

**NHS SUPPLY CHAIN FRAMEWORK AGREEMENT FOR THE SUPPLY OF GOODS AND SERVICES**

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| **NHS Supply Chain** | Supply Chain Coordination Limited (SCCL) is a company registered in England and Wales. Registered number 10881715. Registered office: Skipton House, 80 London Road, London, SE1 6LH. Supply Chain Coordination Limited (SCCL) is the Management Function of the NHS Supply Chain |
| **The Supplier** | **[ *Insert*** ***company name, registered number and registered office address*]** |

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| --- | --- |
| **Date** | **[*Insert date when signed by both parties*]** |
| **Type of Goods and Services** | Angiography Equipment and Services |
| **Framework Agreement Name** | **Angiography & Hybrid Theatre Equipment and Related Services** |
| **Framework Agreement Number** | OJEU |

This Framework Agreement is made on the date set out above subject to the terms set out in the schedules listed below (“**Schedules**”). NHS Supply Chain (as agent for Supply Chain Coordination Limited (SCCL)) and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Framework Agreement.

The Definitions in [Schedule 4](#Ref347235337) apply to the use of all capitalised terms in this Framework Agreement.

**Schedules**

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| **[Schedule 1](#Ref318785210)** | Key Provisions |
| [**Schedule 2**](#Ref352916352)**a** | General Terms and Conditions for the Supply of Goods and Provision of Services, applicable to orders placed under Lot 1 |
| **Schedule 2b** | Terms and Conditions for the Provision of Managed Services, applicable to orders placed under Lot 2. |
| [**Schedule 3**](#Ref318701648) | Information Governance Provisions |
| **Schedule 4** | Definitions and Interpretations |
| [**Schedule 5**](#Ref318700713)**(a)** | Specification |
| **Schedule 5(b)** | Tender Response Document |
| [**Schedule 6**](#Ref369163981) | Commercial Schedule |
| **Schedule 7** | Ordering Procedure and Order Form |
| **Schedule 8** | Service Levels |
| **Schedule 9** | Call-off Terms and Conditions |
| **Schedule 10** | Pricing Schedule |

**Signed by an authorised representative for and on behalf of NHS Supply Chain on behalf of Supply Chain Coordination Limited**

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| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  |  |  |

**Signed by an authorised representative of the Supplier**

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| --- | --- | --- | --- |
| Name: |  | Signature |  |
| Position: |  |  |  |

SCHEDULE 1

**Key Provisions**

**Standard Key Provisions**

1. **Application of the Key Provisions**
   1. The standard Key Provisions at Clauses [1](#Ref358208654) to [7](#Ref361940215) of this [Schedule 1](#Ref318785210) shall apply to this Framework Agreement.
   2. The optional Key Provisions at Clauses [8](#Ref371319644) to [10](#Ref361843452) of this [Schedule 1](#Ref318785210) shall only apply to this Framework Agreement where they have been checked and information completed as applicable.
   3. Extra Key Provisions shall only apply to this Framework Agreement where such provisions are set out at the end of this [Schedule 1](#Ref318785210).
2. **Term**
   1. The Term of this Framework Agreement shall be 2 years from the Commencement Date and may be extended in accordance with Clause [16.2](#Ref318790784) of [Schedule 2](#Ref352916352) provided that the duration of this Framework Agreement shall be no longer than 4 years in total.
3. **Contract Managers**
   1. The Contract Managers at the commencement of this Framework Agreement are:
      1. for NHS Supply Chain:

**Fran Webster, Category Buyer**

* + 1. for the Supplier:

**[*insert name and role*].**

1. **Names and addresses for notices**
   1. Notices served under this Framework Agreement are to be delivered to:
      1. for NHS Supply Chain:

Category Tower Director

Akeso & Company Limited

Brewhouse Level 1 Front

Wilderspool Park

Stockton Heath

WA4 6HL

* + 1. for the Supplier:

**[*Complete name and/or role and address*]**.

1. **Management levels for escalation and dispute resolution**
   1. The management levels at which a dispute will be dealt with are as follows:

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| --- | --- | --- |
| **Level** | **NHS Supply Chain representative** | **Supplier representative** |
| 1 | Buyer | **[*Contract Manager*]** |
| **2** | Head of Category | **[I*nsert role*]** |
| **3** | Procurement Director | **[*Insert role*]** |

1. **Order of precedence**
   1. Subject always to Clause [1.10](#Ref322935357) of [Schedule 4](#Ref347235337), should there be a conflict between any other parts of this Framework Agreement the order of priority for construction purposes shall be:
      1. the provisions on the front page of this NHS Framework Agreement for the Supply of Goods;
      2. [Schedule 1](#Ref318785210): Key Provisions;
      3. [Schedule 5](#Ref318700713)(a): Specification;
      4. [Schedules 2](#Ref352916352)a and 2b: General Terms and Conditions for the Supply of Goods and Provision of Services (Lot 1 orders); Terms and Conditions for the Provision of Managed Services (Lot 2 orders)*.*
      5. Schedule 7: Ordering Procedure and Order Form;
      6. [Schedule 6](#Ref369163981): Commercial Schedule;
      7. Schedule 8: Service Levels;
      8. Schedule 5(b): Tender Response Document;
      9. [Schedule 3](#Ref347235111): Information Governance Provisions;
      10. [Schedule 4](#Ref347235337): Definitions and Interpretations;
      11. the order in which all subsequent schedules, if any, appear; and
      12. any other documentation forming part of the Framework Agreement in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.
2. **Participating Authorities**
   1. The following Contracting Authorities are entitled to place Orders:
      1. in relation to a Direct Route of Supply: any NHS Trust; other NHS entities; any private sector entity which is active in the United Kingdom Healthcare Sector; or any government department, government agency or other statutory body; any primary, secondary or tertiary, vocational or higher educational establishment (and those purchasing on their behalf); and
      2. in relation to a Non-direct Route of Supply: NHS Supply Chain,
      3. for the avoidance of doubt, any successor bodies of any of the entities described in this definition are included in this definition.

