3.1 extra costs incurred purchasing replacement or alternative goods and/or services;
 - 19.3.2 costs incurred in relation to any product recall;

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- 19.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 19.3.4 the costs of extra management time; and/or
- 19.3.5 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.
- 19.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one Party is entitled to bring a claim against the other pursuant to this Contract.
- 19.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
- 19.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 19.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
- 19.5.2 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 19.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
- 19.5.3 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 19.2 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 19.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 19.5.4 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 19.2 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 19.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 19.6 Clause 19 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

20 Insurance

- 20.1 Subject to Clauses 20.2 and 20.3 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 (including pure economic loss) and product liability in accordance with Good Industry Practice with the minimum cover per claim being the greater of five million GBP (£5,000,000) or any sum as required by Law, however, the Supplier shall have

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responsibility for ensuring that it is adequately insured to cover all potential liability under this Contract.

- 20.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement, if any.
- 20.3 The Supplier acknowledges and agrees that where an Order is placed primarily for Services, NHS Supply Chain reserves the right to request that the Supplier provides evidence that it has adequate professional indemnity liability cover for those Services.
- 20.4 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 20.1 and 20.2 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.
- 20.5 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.
- 20.6 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.
- 20.7 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 20 of this Schedule 2 and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 20.8 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.

21 Term and termination

- 21.1 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. For the avoidance of doubt, expiry or earlier termination of this Contract shall not automatically terminate the Framework Agreement.

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- 21.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than one (1) month prior to the date on which this Contract would otherwise have expired.
- 21.3 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 failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and 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 21.4.1(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:
- 21.3.1 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;
 - 21.3.2 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
 - 21.3.3 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 21.4.1(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.
- 21.4 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:
- 21.4.1 commits a material breach of any of the terms of this Contract which is:
 - (i) not capable of remedy; or
 - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
 - 21.4.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

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- 21.5 The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:
- 21.5.1 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;
 - 21.5.2 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;
 - 21.5.3 where the Supplier is a distributor, the distribution rights required for it to supply Goods on behalf of the original manufacturer of those Goods expire or otherwise cease to exist;
 - 21.5.4 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 34 of this Schedule 2; or
 - 21.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 21.6, 29.8; 31.2; 31.4 and 35.2 of this Schedule 2; or
 - 21.5.6 the Supplier is in breach of Clause 16.7 of this Schedule 2.
- 21.6 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:
- 21.6.1 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

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reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;

- 21.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 21.6 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
- 21.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 28.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 21.4.1(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 21.6 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.

- 21.7 The Authority may terminate this Contract immediately at any time by giving notice in writing to the Supplier where:
 - 21.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 21.7.2 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; or
 - 21.7.3 not used; or
 - 21.7.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environment, social or labour Law. Where the failure to comply with legal obligations in the fields of environment, 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 Clause 21.7.4.

22 Consequences of expiry or earlier termination of this Contract

- 22.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods and Services which have been supplied or provided by the Supplier and accepted by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.

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- 22.1 Subject to the Supplier receiving all undisputed outstanding sums due under this Contract, following expiry or earlier termination of this Contract in accordance with Clause 21 of this Schedule 2, all equipment and materials provided and/or assembled by (or which are in the process of being assembled by) the Supplier or materials which are being altered or modified by the Supplier in accordance with the Contract, shall be transferred into the ownership of the Authority, regardless of whether the assembly of such equipment and materials has been completed.
- 22.2 Subject to Clause 22.3 of this Schedule 2, the Supplier agrees that where this Contract has been terminated properly in accordance with Clause 21 of this Schedule 2 it shall not be entitled to make a claim against the Authority (if NHS Supply Chain is not the Authority) in relation to costs incurred in the provision of the Goods and/or Services which do not form part of the Contract Price paid or payable by the Authority.
- 22.3 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.
- 22.4 Upon termination of the Contract all equipment and materials provided and/or assembled by (or which are in the process of being provided or assembled by) the Supplier or materials and parts of Authority Sites which are being altered or modified by the Supplier, in accordance with the Contract shall be transferred into the ownership of the Authority regardless of whether the assembly of such equipment and materials or the alteration or modification of such Authority Sites has been completed.
- 22.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in by the Parties to allow the Supplier to perform its obligations under this Contract shall automatically terminate.
- 22.6 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.
- 22.7 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.
- 22.8 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

23 Packaging, identification and end of use

- 23.1 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.

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- 23.2 Unless otherwise specified in the Specification and Tender Response Documents 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 commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom and in relation to Goods imported into the United Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such Regulations and other legislation.
- 23.3 Unless otherwise (a) specified in the Specification; (b) agreed with the Authority in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown by labels on at least two sides of the outside of every package, each package containing no more than one type of product:
- 23.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or the Supplier;
 - 23.3.2 the relevant NHS Supply Chain or customer order number (as appropriate) and the customer's local reference number (if appropriate);
 - 23.3.3 the quantity in the package where available;
 - 23.3.4 any special directions for storage;
 - 23.3.5 the expiry date of the contents where applicable;
 - 23.3.6 the delivery date;
 - 23.3.7 at least one of either the MPC code or NPC code as stated on the Order Form (where relevant);
 - 23.3.8 the name and address of the delivery location (including the requisition point, if any);
 - 23.3.9 the batch number;
 - 23.3.10 the route of supply (i.e. Stock, E-Direct, Blue Diamond, Direct, as more particularly described in Schedule 4; and
 - 23.3.11 the name and address of the manufacturer of the Goods and the Supplier.
- 23.4 All Goods that customarily bear 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 must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.

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- 23.5 Unless otherwise set out in the Specification and Tender Response Documents or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers 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 or return. The Authority will not accept transfer of costs or liabilities in respect of any local, regional or national pool pallets. The Authority will not exchange any damaged or sub-standard pallets on delivery and all responsibility for the same shall remain with the Supplier.

24 Coding requirements

- 24.1 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 24.2 of this Schedule 2, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be placed by the Supplier into a GS1 certified data pool within the following timescales:
- 24.1.1 prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Contract as at the Commencement Date; or
 - 24.1.2 where further categories of Goods are to be supplied in accordance with Clause 27 of this Schedule 2, prior to or on the date of implementation of any such variation.
- 24.2 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 24.1 of this Schedule 2 within the timescales stated and the Authority requires compliance with such coding requirements, the Supplier shall provide an implementation plan and timetable that sets out how the Supplier shall achieve such compliance by an alternative timescale. This implementation plan and timetable must be submitted by the Supplier for agreement by the Authority prior to the first delivery of the relevant Goods under the Contract (such agreement not to be unreasonably withheld or delayed). Any failure by the Parties to agree such a timetable and plan shall be referred to and resolved in accordance with the Dispute Resolution Procedure. Once a timetable and plan have been agreed by the Authority, the Supplier shall comply with such timetable and plan as a condition of this Contract.
- 24.3 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.

25 Sustainable development

- 25.1 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 and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification. Without prejudice to the generality of the foregoing, the Supplier shall:

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- 25.1.1 comply with all Policies and/or procedures and requirements set out in the Specification in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
 - 25.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being supplied and as proportionate to the nature and scale of the Supplier's business operations; and
 - 25.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to in Clause 25.1.2 of this Schedule 2.
- 25.2 The Supplier shall meet reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of Clause 25 of this Schedule 2.

26 Electronic product information

- 26.1 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.
- 26.2 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 26 of this Schedule 2.
- 26.3 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.
- 26.4 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 and Services) available in the Authority's product catalogue in relation to any catalogues produced during the Term. Subject to Clause 26.5 of this Schedule 2, no obligation to illustrate or advertise the Product Information is imposed on the Authority by the Supplier, as a consequence of the licence conferred by this Clause 26.4 of this Schedule 2.
- 26.5 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.
- 26.6 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 26.6 of this Schedule 2 or otherwise under the terms of this Contract.

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- 26.7 The Authority may approach the Supplier during the Term to offer the Supplier the opportunity to take part in specific promotions or to purchase additional advertising space in relation to the Goods and/or Services, the Framework Agreement and any Contract and the Parties shall agree an appropriate price for any such advertising. If any such opportunity is cancelled by the Authority it shall refund the purchase price to the Supplier but for the avoidance of doubt, the Authority shall not be liable for any incidental costs incurred by the Supplier, including costs associated with the development of an advert
- 26.8 The Supplier agrees to indemnify and keep indemnified the Authority against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings arising out of or in connection with the Authority's use of the Product Information, provided always that the Authority has not materially misused the Product Information.

27 Change management

- 27.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, as may be requested by the Authority from time to time.
- 27.2 Subject to Clause 27.3 below, any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
- 27.3 Where a change in Law has occurred, or will occur, in relation to the Data Protection Legislation, the Authority may amend the applicable provisions of the Contract, as it deems reasonably necessary in the circumstances, by giving the Supplier no less than 30 days' notice of such amendments.

28 Dispute resolution

- 28.1 During any dispute it is agreed that the Supplier shall continue its performance of the provisions of the Contract to the extent that such obligations are not the subject of the dispute (unless the Authority requests in writing that the Supplier does not do so).
- 28.2 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 28.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 28.3 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 of the levels have

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been exhausted. Level 1 will commence on the date of service of the dispute resolution 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.

