



**TERMS AND CONDITIONS  
FOR THE PURCHASE OF GOODS  
AND SERVICES**

## **TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS SERVICES**

This Contract is subject to the terms set out in the schedules listed below (“**Schedules**”) to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

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

The Purchase Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these terms. The Purchase Order shall be deemed to be accepted on the earlier of:

- the Supplier issuing a written acceptance of the Purchase Order; or
- the Supplier doing any act consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

The Definitions in 0 apply to the use of all capitalised terms in this Contract.

### **Schedules**

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## **Schedule 1**

### **General Terms and Conditions**

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## **1 Purchase of Goods and Services**

- 1.1 The Customer appoints the Supplier as a supplier of Goods and Services ordered by the Customer under this Contract. Such Goods and Services shall be supplied:
- 1.1.1 promptly and in any event within any time limits as may be set out in the Specification;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 using reasonable skill and care in their provision and delivery;
  - 1.1.4 using reasonable skill and care in their installation, associated works and training to the extent that such installation, works or training is a requirement of this Contract;
  - 1.1.5 in accordance with any quality assurance standards as set out in the Specification;
  - 1.1.6 in accordance with the Law and with Guidance;
  - 1.1.7 in accordance with Good Industry Practice;
  - 1.1.8 in accordance with the Policies; and
  - 1.1.9 in a professional and courteous manner.

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

- 1.2 The Supplier shall comply fully with its obligations set out in the Specification (to include, without limitation, any KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods and 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 provisions of the Customer's requirements set out in the Specification) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods and Services are in place prior to the delivery of any Goods or supply of any Services to the Customer.
- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods and 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 shall respond promptly 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.
- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation

to the Goods and Services, the Supplier shall promptly provide the Customer with a copy of any such reports, notices, alerts or other communications.

- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 1, 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 with any such request.
- 1.8 The Supplier shall ensure the Goods are inspected and tested for compliance with this Contract before dispatch.
- 1.9 The Supplier shall not (except with the prior written consent of the Customer) supply goods or services similar to the Goods or Services directly to End Customers.
- 1.10 The Parties acknowledge that the Goods and Services supplied pursuant to this Contract are procured in order to fulfil an obligation on the Customer to supply the Goods and Services to its relevant End Customer(s).
- 1.11 The Supplier shall comply with any reasonable requests or directions of the Customer or the relevant End Customer in relation to the provision of Goods and Services.

## **2 Delivery**

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times which may be specified by the relevant End Customer) set out in the Specification.
- 2.2 Delivery 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. The Customer shall procure that such 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. Any arrangement by which the Goods are collected by the Customer in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Customer collects the Goods, collection is deemed delivery for the purposes of the Contract.
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification 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, the name and address of the Customer, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned.
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the 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 2.4 of this Schedule 1, 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.

- 2.5 Unless otherwise set out in the Specification or agreed with the Customer in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 1, unless otherwise stated in the Specification or agreed with the Customer 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 Customer as to the country of origin of the Goods and shall be liable to the Customer for any extra duties or taxes for which the Customer may be accountable should the country of origin prove to be different from that set out in the Specification.
- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Customer and accordingly the Supplier shall be liable to the Customer for the acts and omissions of all third party carriers engaged to deliver the Goods to the Customer.
- 2.7 In the event that the Customer is unable to accept delivery of any Goods, the Supplier shall store and safeguard the Goods, take all reasonable steps to prevent their deterioration, loss or damage, and work with the Customer to ensure their successful re-delivery.

### **3 Passing of risk and ownership**

- 3.1 Risk in the Goods shall pass to the Customer 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 and accepted.
- 3.2 Ownership of the Goods shall pass to the Customer on the earlier of:
- 3.2.1 full payment for such Goods; or
  - 3.2.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3.2.2 of this Schedule 1, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Customer as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Customer in relation to such Goods.
- 3.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Contract shall be and remain at the sole risk of the Supplier, whether or not they are situated at a delivery location.

### **4 Inspection, rejection, return and recall**

- 4.1 As relevant and proportionate to the Goods in question and subject to reasonable written notice, the Supplier shall permit any person authorised by the 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 the requirements of this Contract and/or that stock holding and quality assurance processes are in accordance with the requirements of this Contract.