**Optional Key Provisions**

1. **Quality assurance standards self-certification**  **(only applicable to the Framework Agreement if this box is checked and the standards are listed****)**
   1. The Supplier warrants that on the request of NHS Supply Chain it shall provide a written and signed self-certification in the form requested by NHS Supply Chain that it complies, and will notify NHS Supply Chain immediately if it no longer complies throughout the Term of the Framework Agreement and all Contracts with all quality assurance standards set out in the Specification as applicable to the Goods and Services and that it shall evidence such compliance on request.
2. **Different levels and/or types of insurance  (only applicable to the Framework Agreement if this box is checked and the table sets out the requirements)**
   1. The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

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| **Type of insurance required** | **Minimum cover** |
| **Employer’s liability insurance** | **£5,000,000** |
| **Public liability insurance** | **£5,000,000** |
| **Product liability insurance** | **£5,000,000** |
| **Professional Indemnity Insurance** | **£5,000,000** |

1. **Guarantee  (only applicable to the Framework Agreement if this box is checked)**
   1. Promptly following the execution of this Framework Agreement, the Supplier shall, if it has not already delivered an executed deed of guarantee to NHS Supply Chain, deliver the executed deed of guarantee to NHS Supply Chain as required by the procurement process followed by NHS Supply Chain. Failure to comply with this Key Provision shall be an irremediable breach of this Framework Agreement.

**Extra Key Provisions**

1. **Range Management during Framework Agreement**
   1. NHS Supply Chain recognises that the Goods and Services which are subject of this Tender are used in a changing environment and anticipates that the Goods/Services which are set out in this Invitation to Tender may be subject to change, during the term of any awarded Framework Agreement.
      1. NHS Supply Chain reserves the right (acting in its absolute discretion) throughout the term of the Framework Agreement to:
         1. Add and remove Products/Systems/Equipment/Consumables/Services;
         2. List alternative Products/Equipment for increased customer choice;
         3. Change the route of supply for any Product/Equipment/Service.

SCHEDULE 2a

**General Terms and Conditions for the Supply of Goods and Services (applicable to Lot 1 orders)**

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| **Contents** |
| 1. Supplier’s appointment |
| 2. NHS Supply Chain commitments |
| 3. Ordering procedures |
| 4. Reasonable assistance |
| 5. Supplier Performance and Lifescience Industry Accredited Credentialing Register |
| 6. Business Continuity & Disaster Recovery |
| 7. NHS Supply Chain’s obligations |
| 8. Contract management |
| 9. Price and payment |
| 10. Warranties |
| 11. Intellectual Property |
| 12. Statutory compliance |
| 13. Independence of Participating Authorities |
| 14. Limitation of liability |
| 15. Insurance |
| 16. Term and termination |
| 17. Consequences of expiry or early termination of this Framework Agreement |
| 18. Suspension of Supplier’s appointment |
| 19. Complaints |
| 20. Sustainable development |
| 21. Electronic product and services information |
| 22. Change management |
| 23. Dispute resolution |
| 24. Force majeure |
| 25. Records retention and right of audit |
| 26. Conflicts of interest and the prevention of fraud |
| 27. Equality and human rights |
| 28. Notice |
| 29. Assignment, novation and Sub-contracting |
| 30. Prohibited Acts |
| 31. General |