- 28.4 If the procedure set out in Clause 28.3 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 28.3 of this Schedule 2, the mediator shall be nominated by the Centre for Effective Dispute Resolution, London.
- 28.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 28.4 of this Schedule 2 of these Call-off Terms and Conditions or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 28.6 Nothing in this Contract shall prevent:
- 28.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or Services; or
 - 28.6.2 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.
- 28.7 Clause 28 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

29 Force majeure

- 29.1 Subject to Clause 29.2 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.
- 29.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 29 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:

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- 29.2.1 the Supplier has fulfilled its obligations pursuant to Clause 11 of this Schedule 2;
 - 29.2.2 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
 - 29.2.3 the Supplier has complied with the procedural requirements set out in Clause 29 of this Schedule 2.
- 29.3 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.
- 29.4 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.
- 29.5 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.
- 29.6 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.
- 29.7 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.
- 29.8 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 on service of written notice on the Supplier.
- 29.9 Following such termination in accordance with Clause 29.8 of this Schedule 2 and subject to Clause 29.10 of this Schedule 2, neither Party shall have any liability to the other.
- 29.10 Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 29.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.

30 Records retention and right of audit

- 30.1 Subject to any statutory requirement and Clause 30.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards,

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or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.

- 30.2 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.
- 30.3 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.
- 30.4 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.
- 30.5 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:
- 30.5.1 the examination and certification of the Authority's accounts; or
- 30.5.2 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.
- 30.6 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 30 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3)(d) and 6(5) of the National Audit Act 1983.
- 30.7 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.
- 30.8 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.

31 Conflicts of interest and the prevention of fraud

- 31.1 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,

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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.

- 31.2 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 31.2 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.
- 31.3 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.
- 31.4 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.

32 Equality and human rights

- 32.1 The Supplier shall:
- 32.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and Services engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 32.1.2 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
 - 32.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 32 of this Schedule 2.
- 32.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 32 of this Schedule 2.
- 32.3 The Supplier shall notify the Authority of any investigation of or proceedings against the Supplier under the Equality Legislation as soon as reasonably practicable and within five (5) Business Days of knowledge of the relevant

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investigation or service of proceedings (as applicable). The Supplier shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

- 32.4 The Supplier shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any breach or alleged breach of the Equality Legislation by the Supplier, its agents, employees or Sub-contractors.

33 Notice

- 33.1 Subject to Clause 28.5 of Schedule 2 of these Call-off Terms and Conditions notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.
- 33.2 A notice shall be treated as having been received:
- 33.2.1 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
 - 33.2.2 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
 - 33.2.3 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.
- 33.3 The Supplier will provide NHS Supply Chain with a copy of all notices given or received under this Contract.

34 Assignment, novation and Sub-contracting

- 34.1 The Supplier shall not, except where Clauses 34.2 and 34.7 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.

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34.2 Notwithstanding Clause 34.1 of this Schedule 2, the Supplier may:

34.2.1 assign, Sub-contract or novate this Contract to a member of its Group, provided always that such Group member shall have been assessed by the Authority or NHS Supply Chain and passed to the satisfaction of the Authority or NHS Supply Chain (as appropriate) all grounds for exclusion and shortlisting criteria to be awarded onto the Framework Agreement; Sub-contract the carriage only of the Goods to the delivery location;

34.2.3 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 34.2 of this Schedule 2 shall be subject to:

- (i) the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 15.16 of this Schedule 2;
- (ii) all related rights of the Authority in relation to the recovery of sums due but unpaid;
- (iii) 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;
- (iv) the provisions of Clause 15 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
- (v) payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.

34.3 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.

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

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

34.4.2 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;

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- 34.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
 - 34.4.4 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;
 - 34.4.5 requires the Supplier or other party receiving goods under the Sub-contract to consider and verify invoices under that contract in a timely fashion;
 - 34.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 34.4.5 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 34.4.7 of this Schedule 2 of these Call-Off Terms and Conditions after a reasonable time has passed;
 - 34.4.7 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;
 - 34.4.8 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 21.7.4 of this Schedule 2 of these Call-off Terms and Conditions;
 - 34.4.9 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 34.5 of this Schedule 2 of these Call-Off Terms and Conditions;
 - 34.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 34.4 of this Schedule 2 of these Call-off Terms and Conditions in any Sub-contract which it awards.
- 34.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
- 34.5.1 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
 - 34.5.2 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.

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- 34.6 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and/or Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) 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.
- 34.7 Notwithstanding Clause 34.1 of this Schedule 2, where the Supplier is a distributor and the distribution rights required for it to supply Goods on behalf of the original manufacturer of those Goods expire or otherwise cease to exist, the Supplier must immediately notify the Authority in writing of such loss of rights and shall, if requested by the Authority, cooperate with the Authority and the original manufacturer and take all steps necessary to novate this Contract to the original manufacturer or a replacement distributor appointed by the original manufacturer, provided always that such original manufacturer or replacement distributor shall have been assessed by NHS Supply Chain and passed to the satisfaction of NHS Supply Chain all grounds for exclusion and shortlisting criteria to be awarded onto this Framework Agreement.
- 34.8 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 promptly carry out all such reasonable further acts required by the Authority 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.

35 **Prohibited Acts**

- 35.1 The Supplier warrants and represents that:
- 35.1.1 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
- 35.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

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35.2 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:

35.2.1 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;

35.2.2 any termination under Clause 35.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

35.2.3 notwithstanding Clause 28 of this Schedule 2, any dispute relating to:

- (i) the interpretation of Clause 35 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.

36 Modern slavery

36.1 The Supplier represents and warrants that at the Commencement Date of this Contract neither the Supplier, nor any of its officers and employees:

36.1.1 have been convicted of any offence involving slavery and human trafficking; and

36.1.2 having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

36.2 The Supplier shall implement due diligence procedures for its subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

36.3 The Supplier shall prepare and deliver to the Authority each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that

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slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

37 **Not used**

38 **General**

- 38.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 38.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 38.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 38.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 38.5 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.
- 38.6 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.
- 38.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 38.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 38.8 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.
- 38.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to explicitly in this Contract or any variation

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

- 38.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 38.11 Subject to Clause 28 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.
- 38.12 All written and oral communications and all written material referred to under this Contract shall be in English.
- 38.13 Each Party agrees that the Contract may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of each Party's intention to be bound by this Contract as if signed by each Party's manuscript signature.

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 in accordance with the Government's Transparency Agenda (including but not limited to Transparency Guidance) and/or 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 of these Call-off Terms and Conditions.

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 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 Nothing in this Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing the Confidential Information to its Group companies, provided that the Recipient procures that such Group companies comply with this Clause 1 of this Schedule 3 as if each reference to the Recipient in this Clause 1 of this Schedule 3 is a reference to any such Group company receiving the Confidential Information.
- 1.6 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.
- 1.7 Clause 1 of this Schedule 3 shall remain in force:
 - 1.7.1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and

- 1.7.2 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 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.
- 2.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such Sub-contractor were the Supplier.

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 and shall comply with the Transparency Guidance if and when applicable.

- 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.
- 4.2 The Supplier must and agrees to obtain and maintain certification under the HM Government Cyber Essentials Scheme at the appropriate level as applicable to the provision of the Goods and Services.
- 4.3 Where access to patient data and/or NHS systems is required, in order for the Supplier to supply Goods and/or Services, the Supplier must comply with all applicable standards and requirements set by NHS Digital (or any successor body) that are in force from time to time. As at the Commencement Date this includes (without limitation) completion of NHS Digital's 'Data Security and Protection Toolkit' and maintenance of a published 'Standards Met' status.

The provisions of Schedule 9 (Supplemental Security Provisions) shall apply in addition where indicated at Clause 7 of Schedule 1 (Extra Key Provisions) and/or in the Order Form.

Appendix 1 to Schedule 3
DATA PROTECTION PROTOCOL

A. TABLE A – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Subject matter of the Processing	
Duration of the Processing	
Nature and purposes of the Processing	
Type of Personal Data	
Type of special category data and/or criminal records data being Processed	
Categories of Data Subject	
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	

B. DEFINITIONS

The definitions and interpretative provisions at Schedule 4 (Definitions and Interpretations) of the Call-off Terms and Conditions for the Supply of Goods and Services shall also apply to this Protocol. Additionally, in this Protocol the following words shall have the following meanings unless the context requires otherwise:

"Controller" or "Data Controller"	shall have the same meaning as set out in the Data Protection Legislation;
"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 Data Protection Legislation;
"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 Data Protection Legislation;
"Processor" or "Data Processor"	shall have the same meaning as set out in the Data Protection Legislation;
"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.