- 4.2 Without prejudice to the provisions of Clause 4.6 of this Schedule 1 and subject to Clause 4.7 of this Schedule 1, the Customer shall visually inspect the Goods within a reasonable time following delivery (or such other period as may be agreed between the Customer and the Supplier) and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract ("**Rejected Goods**"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 4.3 Without prejudice to the provisions of Clause 4.5 of this Schedule 1, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 1, the Supplier shall at the Customer's written request:
- 4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the Customer rejecting the Goods; and
  - 4.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Customer subject to the Customer not cancelling its purchase obligations in accordance with Clause 4.5 of this Schedule 1.

If the Supplier requests and the Customer accepts that the Rejected Goods should be disposed of by the Customer rather than returned to the Supplier, the Customer reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall pay any such costs in accordance with any agreed timescales and in any event within 30 days of receipt of a valid invoice.

- 4.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 1; or (b) immediately following the expiry of ten (10) Business Days from the Customer issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Customer issuing written notification rejecting the Goods, the Customer may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 4.5 Where the Customer rejects any Goods in accordance with Clauses 4.2 and/or 4.6 of this Schedule 1 and the Customer no longer requires replacement Goods, the Customer may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Customer have paid for such Rejected Goods the Supplier shall refund such payment to the Customer within thirty (30) days of the Customer cancelling such purchase obligations and informing the Supplier that the Customer does not require replacements for such Rejected Goods.
- 4.6 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.7 of this Schedule 1, 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 Customer's discretion:

- 4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
  - 4.6.2 upon written notice of rejection from the Customer, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.5 of this Schedule 1.
- 4.7 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.5 (inclusive) and/or Clause 4.6 of this Schedule 1 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.
- 4.8 The Customer's rights and remedies under Clause 4.6 of this Schedule 1 shall cease within a reasonable period of time from the date on which the Customer discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be agreed between the Customer and the Supplier, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Customer they met any shelf life requirements set out in the Specification.
- 4.9 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Supplier shall:
- 4.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, end service users and the Customer as well as compliance by the Supplier with any regulatory requirements) notify the Customer in writing of the recall together with the circumstances giving rise to the recall;
  - 4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.6 of this Schedule 1;
  - 4.9.3 consult with the Customer as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Customer of the recall; and
  - 4.9.4 indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Customer as a result of such Requirement to Recall.
- 4.10 In the event that the Supplier in the Customer's reasonable opinion is in breach of Clause 1 of this Schedule 1, the Customer may refuse to accept any Goods and Services related to that breach and will give the Supplier written notice of the nature of the breach. Where the non-conformance can be rectified in the Customer's opinion, the Supplier must then rectify and resubmit the Goods and Services for acceptance



within a reasonable period as specified in the Customer's notice or, if no period is specified, then promptly.

- 4.11 Following resubmission in accordance with Clause 4.10 of this Schedule 1, if the non-conformance has not been rectified, or where the non-conformance cannot be rectified, the Customer may in its sole discretion: (i) accept the Goods and Services subject to a reasonable reduction and/or (if already paid) refund the Contract Price; or (ii) reject the Goods and Services and the Supplier shall refund to the Customer (within fourteen (14) days of the date of the rejection) all sums paid in respect of such Goods and Services (and any other Goods and Services that in the Customer's opinion cannot be used for their intended purpose as a result); or (iii) recover from the Supplier any costs reasonably incurred by the Customer or its End Customer in obtaining substitute services from another supplier. If the Customer exercises its rights under (ii) or (iii) of this Clause 4.11, it may at its option terminate this Contract by written Termination Notice with immediate effect for material breach.
- 4.12 The Supplier shall track the shelf life of Goods supplied pursuant to this Contract and provide reporting at the reasonable request of the Customer to enable the Customer to effectively manage any expiry or swap out requirements.

## **5 Staff and Lifescience Industry Accredited Credentialing Register**

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall 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 for the duration of the Contract all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) and has the qualifications to carry out their duties.
- 5.6 The Supplier shall comply with the Customer's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Customer in writing.
- 5.7 Unless otherwise confirmed by the Customer in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Customer (to include as may be set out as part of any procurement

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

- 5.8 For Services performed on a time and materials basis, the Supplier shall not use personnel to perform those Services whose rate reflects a competency level greater than that reasonably required to the relevant Service.

## **6 Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Customer's business continuity plan where relevant to the supply of the Goods and Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification.

- 6.2 For the duration of this Contract, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.2.1 the criticality of this Contract to the Customer; and

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

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

- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the 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 6.3 of this Schedule 1 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.

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

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

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

## **7 The Customer's obligations**

7.1 Subject to the Supplier supplying the Goods and Services in accordance with this Contract, the Customer will pay the Supplier for the Goods and Services in accordance with Clause 8 of this Schedule 1.