1. **Supplier’s appointment**
   1. NHS Supply Chain appoints the Supplier as a potential supplier of the Goods and Services and the Supplier shall be eligible to be considered for the award of Orders during the Term.
   2. In consideration of NHS Supply Chain agreeing to appoint the Supplier to this Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this Framework Agreement, the Supplier undertakes to supply the Goods and to provide the Services under Orders placed with the Supplier:
      1. of the exact quality, type and as otherwise specified in the Specification and Tender Response Document;
      2. at the Contract Price calculated in accordance with the Commercial Schedule; and
      3. in such quantities and to such extent and at such times and at such locations as may be specified in an Order.
   3. The Supplier agrees that the Call-Off Terms and Conditions for the Supply of Goods and the Provision of Services shall apply to all Goods and Services provided by the Supplier to a Participating Authority pursuant to this Framework Agreement. The Supplier agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract.
   4. The Supplier shall comply fully with its obligations set out in this Framework Agreement, the Specification and Tender Response Document, the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services and any other provisions of Contracts entered into under and in accordance with this Framework Agreement (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery and installation and training in relation to use of the Goods).
   5. If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide NHS Supply Chain with a copy of any such reports, notices, alerts or other communications.
   6. Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.5 of this Schedule 2, NHS Supply Chain 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.
   7. In complying with its obligations under this Framework Agreement, 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.
2. NHS Supply Chain commitments
   1. Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:
      1. there is no obligation on NHS Supply Chain or on any other Participating Authority to purchase any Goods or Services from the Supplier during the Term;
      2. no undertaking or any form of statement, promise, representation or obligation has been made by NHS Supply Chain and/or any other Participating Authority in respect of the total quantities or volumes or value of the Goods or Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;
      3. in entering this Framework Agreement, no form of exclusivity has been granted by NHS Supply Chain and/or other Participating Authority; and
      4. NHS Supply Chain and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods or services which are the same as or similar to the Goods or Services.
3. Ordering procedure
   1. Any Participating Authority may enter into Contracts by placing an Order in accordance with the Ordering Procedure.
4. Reasonable assistance
   1. Upon the written request of any Participating Authority, the Supplier shall provide such Participating Authority with any reasonable and proportionate information that it holds about the Goods and/or Services it supplies under this Framework Agreement including, without limitation, the compatibility and interoperability of such Goods and/or Services with other products alongside other related services, to enable the Participating Authority to complete any necessary due diligence before purchasing such Goods and/or Services, or any connected or replacement Goods and/or Services.
5. Supplier Performance and Lifescience Industry Accredited Credentialing Register
   1. The Supplier shall perform all Contracts entered into under this Framework Agreement by the Authority or any other Participating Authority in accordance with:
      1. the requirements of this Framework Agreement; and
      2. the provisions of the respective Contracts.
   2. Unless otherwise confirmed by NHS Supply Chain 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 NHS Supply Chain (to include as may be set out as part of any procurement documents leading to the award of this Framework Agreement) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Polices.
6. Business continuity & Disaster Recovery
   1. Throughout the Term, the Supplier will ensure its Business Continuity & Disaster Recovery Plans provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity & Disaster Recovery Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
      1. the criticality of this Framework Agreement to the Participating Authorities; and
      2. the size and scope of the Supplier’s business operations,

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

* 1. 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 Framework Agreement to Participating Authorities and the size and scope of the Supplier’s business operations. The Supplier shall promptly provide to NHS Supply Chain, at NHS Supply Chain’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 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to NHS Supply Chain a copy of any updated or revised Business Continuity & Disaster Recovery Plans within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
  2. NHS Supply Chain 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 NHS Supply Chain to be relevant and appropriate, the Supplier will incorporate into the Business Continuity & Disaster Recovery Plans all such suggestions made by NHS Supply Chain in respect of such Business Continuity & Disaster Recovery Plans. Should the Supplier not incorporate any suggestion made by NHS Supply Chain into such Business Continuity & Disaster Recovery Plans it will explain the reasons for not doing so to NHS Supply Chain.
  3. Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity & Disaster Recovery Plans and provide regular written reports to NHS Supply Chain on such implementation.
  4. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

1. NHS Supply Chain’s obligations
   1. NHS Supply Chain shall provide reasonable cooperation to the Supplier and shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this Framework Agreement.
   2. NHS Supply Chain shall comply with NHS Supply Chain’s Obligations, if any.
2. Contract management
   1. Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Framework Agreement. 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 Framework Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with NHS Supply Chain’s Contract Manager.
   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 Framework Agreement and to discuss matters arising generally under this Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Framework Agreement. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at quarterly intervals or as may otherwise be agreed in writing between the Parties.
   3. Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to NHS Supply Chain regarding the supply of Goods, the provision of the Services and the operation of this Framework Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
      1. details of the performance of the Supplier under this Framework Agreement and any Contracts when assessed in accordance with the KPIs, as relevant to the Framework Agreement and any Contracts, since the last such performance report;
      2. details of any complaints by Participating Authorities in relation to the supply of Goods or the provision of the Services, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
      3. the information specified in the Specification and Tender Response Document as being relevant to the operation of this Framework Agreement;
      4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
      5. such other information as reasonably required by NHS Supply Chain.
   4. Unless specified otherwise in the Specification and Tender Response Document, NHS Supply Chain shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform NHS Supply Chain in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to NHS Supply Chain within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5.1 of the Key Provisions and Clause 22.3 of this Schedule 2.
   5. The Supplier shall provide such management information as NHS Supply Chain 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 NHS Supply Chain in such form as may be specified by NHS Supply Chain and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (“**Third Party Body”**). The Supplier confirms and agrees that NHS Supply Chain may itself provide the Third Party Body with management information relating to the Goods and/or the Services ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.
   6. Upon receipt of management information supplied by the Supplier to NHS Supply Chain and/or the Third Party Body, or by NHS Supply Chain to the Third Party Body, the Parties hereby consent to the Third Party Body and NHS Supply Chain:
      1. storing and analysing the management information and producing statistics; and
      2. sharing the management information, or any statistics produced using the management information with any other Contracting Authority.
   7. If the Third Party Body and/or NHS Supply Chain shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Framework Agreement and such management information is provided direct by NHS Supply Chain to such Contracting Authority, be informed of the confidential nature of that information by NHS Supply Chain and shall be requested by NHS Supply Chain not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
   8. NHS Supply Chain may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month’s written notice of any changes.
3. Price and payment
   1. The Contract Price for all Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Contracts shall be as set out in the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services.
   2. Where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Contracts, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.
   3. Where NHS Supply Chain is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Framework Agreement, NHS Supply Chain may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
   4. If a Party fails to pay any undisputed sum properly due to the other Party under this Framework Agreement, 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.