C. OPERATIVE PROVISIONS

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 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 1.3.3 an assessment of the necessity and proportionality of the Processing operations in relation to the relevant Patient Monitoring Equipment, Related Accessories and Services;
 - 1.3.4 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 1.3.5 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 the 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:
 - (1) nature of the data to be protected;
 - (2) harm that might result from a Data Loss Event;
 - (3) state of technological development; and
 - (4) cost of implementing any measures;
 - 1.4.3 ensure that:
 - (1) the Staff do not Process Personal Data except in accordance with this Contract (and in particular Table A of this Protocol);
 - (2) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (1) are aware of and comply with the Supplier's duties under this Protocol;
 - (2) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (3) 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

- (4) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.4.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (1) 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;
 - (2) the Data Subject has enforceable rights and effective legal remedies;
 - (3) 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
 - (4) 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 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Goods and/or Services supplied, the Supplier shall:
 - 1.8.1 complete and publish an information governance assessment using NHS Digital's 'Data Security and Protection Toolkit';
 - 1.8.2 achieve and maintain a minimum 'standards met' performance against all requirements in the relevant NHS Digital's 'Data Security and Protection Toolkit';
 - 1.8.3 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 1.8.4 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or NHS Digital guidelines;
 - 1.8.5 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 1.8.6 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
 - 1.8.7 put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with

non-NHS organisations in circumstances in which sharing of that data is required under this Contract;

- 1.8.8 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Goods and/or Services, including the retention and disposal of those recordings;
 - 1.8.9 at all times comply with any information governance requirements and/or processes as may be set out in the Framework Agreement and the Contract; and
 - 1.8.10 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 1.9 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:
- 1.9.1 the Authority determines that the Processing is not occasional;
 - 1.9.2 the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - 1.9.3 the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.10 The Supplier shall allow for audits of its Processing activity by the Authority or the Authority's designated auditor.
- 1.11 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 1.12 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Supplier must:
- 1.12.1 notify the Authority in writing of the intended Sub-processor and Processing;
 - 1.12.2 obtain the written consent of the Authority;
 - 1.12.3 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
 - 1.12.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.13 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.14 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).

- 1.15 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.
- 1.16 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 33 of Schedule 2 of the Call-off Terms and Conditions for the Supply of Goods and Services.
- 2 Subject to Clauses 1.8.10, 1.14, 1.15 and 1.16 of this Protocol and Clause 22.7 of Schedule 2 of the Framework Agreement (General Terms and Conditions) and/or Clause 27.3 of Schedule 2 these Call-off Terms and Conditions for the Supply of Goods and Services 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:

"Additional Terms"	means the additional provisions relating to the goods and logistics of Orders placed pursuant to a Non-Direct Route of Supply as set out in Schedule 5 which shall apply to this Contract;
"Affiliate"	in relation to any legal entity, a subsidiary of that entity or a holding company of that entity or any other subsidiary of that holding company;
"ASN"	means advance shipping notice;
"Authority"	means the authority named on the Order;
"Authority Site(s)"	means premises owned or occupied by the Customer, or NHS Supply Chain, which are to be used by the Supplier for the provision of the Goods and Services as set out in the Order Form or as otherwise agreed in writing between the Customer and the Supplier and shall include the Installation Sites;
"Authority's Obligations"	means the Authority's further obligations, if any, referred to in the Specification and/or the Order Form;
"Basic DBS Check"	means a basic check of an individual's criminal record processed by the Disclosure and Barring Service (or any successor body) and as defined at the following government website (as may be updated from time to time): https://www.gov.uk/government/collections/dbs-checking-service-guidance--2 ;
"Blue Diamond"	means Goods and Services ordered by NHS Supply Chain on behalf of a customer which are delivered and invoiced to the required NHS Supply Chain location to be distributed by NHS Supply Chain to the relevant customer in accordance with the Order Form;
"Business Continuity Event"	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods and Services including an influenza pandemic and any Force Majeure Event;

"Business Continuity Plan"	means the Supplier's business continuity plan which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event;
"Business Day"	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
"Call-off Terms and Conditions for the Supply of Goods and Services", "Call-off Terms and Conditions" or "Call-off Terms"	means these call-off terms and conditions for the supply of Goods and Services – at set out at Schedules 1 to 11 inclusive – which shall form part of all Contracts placed under this Framework Agreement;
"Codes of Practice"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"Commencement Date"	means commencement date of the Contract, as specified in the Order Form or as otherwise agreed in writing by the Parties;
"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> <ul style="list-style-type: none"> (a) Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;
"Conformity Marking"	means any markings required by: (i) the Medical Devices Directive 93/42/EEC including CE markings, CE markings of conformity and CE conformity markings (the "Directive"); or, any (ii) applicable national Law which supersedes the Directive, as such Law may be amended from time to time.
"Contract"	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions for the Supply of Goods and Services, the Specification, the Tender Response Documents and the applicable provisions of the Framework Agreement;

"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than NHS Supply Chain;
"Contract Manager"	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 14.1 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 calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form (or, in the absence of an Order Form, as otherwise confirmed between the Authority and the Supplier in writing);
"Customer"	means: (i) for Orders placed via the Direct Route of Supply, the Authority named on the Order; or (ii) for Orders placed via the Non-Direct Route of Supply: as the context requires, (a) NHS Supply Chain; or (b) NHS Supply Chain's customer where Goods and/or Services are ordered on behalf of that customer;
"Customer Data"	means: (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Customer; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Supplier; and (b) any Personal Data for which the Customer is the Data Controller or a joint Data Controller;
"Customer Background IPR"	means IPR owned by or licensed to the Customer and developed independently of the Contract whether developed before or after the Commencement Date;
"Customer Software"	means any software listed in the Order Form to be provided by the Customer for use on or with any Goods and/or in connection with the performance of any Services and for

	which the Customer has expressly taken responsibility in the Order Form;
"Customer System"	has the meaning set out in Schedule 9 (Supplemental Security Requirements");
"Data Controller" or "Controller"	shall have the same meaning as set out in the Data Protection Legislation;
"Data Processor" or "Processor"	shall have the same meaning as set out in the Data Protection Legislation;
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;;
"Data Subject"	shall have the same meaning as set out in the Data Protection Legislation;
"Defective Goods"	has the meaning given under Clause 4.9 of Schedule 2;
"Deliverable"	means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material supplied to the Authority in the course of (or as a required part of) the provision of the Goods and Services;
"Direct Route of Supply"	means a route of supply whereby the Authority (who is not NHS Supply Chain) places an Order with the Supplier, which is delivered and invoiced directly to that Authority;
"Dispute Resolution Procedure"	means the process for resolving disputes as set out in Clause 28 of Schedule 2;
"Documentation"	<p>means all documentation as:</p> <ul style="list-style-type: none"> (a) is required to be supplied by the Supplier to the Customer under this Contract; (b) would reasonably be required by a competent third party capable of good industry practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the Systems; (c) is required by the Supplier in order to provide the System;

	<p>(d) has been or shall be generated for the purpose of providing the System; and/or</p> <p>(e) any other Supplier or third party standard manuals or literature which is specified in the Order Form;</p>
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & 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;
"E-Direct"	means Goods and Services ordered by NHS Supply Chain as the Authority on behalf of a customer which are delivered directly to the customer and invoiced to NHS Supply Chain;
"Environmental Regulations"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"E-Procurement Guidance"	<p>means the NHS E-Procurement 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;</p>
"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;
"Equipment Outputs"	has the meaning set out in the Purchase Plan Agreement Template (at Schedule 8(b) of these Call-off Terms and Conditions);
"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> <p>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict</p>

	<p>materially affecting either Party's ability to perform its obligations under this Contract;</p> <p>(b) acts of terrorism;</p> <p>(c) flood, storm or other natural disasters;</p> <p>(d) fire;</p> <p>(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;</p> <p>(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;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p>
"Framework Agreement"	means the Framework Agreement between NHS Supply Chain and the Supplier for the Supply Of; Patient Monitoring Equipment, Related Accessories and Services
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"General Anti-Abuse Rule"	<p>means</p> <p>(j) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(ii) any future legislation introduced into parliament to counteract tax advantages arising from abusive</p>

	arrangements to avoid national insurance contributions;
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods and/or services similar to the Goods and/or Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
"Goods"	means all goods (which may include Software), materials or items as set out in the Order Form and as may be more particularly described in the Specification that the Supplier is required to supply to the Authority under this Contract and shall include parts of such Goods which have been repaired or replaced by or on behalf of the Supplier in accordance with this Framework Agreement. Where the term refers to any hardware, it may include code which is an integral part of and required by such hardware to operate correctly ("internal code");
"Group"	means in relation to a Party, that Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party and holding company and subsidiary company shall have the meaning given in Section 1159 of the Companies Act 2006;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health & Social Care, Monitor, NHS England/NHS Improvement, NHSX, NHS Digital, the Medicines and Healthcare Products Regulatory Agency, the Information Commissioner, the Care Quality Commission, any successor body of the foregoing and/or any other regulator or competent body;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HM Government Cyber Essentials Scheme"	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview

"Installation Certificate"	<p>means a certificate given by the Supplier to the Authority following installation of the Goods which shall be signed by an authorised representative of the Supplier having supervising technical responsibility for the Installation (preferably a chartered engineer) and which shall include a certified statement as follows:</p> <p>"The installation of goods detailed in the contract has been tested and inspected. I certify that to the best of my knowledge and belief it is in full accordance with the specification and technical conditions of the contract."</p>
"Installation Site(s)"	means the site(s) listed on the Order Form for delivery and installation of the Goods;
"Intellectual Property Rights" or "IPR"	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 and/or as part of the Order Form;
"Last Call"	means the day which occurs four (4) weeks before the agreed delivery date or, where the Goods are linear accelerators, eight (8) weeks before the agreed delivery date;
"Law"	<p>means:</p> <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (b) any directly applicable or directly effective European Union directive, regulation, decision or law; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (d) requirements set by any regulatory body; and (e) any applicable code of practice, <p>in each case as applicable in England and Wales; and</p> <ul style="list-style-type: none"> (g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (e) above).
"NHS"	means the National Health Service;
"NHS Supply Chain"	means Supply Chain Coordination Limited (registered number 10881715) whose registered office is at Wellington House, 133-155 Waterloo Road, London, United Kingdom, SE1 8UG

	and which acts as the management function of the NHS Supply Chain
"Non-Direct Route of Supply"	means all routes of supply through which NHS Supply Chain (as the Authority) places an Order with the Supplier for Goods and/or Services and the Supplier invoices NHS Supply Chain for the sum of the relevant Order, whether or not such Goods and/or Services are delivered to NHS Supply Chain or another authority. Non-direct routes of supply include E-Direct, Blue Diamond and Stock (and any other non-direct routes which NHS Supply Chain may notify to the Supplier from time to time);
"Object Code"	means computer programs and/or data in computer-readable form;
"Occasion of Tax Non-Compliance"	<p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>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>
"Order"	means an order for Goods and/or Services placed under the Framework Agreement by the Authority;
"Order Form"	means any order form (which document may be based upon the template order form set out in Appendix B to Schedule 7 of this Framework Agreement), purchase order and/or any additional ancillary related documentation for the Goods and Services issued by the Authority in accordance with the Framework Agreement which sets out the Authority's detailed requirements for an Order and which may include a specification prepared by the Authority;
"Party"	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;