7.2 The Customer 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 Services.

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

## **8 Contract management**

8.1 Each Party shall appoint and retain a contract manager with sufficient seniority and experience 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 Customer's contract manager.

8.2 Each Party shall ensure that its representatives (to include, without limitation, its contract manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operation of the Contract. Review meetings shall take place quarterly (or at a frequency specified by the Customer). The first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date.

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

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

8.3.2 details of any complaints by the Customer in relation to the supply of Goods and Services, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;

- 8.3.3 a status report in relation to the implementation of any current Remedial Proposals by either Party;
  - 8.3.4 details of the shelf life of any supplied Goods; and
  - 8.3.5 such other information as reasonably required by the Customer.
- 8.4 The Supplier shall provide such management information as the Customer 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 Customer in such form as may be specified by the Customer.
- 8.5 The Supplier shall appoint an escalation manager with sufficient seniority and experience for matters which, in the reasonable opinion of the Customer, are not able to be managed by the contract manager.

## **9 Price and payment**

- 9.1 The Contract Price shall be calculated as set out in the Specification.
- 9.2 The Contract Price:
- 9.2.1 shall remain fixed for the duration of this Contract; and
  - 9.2.2 is the entire price payable by the Customer 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, the cost of any import or export licences, all appropriate taxes (excluding VAT), duties and tariffs, any expenses arising from import and export administration, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Customer 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 Customer in accordance with Clause 11 of this Schedule 1; and
    - (iii) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods and Services.
- 9.3 Where the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Customer, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Goods and Services supplied in compliance with this Contract in the preceding calendar month.

- 9.4 Where Clause 9.3 of this Schedule 1 does not apply, the Supplier shall invoice the Customer for Goods and Services at any time following completion of the supply of the Goods and Services in compliance with this Contract.
- 9.5 Each invoice shall contain such information and be addressed to such individual as the Customer may inform the Supplier from time to time.
- 9.6 The Contract Price is exclusive of VAT, which, if properly chargeable, the Customer shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.7 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 9.8 The Customer shall verify and pay each valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 1 within thirty (30) days of the end of the month of receipt of such invoice. If there is undue delay in verifying the invoice in accordance with this Clause 9.6 of this Schedule 1, the invoice shall be regarded as valid and undisputed for the purposes this Clause 9.6 after a reasonable time has passed.
- 9.9 Where the Customer raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Customer shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.7 of this Schedule 1 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Customer has then failed to pay such sum within a reasonable period following such determination.
- 9.10 The Supplier shall pay to the Customer any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification. For the avoidance of doubt, the Customer may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Customer in accordance with the provisions of the Specification. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.11 The Customer reserves the right to set-off:
- 9.11.1 any monies due to the Supplier from the Customer as against any monies due to the Customer from the Supplier under this Contract; and
- 9.11.2 any monies due to the Customer from the Supplier as against any monies due to the Supplier from the Customer under this Contract.

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

## **10 Warranties**

10.1 The Supplier warrants and undertakes that:

- 10.1.1 the Goods and Services 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;
- 10.1.2 unless otherwise confirmed by the Customer in writing (to include, without limitation, as part of the Specification), it will ensure that the Goods and Services comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods and Services;
- 10.1.3 it shall ensure that prior to actual delivery to the Customer the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.4 without prejudice to the generality of the warranty at 10.1.3 of this Schedule 1, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good warehousing practice and/or good distribution practice, as may be defined under any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.5 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.6 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.7 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.8 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.9 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate

temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Customer;

- 10.1.10 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Customer and provide updated copies should the instruction information change at any time;
- 10.1.11 all Goods delivered to the Customer shall comply with any shelf life requirements set out in the Specification;
- 10.1.12 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 10.1.13 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and Services without notifying the Customer in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.14 it shall not make any significant changes to the Goods and Services without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed;
- 10.1.15 any equipment it uses in the manufacture, delivery, or installation of the Goods and Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.16 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.17 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods and Services;
- 10.1.18 receipt of the Goods 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;
- 10.1.19 it will comply with all Law, Guidance, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods and Services;
- 10.1.20 it will promptly notify the Customer of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.21 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its

supply chains; and (ii) notify the Customer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;

- 10.1.22 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the 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 10.1.22 and/or as may be requested or otherwise required by the Customer in accordance with its anti-slavery Policy.
  - 10.1.23 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods and Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Customer from time to time (acting reasonably);
  - 10.1.24 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
  - 10.1.25 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
  - 10.1.26 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
  - 10.1.27 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 10.1.28 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
  - 10.1.29 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
  - 10.1.30 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Customer, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause



10.2 of this Schedule 1, the Supplier shall, upon written request from the Customer, make available to the Customer evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;

10.2.2 at the point such Goods are supplied to the 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, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 1, the Supplier shall, upon written request from the Customer, make available to the Customer evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and

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

10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 1, then, without prejudice to any other right or remedy of the Customer, the Customer shall be entitled to reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 1, indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Customer as a result of such breach.