**Management Fee**

* 1. as a percentage of the total Order value at the rate set out in the Commercial Schedule (the “Management Fee”). The Supplier shall pay this fee to NHS Supply Chain.
  2. The Supplier shall, in relation to all Orders made pursuant to the Direct Route of Supply, prepare and submit to NHS Supply Chain a Management Fee report (“Management Fee Report”). Unless otherwise agreed, the Supplier shall submit such Management Fee Report to NHS Supply Chain at the end of each quarter in which Orders have been raised pursuant to the Direct Route of Supply during the Term of the Framework Agreement.
  3. The Management Fee Report shall include as a minimum in relation to each Order listed in the report:
  4. the NHS Supply Chain Unique Reference Number (URN);
  5. the Authority’s order number;
  6. the total quantity of Goods and/or Services ordered pursuant to the Order;
  7. the total value of the Order;
  8. the date of the Order;
  9. the MPC or NPC codes listed in the Order; and
  10. the units of purchase and unit price detailed in the Order.
  11. Following receipt of the Management Fee Report, NHS Supply Chain shall invoice the Supplier for the Management Fee. The Supplier shall pay the Management Fee within thirty (30) days from receipt of such invoice.
  12. Where the Supplier raises a query with respect to an invoice for the Management Fee, or NHS Supply Chain raises a query with respect to the Management Fee Report, the Supplier and NHS Supply Chain shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the Parties shall refer to dispute resolution in accordance with Clause [2](#Ref286071345)3 of this [Schedule 2](#Ref352916352).

1. Warranties
   1. The Supplier warrants and undertakes that:
      1. it will comply with the terms of all Contracts entered into by Participating Authorities under this Framework Agreement;
      2. it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Framework Agreement, any Contracts, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by NHS Supply Chain from time to time (acting reasonably);
      3. all information included within the Supplier’s responses to any documents issued by NHS Supply Chain as part of the procurement relating to the award of this Framework Agreement (to include, without limitation, as referred to in Specification and Tender Response Document and Commercial Schedule) and all accompanying materials is accurate;
      4. it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to enter into and comply with its obligations under this Framework Agreement;
      5. it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;
      6. 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 Framework Agreement and the documents referred to in this Framework Agreement;
      7. all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;
      8. 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;
      9. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;
      10. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement;
      11. it has satisfied itself as to the nature and extent of the risks assumed by it under this Framework Agreement and has gathered all information necessary to perform its obligations under this Framework Agreement and all other obligations assumed by it;
      12. it shall 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
      13. it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of NHS Supply Chain and shall provide to NHS Supply Chain any reports or other information that NHS Supply Chain may request as evidence of the Supplier’s compliance with this Clause 10.1.13 and/or as may be requested or otherwise required by NHS Supply Chain in accordance with its anti-slavery Policy.
   2. The Supplier warrants that all information, data and other records and documents required by NHS Supply Chain as set out in the Specification and Tender Response Document shall be submitted to NHS Supply Chain in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
   3. The Supplier warrants and undertakes to NHS Supply Chain 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 NHS Supply Chain to comply with such eProcurement Guidance.
   4. The Supplier warrants and undertakes to NHS Supply Chain that, as at the Commencement Date, it has notified NHS Supply Chain in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
      1. notify NHS Supply Chain in writing of such fact within five (5) Business Days of its occurrence; and
      2. promptly provide to NHS Supply Chain:
         1. 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
         2. such other information in relation to the Occasion of Tax Non-Compliance as NHS Supply Chain may reasonably require.
   5. The Supplier further warrants and undertakes to NHS Supply Chain that it will inform NHS Supply Chain in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
   6. Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
2. **Intellectual Property**
   1. Unless otherwise agreed in writing between the Parties, the Supplier has no right to use the branding or logo(s) of NHS Supply Chain or the NHS in the promotion or marketing of the Supplier’s goods and services, nor to reference the approval, support, endorsement, authorisation, certification or similar of NHS Supply Chain or the NHS in relation to the supplier’s goods and services.
3. Statutory compliance
   1. The Supplier shall comply with all Law and Guidance relevant to its obligations under this Framework Agreement and any Contracts.
   2. Without limitation to Clause 12.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Framework Agreement and any Contracts.
4. Independence of Participating Authorities
   1. The Supplier acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Framework Agreement and that NHS Supply Chain is not responsible or accountable for and shall have no liability whatsoever in relation to:
      1. the conduct of Participating Authorities other than NHS Supply Chain in relation to the operation of this Framework Agreement; or
      2. the performance or non-performance of any Participating Authorities other than NHS Supply Chain under any Contracts between the Supplier and such other Participating Authorities entered into under this Framework Agreement.
5. Limitation of liability
   1. Nothing in this Framework Agreement shall exclude or restrict the liability of either Party:
      1. for death or personal injury resulting from its negligence;
      2. for fraud or fraudulent misrepresentation;
      3. in any other circumstances where liability may not be limited or excluded under any applicable law; or
      4. to make any payments agreed in accordance with Clause 9 of this Schedule 2.
   2. Subject to Clause 14.1, 14.3 and 14.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand GBP (£500,000).
   3. There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement 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.
   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 Framework Agreement.
   5. The liability of the Supplier and any Participating Authorities under any Contracts entered into pursuant to this Framework Agreement shall be as set out in the Call-off Terms and Conditions for the Supply of Goods and the Provision of Services forming part of such Contracts.
6. Insurance
   1. Subject to Clauses 15.2 and 15.3 of this Schedule 2 and unless otherwise confirmed in writing by NHS Supply Chain, 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 professional indemnity and product liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with NHS Supply Chain in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
   2. Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by NHS Supply Chain, if specified in the Key Provisions.
   3. Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 15.1 and 15.2 of this Schedule 2 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by NHS Supply Chain in writing prior to the Commencement Date.
   4. The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
   5. The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
   6. The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to NHS Supply Chain that insurance arrangements taken out by the Supplier pursuant to Clause 15 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
   7. Upon the expiry or earlier termination of this Framework Agreement, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Framework Agreement shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Framework Agreement or until such earlier date as that liability may reasonably be considered to have ceased to exist.
7. Term and termination
   1. This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term.
   2. NHS Supply Chain shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.
   3. In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay any sums due under this Framework Agreement), the non-breaching Party may, without prejudice to its other rights and remedies under this Framework Agreement, 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 Framework Agreement in accordance with Clause 16.4.1.(ii) of this 0. 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:
      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;
      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
      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 16.4.1.(ii) of this Schedule 2, a material breach of this Framework Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