"Personal Data"	means personal data as defined in the Data Protection Legislation;
"Point of Sale Maintenance"	means maintenance services purchased by the Authority at the time an Order is placed for Goods which shall be covered by such maintenance services and provided by the Supplier in accordance with Clause 9 of Schedule 2;
"Policies"	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time (including, where NHS Supply Chain is the Authority, the Supplier Code of Conduct);
"Process"	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;
"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 26 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
"Project Specific IPR"	means IPRs in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract, including in the Specially Written Software;
"Rejected Goods"	has the meaning given under Clause 4.2 of Schedule 2;
"Remedial Proposal"	has the meaning given under Clause 21.3 of Schedule 2;
"Required Standards"	all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's, or its representative's, profession undertaking services or works similar in scope and character to the those identified in the Contract (and, if applicable, the Works Contract);
"Requirement to Recall"	has the meaning given under 4.13 of Schedule 2;
"Services"	means any services (which may include Point of Sale Maintenance) as set out in the Order Form and as may be more particularly described in the Specification that the Supplier is required to supply to the Authority under this Contract and/or made available for purchase under the Framework Agreement in accordance with Clause 26 of Schedule 2;
"Software"	means the software provided by the Supplier as set out in the relevant Order Form – including the Supplier Software, Third Party Software and Specially Written Software but excluding

	the Customer Software – and any new releases, modifications, enhancements or updates thereto;
“Source Code”	means computer programs or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such computer programs;
“Software Directive”	means Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs;
“Specially Written Software”	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;
“Specification”	means the Specification set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with the Contract;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contracts and person employed or engaged by such Sub-contractors;
“Stock”	means, where NHS Supply Chain is the Authority, Goods purchased by the Authority which are delivered and invoiced to the Authority to be held as stock until such time as the Authority’s customers place an order for such goods with the authority;
“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 Framework Agreement;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Supplier”	means the supplier named on the Order Form;
“Supplier Background IPR”	means IPR owned by or licensed to the Supplier and developed independently of the Contract whether developed before or after the Commencement Date;

"Supplier Code of Conduct"	means the Authority's code of conduct (if any) set out at Schedule 11 as amended from time to time in the reasonable discretion of the Authority;
"Supplier Software"	means the Software which proprietary to the Supplier (or an Affiliate of the Supplier) and is supplied by the Supplier for use in the provision of the Goods and/or Services (whether listed in the Order Form or not);
"System"	means the combination of Goods and Software working together the deliver the function and performance specified in the Specification;
"Tender Response Documents"	<p>for the purposes of the Contract, "Tender Response Documents" means:</p> <ul style="list-style-type: none"> (i) the Tender Response Document set out in the Framework Agreement; and, (ii) any information provided by the Supplier in response to the Authority's procurement exercise for the Contract (whether procured by direct call-off or re-opening of competition) which supplements, amends or updates (i) above, provided that the said information has been accepted by the Authority; <p>and, in the event that no information has been provided or accepted under (ii) above, then the phrase "Tender Response Documents" shall only refer to (i).</p>
"Term"	means the term as referred to in the Key Provisions;
"Third Party Body"	has the meaning given under Clause 14.4 of Schedule 2;
"Third Party Software"	means any all software proprietary to any third party (other than an Affiliate of the Supplier) or any open source software – in each case whether listed in the Order Form or not – which is or will be used by the Supplier for the purposes of providing the Services);
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Transparency Guidance"	the guidance in relation to the publication of tender documentation and the publication of contracts, available via:
"Update"	means a software release that incorporates improvements or needed changes (such as statutory changes, DSCN's / ISB's) or fixes to previously released software, including bug fixes and patches, feature enhancements, and database modifications. The release number of the Software will be updated from e.g. 2.0 to 2.1 or 2.1.3 to 2.1.4;

"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
"Upgrade"	means a software product that implements substantive new features and / or functionality. The release number of the Software will be from e.g. 2.0 to 3.0;
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax;
"Works Contract"	has the meaning given under Clause 1 of Schedule 6.

- 1.2 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 38.6 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 requirements set out in the Specification in the Tender Response Documents 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 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

Schedule 5

Additional Terms

1. Where, in accordance with Clauses 4.9 and 4.11 of Schedule 2, any of the parts listed in Clause 2 of this Schedule 5 are replaced, the replacement part shall be charged to the Authority on a pro-rata basis according to the proportion of twelve (12) months which has elapsed since the defective part being replaced was accepted by the Authority, such charge to be calculated by reference to the Contract Price.
2. The parts to which Clause 1 relates are as follows:
 - 2.1. RF amplifier tubes for MR scanners;
 - 2.2. X-ray tubes;
 - 2.3. X-ray tubes for CT scanners;
 - 2.4. Microwave vacuum device for linear accelerators;
 - 2.5. Gamma camera detector crystal for nuclear medicine equipment (in relation to which defects shall include but not be limited to yellowing or material deterioration or hydration and shall exclude damage due to mechanical or temperature shock or non-observance of operating or storage parameters, unless such damage has been caused by the Supplier, its agents or sub-contractors); and
 - 2.6. Ultrasonic transducers or transducer accessories (excluding those transducer accessories which have been designated by the Supplier as consumables) for ultrasound equipment which are agreed between the Supplier and the Authority to be unusable or unsafe (in relation to which defects shall exclude transducer damage due to mechanical shock, non-observance of operating or disinfection instructions, or the use of accessories which are not recommended by the Supplier, unless such damage has been caused by the Supplier, its agents or sub-contractors).
3. For the avoidance of doubt, the obligation to repair and/or replace Defective Goods in accordance with Clauses 4.9 and 4.11 shall extend to include all necessary removal and reconstruction of walls, partitions, ceilings and other facilities costs provided that the access facilities and local building conditions are not dissimilar to those at time of installation.

The minimum scan warranty shall be 150,000 tube rotations.

Schedule 6

Building & Preparatory Works and Installation Services

Where the Goods require building and preparatory works and/or installation services the following terms shall apply to this Contract:

Building and Preparatory Works

1. The terms and conditions applicable to any building and preparatory works shall be subject to a separate agreement³ between the Authority and the Supplier⁴ (the “**Works Contract**”).
2. The Supplier shall carry out its obligations in respect of any building and preparatory work in accordance with the Works Contract and to the Required Standards and time shall be of the essence of the Contract in respect of such obligations.
3. The Goods must be operational and ready for use on the completion date set out in the Works Contract or, where no such date is set out in the Works Contract, as agreed between the Authority and the Supplier in writing.
4. The Parties must not unreasonably withhold or delay approval of the Works Contract. In the event that no Works Contract is agreed, the Supplier shall ensure that the Goods are operational and ready for use within eight (8) weeks of the date of delivery to the Installation Site or as otherwise agreed between the Authority (or, where NHS Supply Chain is the Authority, NHS Supply Chain’s customer) and the Supplier.
5. The Authority (or, where NHS Supply Chain is the Authority, NHS Supply Chain’s customer) shall ensure that all reasonable steps are taken and all reasonable facilities are given to the Supplier to enable the Supplier to discharge its obligations under the Works Contract.

Installation of Goods

6. The Supplier shall satisfy itself that the Installation Site is suitable for the installation of the Goods and that access to the Installation Site is satisfactory and adequate for the purposes of the Contract. The Supplier shall carry out any agreed building and other preparatory work to the Installation Site (and any other parts of the premises, as appropriate) in accordance with the Works Contract (and as set out in paragraphs 1-5 of this Schedule 6) in preparation for the installation of the Goods.
7. The Supplier is responsible for the complete installation of the Goods, including off loading, erection, electrical and mechanical connections, testing and commissioning.
8. Without prejudice to either Party’s rights and remedies under this Contract, the Supplier shall be responsible for and shall pay any extra costs incurred by the Parties as a result of any discrepancies, errors or omissions in the Works Contract (whether or not approved by the Authority) provided that such discrepancies, errors or omissions are not due to inaccurate drawings, documentation or information supplied in writing by the Authority (or, where NHS Supply Chain is the Authority, NHS Supply Chain’s

³ **Important note:** As indicated at paragraph 1 above, these Call-off Terms and Conditions do not cover the performance of building and preparatory works. The Authority and Supplier must agree an appropriate form of contract to use for the works (e.g. from the JCT or NEC suites); and, each must take its own advice on negotiation and completion of the contract.