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

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

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

10.7 The Supplier warrants and undertakes to the Customer that, as at the Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- 10.7.1 notify the Customer in writing of such fact within five (5) Business Days of its occurrence; and
- 10.7.2 promptly provide to the Customer:
- (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 10.8 The Supplier further warrants and undertakes to the Customer that it will inform the Customer in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 1 have been breached or there is a risk that any warranties may be breached.
- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

- 11.1 Unless specified otherwise in the Specification, the Supplier hereby grants to the Customer, for the life of the use of Goods and Services by the Customer or its End Customer (as applicable), an irrevocable, perpetual, worldwide, transferable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods and Services (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.

## **12 Indemnity**

- 12.1 The Supplier shall be liable to the Customer for, and shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
  - 12.1.2 any loss of or damage to property (whether real or personal); and/or
  - 12.1.3 any breach of Clause 10.1.18 and/or Clause 11 of this Schedule 1;

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 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 Customer.

- 12.2 Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 1 and Clause 2.5 of 0 shall be unlimited. Liability under Clauses 4.9.4, 10.3, and 12.1.2 of this Schedule 1 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 1.
- 12.3 In relation to all third party claims against the Customer, which are the subject of any indemnity given by the Supplier under this Contract, the Customer shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Customer; and/or
  - 12.3.2 relating to the Customer'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 Customer 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 Customer).

### **13 Limitation of liability**

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
  - 13.1.2 for fraud or fraudulent misrepresentation; or
  - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 of this Schedule 1, the Supplier's total liability to the Customer 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) ten million GBP (£10,000,000); or (b) one hundred and fifty percent (150%) of the total Contract Price paid or payable by the Customer to the Supplier Goods and Services in the year in which the claim arises.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:
- 13.3.1 extra costs incurred purchasing replacement or alternative goods;
  - 13.3.2 costs incurred in relation to any product recall;

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

13.3.4 the costs of extra management time; and/or

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

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

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

13.5 Subject to Clauses 13.1 and 13.3 of this Schedule 1, the Customer's total liability in connection with this Contract shall be limited to 150% (one hundred and fifty percent) of the Contract Price paid or payable by the Customer for the 12 (twelve) months prior to the date on which the relevant breach took place.

13.6 Clause 13 of this Schedule 1 shall survive the expiry of or earlier termination of this Contract for any reason.

#### **14 Insurance**

14.1 As a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£10,000,000) or any sum as required by Law.

14.2 The amount of any indemnity cover 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 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 is insufficient to cover the settlement of any claim.

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

14.4 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Customer that insurance arrangements taken out by the Supplier pursuant to Clause 4 of this Schedule 1 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

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

## 15 Termination

- 15.1 The Customer may terminate the Contract in whole or in part at any time before delivery of the Goods or performance of the Services is completed with immediate effect by giving the Supplier written notice, at which point the Supplier shall cease all work on the Contract. The Customer shall pay the Supplier reasonable compensation for any work in progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 15.2 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 1, any breach of any payment obligations, under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.3(ii) of this Schedule 1. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
- 15.2.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
  - 15.2.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
  - 15.2.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,
- shall be deemed, for the purposes of Clause 15.3(ii) of this Schedule 1, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.
- 15.3 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- (i) not capable of remedy; or
  - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
- 15.4 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier if:
- 15.4.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business;

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

- 15.4.2 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 Customer and the Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Customer;
  - 15.4.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 1;
  - 15.4.4 pursuant to and in accordance with Clauses 15.5, 23.8; 25.2; 25.4 and 29.2 of this Schedule 1; or
  - 15.4.5 the warranty given by the Supplier pursuant to Clause 10.7 of this Schedule 1 is materially untrue, the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 10.7 of this Schedule 1, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.7 of this Schedule 1 that in the reasonable opinion of the Customer are acceptable.
- 15.5 If the Customer, 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 Customer as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.5.1 the Customer may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Customer may require within a reasonable time period as specified in such notice;
  - 15.5.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.5 of this Schedule 1 in accordance with any reasonable timescales specified in any such notice issued by the Customer shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

- 15.5.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process shall entitle, but shall not compel, the Customer to terminate this Contract in accordance with Clause 15.3(i) of this Schedule 1.