* 1. Either Party may terminate this Framework Agreement by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Framework Agreement which is:
     + 1. not capable of remedy; or
       2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
  2. NHS Supply Chain may terminate this Framework Agreement by issuing a Termination Notice to the Supplier if:
     1. the Supplier, or any third party guaranteeing the obligations of the Supplier under this Framework Agreement, 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;
     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 NHS Supply Chain and NHS Supply Chain shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of NHS Supply Chain;
     3. the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 29 of this Schedule 2;
     4. pursuant to and in accordance with the Key Provisions and Clauses 16.6, 24.8; 26.2; 26.4 and 30.2 of this Schedule 2; or
     5. the warranty given by the Supplier pursuant to Clause 10.4 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 10.4 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 10.4 of this Schedule 2 that in the reasonable opinion of NHS Supply Chain are acceptable.
  3. If NHS Supply Chain, 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 Framework Agreement and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by NHS Supply Chain as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
     1. NHS Supply Chain 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 Framework Agreement on such reasonable and proportionate terms as NHS Supply Chain may require within a reasonable time period as specified in such notice;
     2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 16.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by NHS Supply Chain shall be deemed a breach of this Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
     3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this 0) shall entitle, but shall not compel, NHS Supply Chain to terminate this Framework Agreement in accordance with Clause 16.4.1.(i) of this Schedule 2.

In order that NHS Supply Chain may act reasonably in exercising its discretion in accordance with Clause 16.6 of this Schedule 2, the Supplier shall provide NHS Supply Chain with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

* 1. NHS Supply Chain may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:
     1. the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
     2. NHS Supply Chain 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 Framework Agreement;
     3. the Framework Agreement 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
     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, NHS Supply Chain may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to NHS Supply Chain terminating this Framework Agreement under this Clause 16.7.4.
  2. If NHS Supply Chain novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the rights of NHS Supply Chain to terminate this Framework Agreement in accordance with Clause 16.5.1 to Clause 16.5.3 of this 0 shall be deemed mutual termination rights and the Supplier may terminate this Framework Agreement by issuing a Termination Notice to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