⁴ **Important Note:** it is the responsibility of the Authority and the Supplier to each take its own advice on the potential applicability of the Construction (Design and Management) Regulations 2015 (‘CDM Regs’) to its own works/installation project, and, to understand and discharge its legal duties under the CDM Regs.

customer), in which case The Authority (or, where NHS Supply Chain is the Authority, NHS Supply Chain's customer) shall be responsible for and shall pay any such extra costs.

Delayed Installation

9. Where the Authority has requested that the Supplier delays the agreed delivery date and such request is made after Last Call, the Supplier may claim any reasonable resulting additional costs incurred by the Supplier which are directly attributable to such delay.
10. The Supplier shall submit its claim under Clause 9 of this Schedule 6 in writing to the Authority as relevant together with a breakdown of the cost allocated for the installation, included in its original accepted quotation, together with such details as the Authority may reasonably require subject always to the Authority's right to reject such claim (in whole or in part) if in the reasonable opinion of the Authority such claim is not justified.

Storage Charges

11. Where delivery of the Goods is delayed, pursuant to Clause 9 of this Schedule 6, beyond an initial period of four (4) months, the Supplier may claim storage charges rates per week or part thereof per square foot of space occupied, in accordance with the rates set out in the Works Contract or, where such rate is not set out in the Works Contract, as otherwise agreed in writing by the Authority and the Supplier.
12. The Supplier shall apply for payment under Clause 11 of this Schedule 6 in writing to the Authority together with such details as the Authority may reasonably require subject always to the Authority's right to reject such application for payment (in whole or in part) if in the reasonable opinion of the Authority such claim is not justified.

Schedule 7

Software

General

- a) For the purposes of this Schedule 7, the capitalised term "**Use**" shall include use for the normal business purposes of the Customer, but shall include any act which is reasonably incidental to such use including the creation of as many copies of the Software as may be necessary to enable use of the Software and the maintenance of a reasonable number of back-up or test copies of the Software.
- b) Where the Goods include Software, or where Software is purchased on a 'standalone' basis, the provisions set out at Clauses 1 to 13 below shall apply (in addition to the other Call-off Terms)

Software Licence

- 1. The Software shall be supplied in accordance with a licence agreement in a form that is reasonably acceptable to the Customer and based on the principles set out in Clause 5 of this Schedule 7 (save where otherwise agreed between the Customer and the Supplier) but subject always to Clause 4 of this Schedule 7.
- 2. Where no separate licence agreement exists, the Supplier grants to the Customer a royalty-free perpetual right and licence to use the Software incorporating the provisions of this Schedule 7.
- 3. Where a licence agreement is granted pursuant to Clauses 1 or 2 of this Schedule 7 the Customer shall:
 - 3.1 not use the Software other than at the Installation Site where it is installed (unless agreed otherwise with the Supplier);
 - 3.2 subject to Clause 4 of this Schedule 7 not transfer to any third party any of the rights and obligations thereunder without the Supplier's prior written consent; and
 - 3.3 use reasonable endeavours to prevent unauthorised use of the Software.
- 4. For Goods purchased via the Non-direct Route of Supply: On the sale or transfer of the Goods (including Software), NHS Supply Chain's licence to use the Software shall pass to the purchaser or transferee of the Goods upon notification to the Supplier of the identity of the purchaser or transferee of the Goods.
- 5. Unless otherwise agreed in writing between the Supplier and the Customer, any licensing arrangements for the Software entered into pursuant to Clause 1 of this Schedule 7 shall comply with the following principles:
 - 5.1 The licence shall grant the Customer the right and licence to Use the Software in accordance with Clause 5 of this Schedule 7; and,
 - 5.1.1 the licence shall cover the Documentation, the Supplier Software, Third Party Software (subject to Clause 5.2 and 5.3) and the Specially Written Software (subject to Clause 5.4);
 - 5.1.2 the licence shall be royalty-free and non-exclusive;

- 5.1.3 the licence shall be perpetual; or, renewable if so indicated on the Order Form;
- 5.1.4 the licence shall not be cancelled, withdrawn, or rescinded by the Supplier except in the circumstances set out in Clause 5.5 (and subject to Clause 5.6);
- 5.1.5 the licence shall permit sub-licensing on the terms set out in Clause 5.7;
- 5.1.6 the licence shall permit Use of the Software by authorised users ("**Authorised Users**") which shall include each and any agent, employee, contractor or subcontractor of the Customer who is engaged or employed by the same and requires use of the Software to perform their functions.
- 5.1.7 The Customer shall not:
 - (a) without the express approval of the Supplier, make copies of or make or permit access to Software other than permitted by the licence.
 - (b) without the express approval of the Supplier, any reverse engineering, reverse assembly or decompilation of Software other than that permitted under the Software Directive and/or the licence.
- 5.1.8 The further provisions at Clauses 5.8-5.14 shall also be incorporated into the licence.
- 5.2 Not used
- 5.3 In respect of all Third Party Software (whether 'commercial off-the-shelf' software or otherwise): The Supplier shall (at its option) either (i) sub-licence the Third Party Software to the Customer on terms equivalent to those set out in Clause 5.1; or, (ii) use its reasonable endeavours to procure that the owners or the authorised licensors of such Third Party Software grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 5.1; or, (iii) if the Supplier cannot sub-licence to the Customer, or obtain for the Customer, a licence materially in accordance with the licence terms set out in Clause 5.1 in respect of any such Third Party Software, the Supplier shall:
 - 5.3.1 notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
 - 5.3.2 only use such Third Party Software if the Customer approves in writing the terms of the licence from the relevant Third Party.
 - 5.3.3 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Customer on terms no less favourable than such software is usually made available.

- 5.4 In addition to the rights set out at Clause 5.1 (and unless otherwise agreed with the Supplier):
 - 5.4.1 where Specially Written Software has been produced for the Customer, the Customer shall be granted the right to use the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
 - 5.4.2 where Specially Written Software has been produced for the Customer, the Customer shall be granted the right to use of all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software;
 - 5.4.3 where Project Specific IPR has been developed for the Customer in relation to Software, the Customer shall be granted right to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.
- 5.5 The licence shall not be cancelled, withdrawn, or rescinded by the Supplier unless:
 - 5.5.1 the Contract is terminated by the Supplier in accordance with sub-Clause 21.4 of Schedule 2;
 - 5.5.2 the Customer commits a material breach of the agreed licence terms which is not capable of remedy or, if capable of remedy, has not been remedied within a reasonable period of time (agreed between the Parties at the time);
 - 5.5.3 the Customer infringes any Intellectual Property in respect of Software and further infringement cannot or has not been avoided within a reasonable period of time (agreed between the Parties at the time);
 - 5.5.4 on the expiry of the term of a licence, which licence is stated (in the Order Form or otherwise) to be granted for a fixed term, where the Customer has failed to exercise its right to renew such licence (in which event the licence shall end automatically upon expiry of the non-renewed term);
 - 5.5.5 terminated by the Customer on the expiry of agreed notice in writing;
- 5.6 In the event of termination or expiry of the licence in accordance with Clause 5.5 above, the Customer shall discontinue Use of Software forthwith and shall confirm to the Supplier in writing within a reasonable time (agreed between the Parties at the time) that it has done so and has returned or destroyed any copies of such Software and associated Documentation.

- 5.7 The licence shall permit sub-licensing free of charge with the consent of the Supplier (such consent not to be unreasonably delayed withheld or refused) provided that:
- 5.7.1 the Customer shall be permitted to assign or novate the benefit and burden of this licence as a whole to any body which at the time in question succeeds to all or substantially all of the Customer's functions. All references in the licence to the Customer shall be construed as including any such body. The Supplier shall continue to comply with the provisions of the licence after any such assignment or novation;
 - 5.7.2 on the sale or transfer of the Goods (including the Software) to a Customer, NHS Supply Chain's licence to use the Software shall pass to the purchaser or transferee of the Goods upon notification to the Supplier the identity of the purchaser or transferee of the Goods;
 - 5.7.3 the sub-licence is on terms no broader than those granted to the original licensee.
- 5.8 The Supplier shall grant to the Customer a continuous, non-exclusive licence, at no additional cost to the Customer, to use applicable internal code on the Goods under the Supplier's or Third Party's standard terms and conditions for such code contained in the Order Form, subject to the Customer's rights under the Software Directive.
- 5.9 The Supplier acknowledges that the Software will be used in conjunction with the Customer's existing platform and Customer System at the Installation Site which may need to be upgraded from time to time.
- 5.10 Unless agreed otherwise with the Customer in writing (prior to the Customer placing an Order for the relevant Goods and/or Services), the Supplier shall make any Upgrades and Updates (and associated training) available to the Software free of charge as and when they become available including, for the avoidance of doubt, any Upgrades and/or Updates required to ensure the Software operates with the Customer's then current platform in use at the Installation Site which the Supplier acknowledges may vary from the platform in use at the time of original delivery and installation of the Software where support from the original manufacturer of such platform has been withdrawn.
- 5.11 The Supplier shall ensure that Upgrades and Updates will not adversely affect the operation or functionality of the System and/or the Customer System. Upgrades and Updates will only be loaded into the Customer's test environment, for testing and released into the live environment after consultation with the Customer. The Supplier will provide such Upgrades and Updates to the Customer as and when they become available along with supporting training sessions if required. Costs for the training and project management required for Upgrades and Updates are part of the Contract Price.
- 5.12 The Supplier will ensure that the quality of the Software is maintained when it has been updated or upgraded through e.g. configuration management, change management and release management.