In order that the Customer may act reasonably in exercising its discretion in accordance with Clause 15.5 of this Schedule 1, the Supplier shall provide the Customer with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.6 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier where:
  - 15.6.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - 15.6.2 the Customer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
  - 15.6.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
  - 15.6.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Customer may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Customer terminating this Contract under this Clause 15.6.4.
- 15.7 If the Customer novates this Contract, from the effective date of such novation, the rights of the Customer to terminate this Contract in accordance with Clause 15.4.1 to Clause 15.4.3 of this Schedule 1 shall be deemed mutual termination rights and the Supplier may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Customer if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Customer.

## **16 Consequences of expiry or early termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Customer agrees to pay the Supplier for the Goods and Services which have been supplied by the Supplier and not rejected by the Customer in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 The Supplier shall cooperate fully with the Customer 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 Customer to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements. Any Personal Data Processed by the Supplier on behalf of the Customer shall be returned to the Customer or destroyed at the Customer's request.

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

16.4 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

## **17 Packaging, identification and end of use**

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

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

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

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

17.5 Unless otherwise set out in the Specification or agreed with the Customer in writing, the Supplier shall collect without charge any returnable containers and/or packages (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers and/or packages not so removed may be returned by the Customer at the Supplier's expense or otherwise disposed of at the Customer's discretion. The Supplier shall credit the Customer in full for any containers for which the Customer has been charged upon their collection, return and/or disposal by the Customer in accordance with Clause 17.5 of this Schedule 1.

## **18 Coding requirements**

18.1 Unless otherwise confirmed and/or agreed by the Customer in writing and subject to Clause 18.2 of this Schedule 11, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling and purchase to pay transacting).

18.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18.1 of this Schedule 1, the Supplier shall, for the duration of this Contract, maintain the required level of compliance relating to the Goods and Services in accordance with any such requirements and Guidance referred to as part of this Contract.



- 18.3 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, for the duration of this Contract, keep such information updated with any changes to the product data relating to the Goods.

## **19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Goods 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:

19.1.1 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;

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

19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 1.

- 19.2 The Supplier shall meet reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 1.

## **20 Electronic product information**

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

- 20.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Customer and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Customer following publication of the same in accordance with Clause 20 of this Schedule 1.

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

- 20.4 The Supplier grants the Customer a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods) available pursuant to the Customer's contracts from time to time. Subject to Clause 20.5 of this Schedule 1, no obligation to illustrate or advertise the Product Information is imposed on the Customer, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 1.

- 20.5 The Customer may reproduce for its use and the use of its End Customers the Product Information provided by the Supplier in the Customer's product catalogue from time to time which may be made available on any appropriate communications networks in electronic format and/or made available on the Customer's external website and/or made available on other digital media from time to time.
- 20.6 If requested in writing by the Customer, and to the extent not already agreed as part of the Specification, the Supplier and the Customer shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Customer that the Customer's requirements for the Goods and Services may change 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 Customer from time to time.
- 21.2 Promptly (and in not more than 5 (five) Business Days) following the Customer's change request, the Supplier shall provide a written proposal to the Customer containing: (i) the time required to implement the change; (ii) any necessary variation to the Contract Price; and (iii) any other required changes to the Specification. Following receipt of the Supplier's proposal, the Customer shall have the option to:
- 21.2.1 accept the proposal in which case the parties shall amend the Specification accordingly; or
  - 21.2.2 reject the proposal in which case the Specification shall remain as agreed prior to the change request; or
  - 21.2.3 if any Goods or Services will no longer materially meet the Customer's (or the End Customer's) requirements without the proposed change, to reject the proposal and terminate the relevant order (in whole or in part), in which case the Customer shall pay the Supplier all charges incurred to date for the terminated Goods and Services and the reasonable costs of any affected and committed resources that cannot be reallocated or cancelled.
- 21.3 Subject to Clause 21.4 of this Schedule 1, any change to the Goods and 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.
- 21.4 Any variation to this Contract which is required as a result of a change to the Data Protection Legislation shall be made in accordance with the relevant provisions of that legislation.

## **22 Dispute resolution**

- 22.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Customer requests in writing that the Supplier does not do so).
- 22.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Customer shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 22.3 of this Schedule 1 as the first stage in the Dispute Resolution Procedure.