1. Consequences of expiry or early termination of this Framework Agreement
   1. Upon expiry or earlier termination of this Framework Agreement, NHS Supply Chain and the Supplier agree that all Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.
   2. The Supplier shall cooperate fully with NHS Supply Chain 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 Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Framework Agreement, as reasonably required by NHS Supply Chain 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 NHS Supply Chain shall be returned to NHS Supply Chain or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
   3. The expiry or earlier termination of this Framework Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
   4. The expiry or earlier termination of this Framework Agreement 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.
2. Suspension of Supplier’s appointment
   1. Without prejudice to NHS Supply Chain’s rights to terminate this Framework Agreement, if a right for NHS Supply Chain to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 16 of this Schedule 2, NHS Supply Chain may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Participating Authorities.
   2. If NHS Supply Chain provides notice to the Supplier in accordance with Clause 18.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by NHS Supply Chain in writing from time to time provided that such suspension shall be lifted where:
      1. the circumstances leading to NHS Supply Chain’s right to terminate this Framework Agreement have been remedied;
      2. NHS Supply Chain has satisfied itself that the risk and/or impact of the circumstances giving rise to NHS Supply Chain’s right to terminate this Framework Agreement no longer requires such suspension; or
      3. NHS Supply Chain exercises its rights to terminate this Framework Agreement in accordance with Clause 6 of this Schedule 2.
3. Complaints
   1. The Supplier shall notify NHS Supply Chain of any formal written complaints made by other Participating Authorities relating to the Supplier’s noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.
   2. Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or NHS Supply Chain may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
   3. Within two (2) Business Days of a written request by NHS Supply Chain, the Supplier shall provide further reasonable details of the complaint to the Authority, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.
4. Sustainable development
   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 and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
      1. comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier’s supply chain;
      2. maintain relevant policy statements documenting the Supplier’s significant labour, social and environmental aspects as relevant to the Goods and Services being provided and as proportionate to the nature and scale of the Supplier’s business operations; and
      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 20.1.2 of this Schedule 2.
   2. The Supplier shall meet reasonable requests by NHS Supply Chain for information evidencing the Supplier’s compliance with the provisions of Clause 20 of this Schedule 2.
5. Electronic product and services information
   1. Where requested by NHS Supply Chain, the Supplier shall provide NHS Supply Chain the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and NHS Supply Chain from time to time for the sole use by NHS Supply Chain.
   2. The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to NHS Supply Chain and that the Product Information and/or Services Information shall not contain any data or statement which gives rise to any liability on the part of NHS Supply Chain following publication of the same in accordance with Clause 21 of this Schedule 2.
   3. If the Product Information and Services Information ceases to be complete and accurate, the Supplier shall promptly notify NHS Supply Chain in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
   4. The Supplier grants NHS Supply Chain a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available pursuant to NHS Supply Chain’s contracts from time to time. Subject to Clause 21.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on NHS Supply Chain, as a consequence of the licence conferred by this Clause 21.4 of this Schedule 2.
   5. The Authority may reproduce for its sole use the Services Information provided by the Supplier in NHS Supply Chain's product and/or services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on NHS Supply Chain’s external website and/or made available on other digital media from time to time.
   6. Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by NHS Supply Chain, NHS Supply Chain will submit a copy of the relevant sections of NHS Supply Chain’s product and/or services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel NHS Supply Chain to exhibit the Product Information and the Services Information in any product and/or services catalogue as a result of the approval given by it pursuant to this Clause 21.6 of this Schedule 2 or otherwise under the terms of this Framework Agreement.
   7. If requested in writing by NHS Supply Chain, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and NHS Supply Chain shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.
6. Change management
   1. The Supplier acknowledges to NHS Supply Chain that the requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by NHS Supply Chain from time to time.
   2. Subject to Clause 22.3 of this this Schedule 2, any change to the Goods and/or Services or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.
   3. Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.
7. Dispute resolution
   1. During any Dispute, including a Dispute as to the validity of this Framework Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Framework Agreement (unless NHS Supply Chain requests in writing that the Supplier does not do so).
   2. In the case of a Dispute arising out of or in connection with this Framework Agreement the Supplier and NHS Supply Chain 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 23.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
   3. If any Dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
   4. If the procedure set out in Clause 23.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 23.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
   5. The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 23.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other party (such notification may be verbal provided that it is followed up by written confirmation). NHS Supply Chain 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.
   6. Nothing in this Framework Agreement shall prevent:
      1. NHS Supply Chain taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of Goods and/or provision of the Services; or
      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.
   7. Clause 23 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.
8. Force majeure
   1. Subject to Clause 24.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Framework Agreement 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.
   2. The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 24 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Framework Agreement if:
      1. the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 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
      3. the Supplier has complied with the procedural requirements set out in Clause 24 of this Schedule 2.
   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 Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
   4. Where the Force Majeure Event affects the Supplier’s ability to perform part of its obligations under the Framework Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
   5. If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement 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.
   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.
   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.
   8. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, NHS Supply Chain may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Framework Agreement by issuing a Termination Notice to the Supplier.
   9. Following such termination in accordance with Clause 24.8 of this Schedule 2 and subject to Clause 24.10 of this Schedule 2, neither Party shall have any liability to the other.
   10. Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 24.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.
9. Records retention and right of audit
   1. Subject to any statutory requirement and Clause 25.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.
   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 Framework Agreement.
   3. NHS Supply Chain shall have the right to audit the Supplier’s compliance with this Framework Agreement. The Supplier shall permit or procure permission for NHS Supply Chain 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 Framework Agreement.
   4. Should the Supplier Sub-contract any of its obligations under this Framework Agreement, NHS Supply Chain shall have the right to audit and inspect such third party. The Supplier shall procure permission for NHS Supply Chain or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier’s obligations under this Framework Agreement that are Sub-contracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany NHS Supply Chain or its authorised representative if requested.
   5. The Supplier shall grant to NHS Supply Chain or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier’s compliance with this Framework Agreement for the purposes of:
      1. the examination and certification of NHS Supply Chain’s accounts; or
      2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which NHS Supply Chain has used its resources.
   6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 25 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
   7. The Supplier shall provide reasonable cooperation to NHS Supply Chain, 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 Framework Agreement.
   8. The Supplier shall provide all reasonable information as may be reasonably requested by NHS Supply Chain to evidence the Supplier’s compliance with the requirements of this Framework Agreement.
10. Conflicts of interest and the prevention of fraud
    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 NHS Supply Chain, 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 NHS Supply Chain under the provisions of this Framework Agreement. The Supplier will disclose to NHS Supply Chain full particulars of any such conflict of interest which may arise.
    2. NHS Supply Chain reserves the right to terminate this Framework Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of NHS Supply Chain, 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 NHS Supply Chain under the provisions of this Framework Agreement. The actions of NHS Supply Chain pursuant to this Clause 26.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to NHS Supply Chain.
    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 NHS Supply Chain immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
    4. If the Supplier or its Staff commits Fraud NHS Supply Chain may terminate this Framework Agreement and recover from the Supplier the amount of any direct loss suffered by NHS Supply Chain resulting from the termination.
11. Equality and human rights
    1. The Supplier shall:
       1. ensure that (a) it does not, whether as employer, a supplier of Goods, or as a provider of Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, a supplier of Goods, or provider of the 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;
       2. in the management of its affairs and the development of its equality and diversity policies, cooperate with NHS Supply Chain in light of NHS Supply Chain’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 NHS Supply Chain 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
       3. the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 27 of this Schedule 2.
    2. The Supplier shall meet reasonable requests by NHS Supply Chain for information evidencing the Supplier’s compliance with the provisions of Clause 27 of this Schedule 2.
12. Notice
    1. Subject to Clause 23 of this Schedule 2, any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
    2. A notice shall be treated as having been received:
       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
       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
       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.
13. Assignment, novation and Sub-contracting
    1. The Supplier shall not assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of NHS Supply Chain, such consent not to be unreasonably withheld or delayed. If the Supplier Sub-contracts any of its obligations under this Framework Agreement, every act or omission of the Sub-contractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to NHS Supply Chain as if such act or omission had been committed or omitted by the Supplier itself.
    2. Any authority given by NHS Supply Chain for the Supplier to Sub-contract any of its obligations under this Framework Agreement shall not impose any duty on NHS Supply Chain 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 Framework Agreement.
    3. Where NHS Supply Chain considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:
       1. if NHS Supply Chain finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or
       2. if NHS Supply Chain finds there are non-compulsory grounds for exclusion, NHS Supply Chain 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.
    4. NHS Supply Chain shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Supply of Goods and/or the 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 NHS Supply Chain. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contract.
    5. NHS Supply Chain may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement 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 NHS Supply Chain novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of NHS Supply Chain shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.
14. Prohibited Acts
    1. The Supplier warrants and represents that:
       1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
          1. offered, given or agreed to give any officer or employee of NHS Supply Chain 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 NHS Supply Chain or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with NHS Supply Chain; or
          2. in connection with this Framework Agreement 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 NHS Supply Chain; and
       2. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
    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 NHS Supply Chain:
       1. NHS Supply Chain shall be entitled:
          1. to terminate this Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
          2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
          3. 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;
       2. any termination under Clause 30.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to NHS Supply Chain; and
       3. notwithstanding Clause 23 of this Schedule 2, any Dispute relating to:
          1. the interpretation of Clause 30 of this Schedule 2; or
          2. the amount or value of any gift, consideration or commission,