- 5.13 The Supplier shall notify the Customer in advance if any Software or service permits the Supplier or any Third Party remote access to the Customer Software or Customer Systems.
- 5.14 The Customer's right to use applicable Software may be restricted if restrictions are specified in the Order Form.
6. If agreed in the relevant Order Form, the Customer and the Supplier shall enter into escrow arrangements with a reputable escrow agent.

Software General Provisions

7. The Supplier warrants that it has the right to grant to the Customer any rights to be granted hereunder (or under any other licence terms) and owns or has obtained valid licences to any Intellectual Property Rights necessary for the fulfillment of all its obligations under this Contract.
8. The Supplier shall indemnify the Customer against any claim that the normal use or possession of the Software infringes the Intellectual Property Rights of any third party provided that the claim does not arise as a result of the use of the Goods and/or Software in combination with any equipment not supplied or approved by the Supplier.
9. The Customer shall give to the Supplier control of any claim referred to in Clause 7 of this Schedule 7, shall not prejudice the Supplier's defence of such claim and shall give the Supplier all reasonable assistance with such claim. The Supplier shall have the right to replace or change all or any part of the Goods or the Software for goods or software that provide the same functionality and performance levels in order to avoid any such infringement.
10. The Supplier warrants that the Software as delivered will be free and clear of all liens and encumbrances (except as otherwise set forth in this Contract) and will be free from defects in material and workmanship and will confirm in all material respects to the Specification and be fit for the intended use of the Software when used in accordance with any reasonable instructions of the Supplier. Any defects in the Software will be dealt with in accordance with Clauses 4.9 and 4.11 of Schedule 2.
11. For Third Party Software, in addition to the warranty provided under Clause 10 of this Schedule 7, the original supplier's warranty in a form reasonably acceptable to the Customer shall apply and the Supplier shall procure that the benefit of that warranty is transferred to the Customer.

Allocation of IPR

12. Save as expressly granted elsewhere under this Contract:

- 12.1. the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
- 12.1.1. in the Supplier Software;
 - 12.1.2. the Supplier Background IPR;
 - 12.1.3. in the Third Party Software;
 - 12.1.4. the Third Party IPR;

- 12.1.5. the Specially Written Software;
 - 12.1.6. the Project-Specific IPR.
- 12.2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
- 12.2.1. Customer Software;
 - 12.2.2. Customer Background IPR; and
 - 12.2.3. Customer Data.
- 12.3. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 12 above, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 12.4. Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Recommended Items

13. The Supplier expressly confirms to the Customer that the Software modules and licence types and other items listed in the Order Form as being "Recommended Items" will, assuming the correct operation of such software and other items, meet all of the functional and other requirements set out in the Order Form as applicable to such items and will enable the Supplier to deliver, and the Customer to receive the benefit of, the Services, in the manner specified in the Tender Response Document. Accordingly, regardless of the identity of the supplier of any such Recommended Items, the Supplier hereby agrees that it shall be liable to the Customer for the suitability of such Recommended Items for such purposes.

Schedule 8

Rental Terms and Purchase Plan Terms

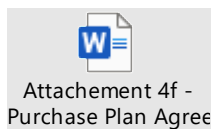
A. Rental Terms

Where Goods are made available to the Authority by the Supplier on rental or lease basis, the Parties shall enter into a rental agreement on the terms embedded below (Rental Agreement Template); or, on terms substantially similar to those embedded below:



B. Purchase Plan Terms

Where Goods are made available to the Authority by the Supplier in consideration for the purchase of an agreed quantity or value of Equipment Outputs or Consumables from the Supplier (e.g. 'pay per scan/view'), the Parties shall enter into a Purchase Plan Agreement on the terms embedded below (Purchase Plan Agreement Template; or, on terms substantially similar to those embedded below:



Schedule 9

Supplemental Security Requirements

Application

The following provisions shall apply to a Contract where:

- i. the Supplier has (or will have) access to any Customer Information and/or any Customer Records in the performance of the Contract;
- ii. the Supplier has (or will) access and/or interact with any Customer System (in whole or part) in the performance of the Contract – this includes, but is not limited to, any interoperability between Software and the Customer System.

Definitions

In this Schedule 9, the following definitions shall apply in addition to those set out in Schedule 4:

"Customer Information"	shall mean all Customer Data, Confidential Information, Intellectual Property Rights and other data or information, however it is conveyed or received, that (without prejudice to the foregoing) belongs to, is licensed to and/or relates to the customers, business affairs, development, trade secrets, business plans, know-how, personnel or suppliers of the Customer together with any information derived from any of the above;
"Customer Records"	shall mean any record of Customer Information in any format or media which provides evidence of business activity;
"Customer Security and Cyber Policies and Rules"	shall mean all policies, standards and rules encompassed within the policy framework owned by the Customer;
"Cyber Attack"	shall mean any unauthorised attempt to gain unauthorised control, disrupt or cause a denial of service in relation to the Customer Information and / or the Customer System;
"DDoS Attack"	shall mean a distributed and non distributed denial of service attempt or attempts to make an online service unavailable by overwhelming it with Traffic or connections from multiple sources;
"Good Industry Practice"	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the

	same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
"IT Disaster Recovery and Business Continuity Policy"	shall mean the Customer's policy relating to IT disaster recovery and business continuity in place from time to time;
"Malicious Traffic"	shall mean Traffic, including any unauthorised communication data that contains Malware which is being or is likely to be being transmitted solely for the purposes of a Cyber Attack;
"Malware"	shall mean any software, computer program, code or programming instructions intentionally constructed with the ability to damage, adversely alter, adversely interfere with or otherwise adversely affect, computer programs, data files, equipment, software or operation of computer systems, including Customer System or Supplier System or any other computer program code typically designated to be a 'virus', 'worm', 'trojan,' 'time or logic bomb', 'disabling code', 'authorisation key', 'licence control utility' or 'software lock' or 'routine key-logger', 'sniffer', 'backdoor' or similar;
"Records Policy"	shall mean as defined in Paragraph 8.1;
"Recovery Point Objective" or "RPO"	shall mean the acceptable amount of data loss measured in time following the failure of a system;
"Recovery Time Objective" or "RTO"	shall mean the time required to switch from the primary system to a disaster recovery system from the point of recovery invocation;
"Required DDoS Filtering Capacity"	shall mean 150% of the capacity required to prevent the largest DDoS Attack at any time publicly reported or known;
"Security and Cyber Incident"	shall mean as defined in Paragraph 4.1.7;
"Security Incident Management Procedures"	shall mean as defined in Paragraph 4.1;
"Security and Cyber Policy"	shall mean as defined in Paragraph 2.1;
"Security Audits"	shall mean as defined in Paragraph 10.1;

"Security and Cyber Standards"	<p>shall mean any standards reasonably applicable, given the Supplier's expertise and the Services provided, and which shall always include:</p> <ol style="list-style-type: none"> 1. ISO/IEC 27000 series of Information Security Management standards; 2. '10 Steps to Cyber Security' guidance, as amended from time to time and currently available at: https://www.ncsc.gov.uk/guidance/10-steps-cyber-security; 3. National Data Guardian data security report/standards/recommendations; 4. NCSC – Cloud Security principles; and 5. ISO 15489 (unless otherwise specified in the Order Form); 6. ISO 20000 (unless otherwise specified in the Order Form); and 7. any other applicable standards specified by the Customer in the Order Form.
"Social Media Incident"	<p>shall mean a post or series of posts that expose Customer Information including information about the Customer's clients or colleagues to unauthorised individuals and/or damages the reputation of the Customer;</p>
"Supplier Group"	<p>the Supplier and any of its subsidiaries, with subsidiaries having the meaning defined by section 1159 of the Companies Act 2006 (or any statutory modification or re-enactment of that Act) but for the purposes of section 1159(1) Companies Act 2006 a company shall be treated as a member of another if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security); or (ii) a person as nominee for the company;</p>
"User ID"	<p>shall mean as defined in Paragraph Error! Reference source not found.;</p>

1. General Security Obligations

- 1.1 Except as strictly required to provide the Services in accordance with the terms of this Call-Off Contract, the Supplier shall not:
- 1.1.1 make use of Customer Information or Customer System or Customer Records for any other purpose;
 - 1.1.2 purport to sell, let for hire, assign rights in, declare a trust of or otherwise dispose of or commercially exploit any Customer Information;
 - 1.1.3 make any Customer Information or Customer Records available to any third party; or
 - 1.1.4 intercept, analyse or otherwise monitor the traffic which passes through the Customer System.