- 22.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation using senior management levels. Respective representatives at each level shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 1 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22.3 of this Schedule 1, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 22.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 1 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 Customer and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Customer taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods and Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 1 shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 1 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 1 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 1;
  - 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
  - 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 1.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Customer may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 1 and subject to Clause 23.10 of this Schedule 1, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 23.8 of this Schedule 1 shall continue in full force and effect unless otherwise specified in this Contract.

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 1, the Supplier shall keep secure and maintain for the duration of this Contract and seven (7) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Customer shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Customer or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier Sub-contract any of its obligations under this Contract, the Customer shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Customer or its authorised representative during normal business hours no more than twice 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 Customer or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Customer or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Customer's accounts; or
- 24.5.2 any examination of the economic efficiency and effectiveness with which the Customer has used its resources.
- 24.6 The Supplier shall provide reasonable cooperation to the Customer, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.7 The Supplier shall provide all reasonable information as may be reasonably requested by the Customer to evidence the Supplier's compliance with the requirements of this Contract.

## **25 Conflicts of interest and the prevention of fraud**

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Customer, 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 Customer under the provisions of this Contract. The Supplier will disclose to the Customer full particulars of any such conflict of interest which may arise.

- 25.2 The Customer 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 Customer, 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 Customer under the provisions of this Contract. The actions of the Customer pursuant to this Clause 25.2 of this Schedule 1 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Customer.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Customer may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Customer resulting from the termination.

## **26 Equality and human rights**

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and Services and any associated services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and Services and any associated services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
  - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Customer in light of the Customer'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 Customer considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
  - 26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 1.
- 26.2 The Supplier shall meet reasonable requests by the Customer for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 1.

## **27 Notice**

- 27.1 Subject to Clause 22.5 of Schedule 1, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the address set out at the start of this Contract or such other address as one Party may inform the other Party in writing from time to time.
- 27.2 A notice shall be treated as having been received:

- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
- 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
- 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and Sub-contracting**

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 1 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 Customer, 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 Customer as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 1, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 1 shall be subject to:
  - 28.2.1 the deduction of any sums in respect of which the Customer exercises its right of recovery under Clause 9.11 of this Schedule 1;
  - 28.2.2 all related rights of the Customer in relation to the recovery of sums due but unpaid;
  - 28.2.3 the Customer 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 Customer shall make payment;
  - 28.2.4 the provisions of Clause 8 of this Schedule 1 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Customer; and
  - 28.2.5 payment to the Assignee being full and complete satisfaction of the Customer's obligation to pay the relevant sums in accordance with this Contract.
- 28.3 Any Customer given by the Customer for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform

the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

- 28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods and Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Customer in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods and Services to the extent relevant to such Sub-contracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
  - 28.4.5 requires the Supplier or other party receiving goods under the contract to consider and verify invoices under that contract in a timely fashion;
  - 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 1, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 after a reasonable time has passed;
  - 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.6.4 of this Schedule 1;
  - 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 1; and
  - 28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 1 in any Sub-contract which it awards.
- 28.5 Where the Customer considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:



- 28.5.1 if the Customer finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
- 28.5.2 if the Customer finds there are non-compulsory grounds for exclusion, the Customer may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.
- 28.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Customer pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 28.7 The Customer 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 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 Customer. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 28.8 The Customer may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Customer novates this Contract, from the effective date of such novation, the party assuming the position of the Customer shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## **29 Prohibited Acts**

- 29.1 The Supplier warrants and represents that:
- 29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Customer 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 Customer or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Customer; 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 Customer; and

- 29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Customer:
- 29.2.1 the Customer shall be entitled:
- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
  - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
  - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 29.2.2 any termination under Clause 29.2.1 of this Schedule 1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Customer; and
- 29.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:
- (i) the interpretation of Clause 29 of this Schedule 1; or
  - (ii) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 30.7 of this Schedule 1, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Customer relating to the supply of the Goods and Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Customer's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 30.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 1, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

## Schedule 2

### 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 2, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 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 2 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 2 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 The Customer may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any consultant, contractor or other person engaged by the Customer;
- 1.3.2 to any relevant party for the purpose of the examination and certification of the Customer's accounts;

- 1.3.3 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 Customer has used its resources;
- 1.3.4 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 1.3.5 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 Customer 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 2.

- 1.4 The Supplier may only disclose the Customer's Confidential Information, and any other information provided to the Supplier by the Customer 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 2 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Customer's written discretion, destroyed securely or returned to the Customer when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 2, the Supplier shall not, without the prior written consent of the Customer (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 Customer and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 2 shall remain in force:
  - 1.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 1.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## **2 Data protection**

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Legislation.