shall be determined by NHS Supply Chain, acting reasonably, and the decision shall be final and conclusive.

1. General
   1. Each of the Parties is independent of the other and nothing contained in this Framework Agreement 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 Framework Agreement.
   2. Failure or delay by either Party to exercise an option or right conferred by this Framework Agreement shall not of itself constitute a waiver of such option or right.
   3. The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Framework Agreement 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.
   4. Any provision of this Framework Agreement 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 Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
   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 Framework Agreement 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 Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.
   6. Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.
   7. The rights and remedies provided in this Framework Agreement are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Framework Agreement or by any other contract or document. In this Clause 31.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
   8. A person who is not a party to this Framework Agreement 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 Framework Agreement.
   9. This Framework Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Framework Agreement or any variation to this Framework Agreement, contain the entire understanding between the Supplier and NHS Supply Chain relating to the operation of this Framework Agreement 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 Framework Agreement. Nothing in this Framework Agreement seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in NHS Supply Chain’s procurement documentation leading to the award of this Framework Agreement shall form part of this Framework Agreement.
   10. This Framework Agreement, 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.
   11. Subject to Clause 23 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.
   12. All written and oral communications and all written material referred to under this Framework Agreement shall be in English.

SCHEDULE 2b

**TERMS AND CONDITIONS FOR THE PROVISION OF MANAGED SERVICES (Lot 2 Orders)**

*These call off terms are applicable to purchases made under Lot 2. The document is also included in the ITT pack as* ***Appendix 3c - Managed Services Terms and Conditions Angiography and Hybrid Theatres Equipment and Related Services Framework Agreement July 2021***

**TERMS AND CONDITIONS FOR THE PROVISION OF MANAGED SERVICES (UPDATED CONTRACT VERSION [JULY] 2021)**

**Angiography and Hybrid Theatres Equipment and Related Services Framework Agreement**

|  |  |
| --- | --- |
| **The Authority** | **[*Insert name and address of the Authority]*** |
| **The Supplier** | **[*Insert name, address and, where applicable, the company number of the Supplier*]** |

|  |  |
| --- | --- |
| **Date** | **[*Insert date when signed by both parties*]** |
| **Contract title** | **[**       **]** |

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

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

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

**Schedules**

|  |  |
| --- | --- |
| **Schedule 1** | Key Provisions |
| **Schedule 2** | General Terms and Conditions |
| **Schedule 3** | Information Governance Provisions |
| **Schedule 4** | Definitions and Interpretations |
| **Schedule 5** | Specification and Tender Response Document |
| **Schedule 6** | Commercial Schedule |
| **Schedule 7** | Implementation Plan |
| **Schedule 8** | Change Control Process |
| **Schedule 9** | Key Sub-Contractors |
| **Schedule 10** | Data Processing |
| **Schedule 11** | Termination Sum |
| ***Drafting note: Schedule 10*** | ***Drafting note: parties may add new schedules as required including but not limited to further detail on areas such as: IT, Estates, KPIs. TUPE.*** |

**Signed by the authorised representative of THE AUTHORITY**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  |  |  |

**Signed by the authorised representative of THE SUPPLIER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature | ……………………………………. |
| Position: | …………………………………. |  |  |

1. (Managed Services Terms & Conditions)

**Key Provisions**

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

**Standard Key Provisions**

1. **Application of the Key Provisions**
   1. The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
   2. The optional Key Provisions at Clauses 8 to 17 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
   3. Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.
2. **Term**
   1. This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **[*insert date*]** years from the Actual Services Commencement Date. The Term may be extended in accordance with Clause 16.2 of Schedule 2 provided that the duration of this Contract shall be no longer than **[*insert number of years*]** years in total.