2. Security Policy Requirements

- 2.1 The Supplier shall at all times have in place, implement, maintain, and on request provide to the Customer, a security and cyber policy/policies ("**Security and Cyber Policy**") which sets out the security and cyber procedures related to the Supplier's (and its sub-contractors') performance of the Services.
- 2.2 The Supplier's Security and Cyber Policy shall be designed to protect Customer Information, Customer Records and Customer Systems and shall be periodically updated and audited in accordance with this Schedule and Good Industry Practice. The Security and Cyber Policy will set out the security and cyber measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and shall at all times comply with and specify security and cyber measures and procedures which are sufficient to ensure that the Supplier and each of its Sub-contractors complies with its obligations in accordance with this Schedule.
- 2.3 The Security and Cyber Policy shall include, without limitation, details of the processes implemented by the Supplier in respect of the following security and cyber measures and procedures:
 - 2.3.1 the controls in place to detect and effectively manage and resolve any Security and Cyber Incident;
 - 2.3.2 details of vetting procedures undertaken by the Supplier on Supplier Personnel and Sub-contractor personnel to the extent that such personnel have access to any Customer Information, the Customer System or Customer Records;
 - 2.3.3 the procedures to be followed in the event of a breach of the Security and Cyber Policy by Supplier Personnel and/or Sub-contractor Supplier Personnel;
 - 2.3.4 (without prejudice to any right of the Customer to approve or reject the use of Sub-contractors) details of the security and cyber arrangements at any Sub-contractor premises used in the performance of the Supplier's obligations under this Call-Off Contract.
 - 2.3.5 the Supplier's control for preventing any unauthorised use, alteration or destruction of Customer Information and Customer Records by Supplier Personnel, a Sub-contractor or by any other Party;
 - 2.3.6 the Supplier's encryption controls for protecting Customer Information, in line with the Security and Cyber Standards;
 - 2.3.7 physical and logical access, including the following:
 - (a) restricting access to Customer Information in any shared environment such that any person who is not authorised by the Customer to do so, may not gain such access;
 - (b) the logical access controls in place to protect information from unauthorised access including, without limitation, limiting the access assigned to users to control their capabilities, and providing access only where authorised;

- (c) ensure that any Customer Information stored on the Supplier's systems are logically separated from the Supplier's own data and the data of any other Party;
- 2.3.8 the Supplier's preventative, detective and remediation requirements to safeguard the Customer System from vulnerabilities and Malware introduced by Supplier Personnel, a Sub-contractor or by any other Party;
- 2.3.9 the Supplier's anti-virus software, other security and cyber software controls (such as firewalls, anti-Malware, intrusion detection);
- 2.3.10 the security and cyber testing policy for web sites hosted by the Supplier;
- 2.3.11 the Supplier's controls for testing and applying security patches; and
- 2.3.12 the Supplier's system development and testing controls.
- 2.4 As soon as reasonably practicable (and in any event within 5 Business Days) following a request by the Customer (or as part of a scheduled audit) the Supplier shall provide the Customer with a copy of the Security and Cyber Policy complete with the most recent updates.
 - 2.4.1 The Supplier must appoint an accountable senior executive to be responsible for the Security and Cyber Policy and ensure it is updated at least annually (or more frequently as it considers it necessary to do so) and must in any event update the Security and Cyber Policy as follows:
 - (a) if any change to an applicable Law, the Customer Security and Cyber Policies and Rules or any other Customer policy is introduced and such change necessitates a change to the security and cyber measures and procedures required to provide or receive the Goods and/or Services;
 - (b) if the Customer reasonably believes that the Security and Cyber Policy is inconsistent with any applicable Law, local or national regulation (for regulated entities), or Good Industry Practice.
- 2.5 The Supplier shall appoint a member of Supplier Personnel to be responsible for Security and Cyber Policy compliance within the Supplier's organisation. The responsible member of Supplier Personnel shall ensure that:
 - 2.5.1 all Supplier Personnel and Sub-contractors understand the process and conditions under which they should, or are required to, invoke and execute any applicable security incident management procedures; and
 - 2.5.2 Supplier Personnel are aware of when they should escalate Security and Cyber Incidents to their senior managers so as to promote active communication, even on issues of relatively minor concern.

3. Training

- 3.1 The Supplier shall provide appropriate security and data protection training and awareness as a part of their employee induction process and ensure such training is repeated at appropriate intervals by all Supplier Personnel.

4. Incident Management

- 4.1 Prior to the commencement of the Services the Supplier shall develop, implement, and maintain (as part of, or separately to, the Security and Cyber Policy) a procedure ("**Security Incident Management Procedure**") for identifying, preventing, monitoring, reporting and responding to:
- 4.1.1 the introduction and/or presence of any Malware;
 - 4.1.2 emerging security and cyber incidents including without limitation crime (e.g. theft of property or data); actual or attempted fraud (external and internal employee fraud); unauthorised access to Customer Information, data and / or Customer Systems; Cyber Attacks including DDoS Attacks; physical security breaches and cyber breaches compromising or breaching the security of Customer Information/Data/Systems and/or involving data leakage and/or data corruption; any incidents which risk impacting the provision of Services to the Customer;
 - 4.1.3 any observed or suspected security and cyber risks or security and cyber incidents in any Supplier System or Supplier network that interconnects with the Customer infrastructure or material Supplier infrastructure (where this is applicable), or that retains Customer Information or Customer Records;
 - 4.1.4 any observed or suspected security and cyber risks or security and cyber incidents in the Customer infrastructure or material Supplier infrastructure including any that interconnects with any other Supplier System or third party system or network as a result of that interconnectivity (where this is applicable);
 - 4.1.5 any incident resulting in or potentially resulting in loss of Customer Records or interruption to business or IT continuity;
 - 4.1.6 any incident that may be indicative of larger, adverse security or cyber related events (for example, DDoS Attacks or Malware penetration) that the Supplier discovers or becomes aware of during the provision of the Services; and
 - 4.1.7 any actual or attempted unauthorised access to or use of any of the Customer infrastructure or material Supplier infrastructure, Customer Information, Customer Records or any sites, facilities, systems or other premises of the Supplier used to provide the Services to the Customer,
- each of which in Paragraphs 4.1.1 to 4.1.7 (inclusive) is a "**Security and Cyber Incident**".
- 4.2 The Security and Cyber Incident Management Procedure shall detail the following obligations of the Supplier, all of which shall be invoked upon the Supplier becoming aware of a Security and Cyber Incident, where it relates to any aspects of the Services the Supplier shall:
- 4.2.1 take all steps necessary to remedy such Security and Cyber Incident and/or to protect Information, infrastructure and Customer Records against any Security and Cyber Incident within agreed service levels specified within this Call-Off Contract;
 - 4.2.2 take all steps necessary to prevent a similar Security and Cyber Incident in the future;
 - 4.2.3 where appropriate, support the recovery process via all reasonable means (whether the incident relates to data or financial loss);

- 4.2.4 provide relevant findings from any internal investigations, or take all reasonable steps necessary to provide any assistance to any investigation that the Customer or a third party (appointed by the Customer) requires, including making employees available for interview by the Customer or its appointed third party and supporting any referral to a law enforcement agency or regulator;
- 4.2.5 at the Customer's request, return to the Customer any Customer Information or Customer Records in the Supplier's or its Sub-contractor's possession;
- 4.2.6 where the Security and Cyber Incident relates to the Customer infrastructure, comply with all reasonable directions of the Customer in connection with the remedy of the breach and/or protection of the Customer infrastructure; and
- 4.2.7 provide the Customer in writing with full details of the steps taken to remedy each actual, potential, threatened or attempted Security and Cyber Incident.

5. Information and Cyber Security

- 5.1 The Supplier must protect Customer Information in accordance with the data classification and handling requirements as notified to the Supplier by the Customer from time to time.
- 5.2 Where a significant change may affect the provision of Services or Customer Information, Records or data, the Supplier shall give the Customer not less than twenty eight (28) days' notice of the proposed changes in order that a security test may be arranged.
- 5.3 Where a vulnerability is identified in the Supplier's System that hosts or supports Customer Information and processes it shall be remediated expeditiously by the Supplier and in any event within the timescales specified by the Customer. The Supplier shall amongst other things be liable to the Customer for any losses suffered by the Customer resulting from either an unpatched or an unsupported element of the Supplier System where an update or a patch was not made available at least 5 Working Days prior to the Cyber and Security Incident causing the loss.
- 5.4 The Supplier shall not introduce or permit the introduction of any Malware or vulnerabilities into, or be the source of any malicious activity against, any of the Customer's infrastructure (for example, Malware, spamming or denial-of-service attack). Where any Malware or vulnerability is identified by the Supplier which may pose an actual or potential threat to the Customer or the Supplier, the Supplier shall promptly notify the Customer of the same and provide details in writing of any such Malware or vulnerabilities to the Customer, including the Supplier's proposed remediation plan, or actions taken in response.
- 5.5 If Malware or a vulnerability is introduced on to the Customer System by a member of Supplier Personnel or Sub-contractor, the Supplier shall reimburse the Customer for the costs and expenses that arise as a consequence of the Customer taking all actions required to remediate the vulnerability.
- 5.6 The Supplier shall not, without the prior written consent of the Customer insert or allow the insertion of any code that would disable, shut down or otherwise materially adversely impact all or any portion of the Customer's infrastructure.

6. Data Security and Logical Access Control

- 6.1 The Supplier shall hold no Customer Information or Customer Records on any portable device in any media (including but not limited to a laptop, CD, USB memory stick and all other similar media).
- 6.2 The Supplier shall not access the Customer infrastructure and/or the Customer Information on the Customer infrastructure and/or access the Customer's assets without the prior written consent of the Customer, which consent may be withheld in the Customer's absolute discretion. If the Supplier requests such consent and such consent is given, the Supplier shall comply with the Customer's infrastructure security and cyber measures as detailed in the Customer Security and Cyber Policies and Rules to guard against any unauthorised access to, and against any alteration or destruction of, the Customer infrastructure and/or Data stored on such system.