- 2.3 The Supplier and the Customer 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 Customer under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 2, as if such Sub-contractor were the Supplier.
- 2.5 The Supplier shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

### **3 Freedom of Information and Transparency**

- 3.1 The Parties acknowledge the duties of contracting authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3.2 The Supplier shall assist and cooperate with the Customer 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 Customer's behalf for the purposes of this Contract may be subject to the obligations and commitments of the Customer, if any, 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 Customer;
  - 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 Customer 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 Customer;
  - 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 Customer) and will promptly (and in any event within two (2) Business Days) transfer the request to the Customer;

- 3.2.5 that the Customer, 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 Customer 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 Customer within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, notwithstanding 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 Confidential Information. Where the Supplier receives a request for information relating to this Contract other than under the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Customer) and will promptly (and in any event within two (2) Business Days) transfer the request to the Customer.
- 3.4 Notwithstanding any other terms 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 2, the Customer 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 Customer's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 2, 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 2, the Supplier shall:
  - 4.1.1 notify the Customer 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 Customer'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 Customer and shall provide full information as may be reasonably requested by the Customer in relation to such audits, investigations and assessments.

### Schedule 3

#### **Definitions and Interpretations**

#### **1 Definitions**

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

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| <b>“Breach Notice”</b>             | means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;  |
| <b>“Business Continuity Event”</b> | 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;  |
| <b>“Business Continuity Plan”</b>  | 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;   |
| <b>“Business Day”</b>              | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;   |
| <b>“Codes of Practice”</b>         | shall have the meaning given to the term in Clause 1.2 of Schedule 2;   |
| <b>“Commencement Date”</b>         | means the date in which the Purchase Order is deemed to be accepted and the Contract comes into existence.<br><br>The Order shall be deemed to be accepted on the earlier of: <ul style="list-style-type: none"><li>• the Supplier issuing a written acceptance of the Purchase Order; or</li><li>• the Supplier doing any act consistent with fulfilling the Purchase Order;</li></ul>   |
| <b>“Confidential Information”</b>  | 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: <ul style="list-style-type: none"><li>(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;</li><li>(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</li><li>(c) Policies and such other documents which the Supplier may obtain or have access to through the Customer’s intranet;</li></ul> |



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| <b>“Consignment Request”</b>          | the Customer's request for Goods to be delivered on a consignment basis;  |
| <b>“Contract”</b>                     | means the contract between the Customer and the Supplier for the sale and purchase of the Goods and/or the supply of Services in accordance with the form of contract at the front of this document and all schedules attached to the form of contract, including any Specification and Purchase Order;   |
| <b>“Contract Price”</b>               | means the price exclusive of VAT that is payable to the Supplier by the Customer under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;  |
| <b>“Customer”</b>                     | means KCH Interventional Facilities Management LLP, incorporated and registered in England and Wales with company number OC412121, whose registered office is at Unit 1 129 Coldharbour Lane, London, England, SE5;   |
| <b>“Customer Confirmation”</b>        | means the written confirmation provided (or deemed to be provided) by the Customer that the Goods and Services appear to have been correctly supplied, installed and commissioned ready for use;  |
| <b>“Data Protection Legislation”</b>  | means (i) the Data Protection Act 1998, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, UK GDPR and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;  |
| <b>“Defective Goods”</b>              | has the meaning given under Clause 4.6 of Schedule 1;   |
| <b>“Dispute(s)”</b>                   | means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| <b>“Dispute Notice”</b>               | means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;  |
| <b>“Dispute Resolution Procedure”</b> | means the process for resolving Disputes as set out in Clause 22 of Schedule 1. For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 1;   |
| <b>“DOTAS”</b>                        | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the  |

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|                                       | 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;   |
| <b>“Electronic Trading System(s)”</b> | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Customer may specify from time to time;  |
| <b>“End Customer”</b>                 | Each private or independent hospital organisation to which the Customer supplies the Goods and Services including, but not limited to:<br><br><u>Fortius London Limited</u><br>2 Fitzhardinge Street, London, W1H 6EQ;<br><br><u>Hospital of St John and St Elizabeth (HJE)</u><br>60 Grove End Road, London, NW8 9NH;<br><br><u>Bupa Cromwell Hospital</u><br>164-178 Cromwell Road, London, SW5 0TU; and<br><br><u>King Edward VII’s Hospital (KEVI)</u><br>5-10 Beaumont Street, London, W1G 6AA. |
| <b>“Environmental Regulations”</b>    | shall have the meaning given to the term in Clause 1.2 of Schedule 2;  |
| <b>“eProcurement Guidance”</b>        | means the NHS eProcurement Strategy available via:<br><br><a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a><br>together with any further Guidance issued by the Department of Health in connection with it;  |
| <b>“Equality Legislation”</b>         | 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;       |
| <b>“FOIA”</b>                         | shall have the meaning given to the term in Clause 1.2 of Schedule 2;  |
| <b>“Force Majeure Event”</b>          | means any event beyond the reasonable control of the Party in question to include, without limitation:   |

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|                                  | <p>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Contract;</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 applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Customer's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p> |
| <b>"Fraud"</b>                   | means any offence under any law in respect of fraud in relation to this Contract;  |
| <b>"GDPR"</b>                    | means the General Data Protection Regulation (Regulation (EU) 2016/679);   |
| <b>"General Anti-Abuse Rule"</b> | means <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>   |

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| <b>“Good Industry Practice”</b>       | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;  |
| <b>“Goods”</b>                        | means all goods, materials or items that the Supplier is required to supply to the Customer under this Contract ;  |
| <b>“Guidance”</b>                     | 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 Customer and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;   |
| <b>“Halifax Abuse Principle”</b>      | means the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| <b>“Intellectual Property Rights”</b> | 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;  |
| <b>“KPI”</b>                          | means any key performance indicators and service levels as agreed by both Parties in the Specification;  |
| <b>“Law”</b>                          | <p>means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> </ul> |

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|   | <p>(e) requirements set by any regulatory body as applicable in England and Wales;</p> <p>(f) any relevant code of practice as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);</p>   |
| <b>“NHS”</b>                            | means the National Health Service;   |
| <b>“Occasion of Tax Non-Compliance”</b> | <p>means:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Customer 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 Customer 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 Customer under the DOTAS or any equivalent or similar regime; and/or</p> <p>(b) any tax return of the Supplier submitted to a Relevant Tax Customer 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> |
| <b>“Party”</b>                          | means the Customer or the Supplier as appropriate and Parties means both the Customer and the Supplier;  |
| <b>“Personal Data”</b>                  | shall have the same meaning as set out in the GDPR;  |
| <b>“Policies”</b>                       | means the policies, rules and procedures of the Customer as notified to the Supplier from time to time;  |
| <b>“Premises and Locations”</b>         | means the Customer’s premises and locations where the Goods and Services are to be installed, commissioned and located;  |
| <b>“Product Information”</b>            | means information concerning the Goods and Services as may be reasonably requested by the Customer and supplied by the Supplier to the Customer in accordance with Clause 20 of Schedule 1 for inclusion in the Customer’s product catalogue from time to time;  |
| <b>“Purchase Order”</b>                 | means the purchase order required by the Customer’s financial systems;   |
| <b>“Rejected Goods”</b>                 | has the meaning given under Clause 4.2 of Schedule 1;  |

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| <b>“Relevant Tax Customer”</b>    | means HM Revenue and Customs, or, if applicable, a tax Customer in the jurisdiction in which the Supplier is established;   |
| <b>“Remedial Proposal”</b>        | has the meaning given under Clause 15.3 of Schedule 1;  |
| <b>“Requirement to Recall”</b>    | has the meaning given under 4.9 of Schedule 1;  |
| <b>“Services”</b>                 | means all Services that the Supplier is required to supply to the Customer under this Contract, including, without limitation, any installation and commissioning services and/or maintenance services in respect of the Goods;                                     |
| <b>“Specification”</b>            | means the specification of any Goods and Services supplied pursuant to this Contract, which may be set out in a separate specification, Consignment Request, Purchase Order or as otherwise agreed with the Customer in writing;                                    |
| <b>“Staff”</b>                    | means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;  |
| <b>“Sub-contract”</b>             | means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract; |
| <b>“Sub-contractor”</b>           | means a party to a Sub-contract other than the Supplier;  |
| <b>“Supplier”</b>                 | means the person or firm from whom the Customer purchases the Goods and/or Services;  |
| <b>“Supplier Code of Conduct”</b> | means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;   |
| <b>“Termination Notice”</b>       | means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination; and      |
| <b>“VAT”</b>                      | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.   |

- 1.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.

- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Specification as a chargeable item and subject to Clause 30.6 of Schedule 1, 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 a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.11 Any guidance notes in grey text do not form part of this Contract.
- 1.12 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.
- 1.13 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.