7. Physical and people security

- 7.1 The Supplier must ensure that a general security review of all premises from which the Customer's activity / data storage etc. is conducted should be undertaken at least annually, or as otherwise required to reflect changes in physical security requirements.
- 7.2 The Supplier shall alert the Customer within twenty four (24) hours of the discovery of any identified physical security issues.
- 7.3 The Supplier must implement appropriate risk related countermeasures to:
 - 7.3.1 ensure the Supplier's premises are protected, to an agreed level, against unauthorised access, intrusion, or damage due to a Security and Cyber Incident;
 - 7.3.2 minimise the probability of an interruption to Supplier's business operations and Services provided to the Customer from a Security and Cyber Incident;
 - 7.3.3 protect to agreed levels, the confidentiality, integrity and availability of the Customer Information.

8. Records Management

- 8.1 The Supplier will develop, implement and maintain a records policy containing mandatory requirements to ensure all records, in all formats/media, including electronic and physical in any location (including the Supplier Group records) are managed appropriately by the Supplier throughout their lifecycle. Such records policy (the "**Records Policy**") will align to Good Industry Practice as a minimum.
- 8.2 The Records Policy shall be periodically updated (every twelve (12) months as a minimum) and shall be subject to audit in accordance with the terms of this Contract.
- 8.3 The Supplier and its Sub-contractors will securely store and protect the Customer Records in accordance with the provisions of this Schedule, and in any event in accordance with Good Industry Practice to ensure the records are reliable, usable and can be read and retrieved effectively.
- 8.4 The Supplier and its Sub-contractors will agree a process to enable the Customer to retrieve any Customer Records within agreed timescales to fulfil legal, regulatory, Customer or business requirements.
- 8.5 The Supplier and its Sub-contractors will retain all the Customer Records for a specific period of time in line with any Customer Policies of which it is made aware,

appropriate record retention practices and, where applicable, with Data Protection Legislation.

- 8.6 The Supplier and its Sub-contractors must ensure they can apply legal holds to prevent destruction of the Customer Records. A process must be agreed with the Customer to apply legal holds to any records (electronic and physical) being managed by the Supplier and its Sub-contractors upon notification from the Customer.

9. Social Media

- 9.1 The Supplier shall ensure that the Supplier Personnel are subject to appropriate social media policies in order to protect the Customer and its information.

- 9.2 The Supplier shall ensure that Supplier Personnel shall not:

- 9.2.1 make reference to the Customer's business information (including key IT systems and processes) or dealings relating to the Customer's colleagues, customers, clients, partners, or suppliers;
- 9.2.2 post opinions on personal social media accounts, which could reasonably be construed as official comment on behalf of the Customer;
- 9.2.3 post anything about the Customer, its customers, clients or colleagues containing abusive, obscene or libellous comments; or
- 9.2.4 use the NHS logo, associated brands or trademarks on social media channels without the prior written approval of the Customer.

- 9.3 The Supplier will ensure that:

- 9.3.1 Supplier Personnel have undertaken and understood the requirements set out in social media awareness training;
- 9.3.2 any exceptions to the ordinary use of social media in relation to this Call-Off Contract are subject to prior written agreement from the Customer; and
- 9.3.3 Social Media Incidents are reported to the Customer.

10. Security Audits

- 10.1 The Customer reserves the right to inspect any aspect of the security arrangements and processes relating to the Supplier's and/or its Sub-contractors' provision of the Services and its Processing of Personal Data (including the Supplier's and/or its Sub-contractors' security environment, arrangements, policies, training arrangements for staff and processes used in the performance of the Services) ("**Security Audits**") once in each twelve (12) month period during the Term of the Call-Off Contract, to assess the Supplier's compliance with the requirements of this Call-Off Contract. Where the Supplier has performed independent reviews of Sub-contractors and is able to share these findings, these will be taken into consideration during the Security Audit. The Customer shall also have the right to conduct additional Security Audits in the following circumstances:

- 10.1.1 if the Customer considers it necessary to do so to satisfy applicable Law or local or national regulation;

- 10.1.2 following an actual or potential Security and Cyber Incident or Personal Data Breach or becoming aware of any actual or potential threat;
 - 10.1.3 if a Security Audit reveals a deficiency in the Security and Cyber Policy;
 - 10.1.4 if the Customer acting reasonably believes that the Supplier has failed to provide the Services in accordance with the security measures and obligations imposed on the Supplier under this Schedule and any solutions provided by the Supplier from time to time in accordance with Paragraph 10.2.3 ; and
- 10.2 where the provisions of Paragraph 10.1 apply:
- 10.2.1 Security Audits may include tests designed to breach the protections set out in the Security and Cyber Policy and associated security measures (including security penetration testing) and shall be conducted with no less than ten (10) days' prior written notice. Security Audits may also require the Supplier to demonstrate their capability in providing the Services on an uninterrupted or otherwise unaffected basis in the event of Security and Cyber Incidents.
 - 10.2.2 The Supplier shall make available to the Customer, at the request of the Customer and where the Customer's Information is hosted any Supplier computer systems, Supplier Personnel to assist in any Security Audit and the Supplier will co-operate fully with any investigation relating to their operations.
 - 10.2.3 If the Customer reasonably believes that the results of a Security Audit identify a weakness in the security measures adopted by the Supplier, the Supplier shall evaluate such weakness and provide a suitable solution to the Customer's satisfaction within timescales agreed by the Customer. The results of any Security Audit and any solution provided pursuant to this Paragraph shall be without prejudice to the Supplier's obligations in this Call-Off Contract.
- 10.3 Following a Security Audit:
- 10.3.1 the Customer may conduct an exit conference with the Supplier to confirm material facts identified in the Security Audit; and
 - 10.3.2 if a Security Audit demonstrates that the Supplier is failing to comply with this Schedule 9, the Supplier shall promptly take any steps which the Customer, acting reasonably, determines are necessary for it to comply with this Contract within the timescales as required by the Customer.
- 10.4 Where the Supplier receives notice from a regulator that a regulatory audit or investigation is to be carried out in respect of the Supplier's business or affairs the Supplier shall inform the Customer of such notice as soon as is reasonably practicable, subject to Paragraph 10.5.
- 10.5 Where the Supplier is subject to a conflicting obligation not to disclose such notice, audit or investigation (which obligation has been imposed by the relevant regulator or by applicable Law) then the Supplier shall be relieved from complying with Paragraph 10.4 for the period that such conflicting obligation is in force

Schedule 10

Technology and AI Principles

1. Where artificial intelligence techniques are deployed in any of the Goods and/or Services supplied ("**AI Solution(s)**")⁵, the Supplier remains liable for the actions and decisions of the AI Solution in the provision of the contracted Goods and/or Services.
2. In accordance with its general obligation at Clause 1.1.5 of Schedule 2, the Supplier shall comply with any and all Law and Guidance applicable to the use of data-driven health and care technology (including, without limitation, artificial intelligence techniques)⁶ in the performance of the Contract.
3. Without prejudice to the generality of Clause 30.3 of Schedule 2, the Supplier agrees to provide all reasonable support, information and assistance requested by the Customer in order to enable the Customer to verify the Supplier's compliance with paragraph 2 above.
4. The Supplier agrees to provide all reasonable support, information and assistance requested by the Customer in order to enable the Customer to comply with Law and Guidance applicable to the use of data-driven health and care technology (including, without limitation, artificial intelligence techniques) in connection with the Contract (insofar as the same applies to the Customer).
5. The Supplier agrees to provide all reasonable support, information and assistance requested by the Customer in order to enable the Customer to carry out an impact assessment in connection with any AI Solution (whether the AI Solution is proposed or implemented).
6. The Supplier agrees to provide all reasonable support, information and assistance requested by the Customer in order to enable the Customer to 'map out' the decision process carried out by the AI Solution (whether the AI Solution is proposed or implemented)⁷.
7. It is the Supplier's responsibility to set out clearly for the Customer all of the data that the AI Solution requires in order to produce the outputs and functions required by the Customer. It is the Customer's responsibility (subject to the Supplier's compliance with the previous obligation) ensure that the AI Solution has access to the data required.

⁵ See footnote 2 below.

⁶ See the Department of Health & Social Care's "[Guide to good practice for digital and data-driven health and care technologies](#)" (as may be updated or superseded from time to time) for an explanation of what is meant by digital and data-driven health and care technologies and artificial intelligence (as used in a health and care context).

⁷ This is intended to allow the Customer to consider what risks may be inherent in the AI Solution and what type of authorisation will be required by the AI Solution in order for it to make the required decisions, and/or to carry out actions, and at what stage.

8. The Supplier shall ensure that the AI Solution is developed and configured so that it does not discriminate against certain individuals, or lend bias to certain data, in making decisions and/or taking actions.
9. The Supplier shall ensure that there is a way to immediately 'turn off' any AI Solution deployed in Goods and/or Services supplied, and to disconnect and separate it from the Customer System. Upon notice by the Customer (and immediately in an emergency, as determined by the Customer) the Supplier shall 'turn off' the AI Solution.
10. The IPR in any outputs/Deliverables of an AI Solution shall be allocated as set out in Clause 17.2 of Schedule 2 unless specified otherwise in the Order Form (and such alternative allocation of IPR is set out in the Order Form).
11. This Schedule 10 is to be read and construed in conjunction with the other general or specific provisions of the Contract applicable to the use of data-driven health and care technology in the performance of the Contract. This includes (without limitation) any supplemental terms relating to technology and/or AI which are included in the Order Form.
12. The Supplier shall comply with the above obligations at no additional cost to the Customer.

Schedule 11

Supplier Code of Conduct



Supplier Code of
Conduct.pdf

Schedule 12

Operational Requirements of Suppliers



Operational
Requirements of Suppliers