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

*Note that the term runs from the date when the Services are actually provided. If there is an implementation plan over, for example, three months, the term runs from the date the Services are provided. In these circumstances, it will be important to include a process in the implementation plan for acknowledging this date to ensure the term is clear.*

*The above approach has been adopted as it will mean that any delay in implementation does not have the effect of shortening the contract term. However, it may be that for some projects you want the services to start and/or end on a particular date or event. Where this is the case, this Key Provision can be amended accordingly.*

1. **Contract Managers**
   1. The Contract Managers at the commencement of this Contract are:
      1. for the Authority:

**[*insert name and role*]**

* + 1. for the Supplier:

**[*insert name and role*]**.

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

1. **Names and addresses for notices**
   1. Notices served under this Contract are to be delivered to:
      1. for the Authority:

**[*complete name and/or role and address*]**

* + 1. for the Supplier:

**[*complete name and/or role and address*]**.

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

1. **Management levels for dispute resolution**
   1. The management levels at which a dispute will be dealt with are as follows:

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

*Guidance: Clause 22.3 of Schedule 2 sets out an internal process for dealing with disputes. In Clause 5.1 above you must insert the number of internal levels and the name and/or role of the person who will deal with a dispute at each level. You may include as many levels as appropriate to the project. Once internal processes are exhausted then either party may refer a dispute to mediation for resolution. The purpose of having a number of levels is to ensure all internal avenues of resolution have been exhausted before a dispute is dealt with by an external body.*

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

1. **Order of precedence**
   1. Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
      1. the provisions on the front page of this Contract for the Provision of Managed Services (Contract Version);
      2. Schedule 1: Key Provisions;
      3. Schedule 5: Specification and Tender Response Document (but only in respect of the Authority’s requirements);
      4. Schedule 2: General Terms and Conditions;
      5. Schedule 6: Commercial Schedule;
      6. Schedule 3: Information Governance Provisions;
      7. Schedule 4: Definitions and Interpretations;
      8. The Call-off Terms and Conditions which are appended to the Framework Agreement; and
      9. the order in which all subsequent schedules, if any, appear.
2. **Application of TUPE at the commencement of the provision of Services**
   1. The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
   2. If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
      1. the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
      2. the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
      3. if such offer of employment is accepted, the Supplier or a subcontractor shall immediately release the person from their employment; and
      4. if after that period specified in Clause 7.2.2 of this Schedule 1 has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the Terms and Conditions for the Provision of Managed Services (Contract Version) ( Updated Version July] 2021).

**Optional Key Provisions**

*Guidance: These optional Key Provisions enable the Authority to:*

*(a) vary some of the default provisions in Schedule 2 as appropriate to the particular project (e.g. Key Provision 12 allows for the insurance levels and/or types to be varied from the default position set out in Clause 14 of Schedule 2); and*

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

*If any of the optional Key Provisions apply, this must be indicated in the draft contract issued at the tender stage by checking the boxes, completing the text in square brackets as appropriate and adding any required schedules. If a clause does not apply, leave the relevant box blank.*

1. **Services Commencement Date (where the Services are to start at a date after the Commencement Date)  (only applicable to the Contract if this box is checked and the dates are inserted in Clause 8.1 of this Schedule 1)**
   1. The Services Commencement Date shall be **[*insert date*]** and the Long Stop Date referred to in Clause 16.5.1 of Schedule 2 shall be **[*insert date*]**.

*Guidance: If provision of the Services is to start at a date after the date the Contract is signed, this must be stated in this Clause. This will apply, for example, if there is an implementation phase. If this applies, then check the box above and insert the date provision of the Services will commence.*

*Where provision of the Services commences after the date of the Contract, it is advisable to include a Long Stop Date. If the Supplier has not started to provide the Services by the Long Stop Date (which will be some weeks after the Services Commencement Date) it then entitles you to terminate the Services Contract (see Clause 15.5.1 of Schedule 2).*

1. **Quality assurance standards  (only applicable to the Contract if this box is checked and the standards are listed)**
   1. The following quality assurance standards shall apply, as appropriate, to the provision of the Services: **[*insert standards*]**.

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

1. **Different levels and/or types of insurance  (only applicable to the Contract if this box is checked and the table sets out the requirements)**
   1. The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

|  |  |
| --- | --- |
| **Type of insurance required** | **Minimum cover** |
| **[**Employer’s Liability**]** | **[** **]** |
| **[**Public Liability**]** | **[** **]** |
| **[**Professional Indemnity**]** | **[** **]** |
| **[**Insert other types of insurance as appropriate**]** | **[** **]** |

*Guidance: This Clause relates to Clause 14 of Schedule 2. Clause 14.1 of Schedule 2 requires the Supplier to have in place a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law in respect of employer’s liability, public liability, and professional indemnity insurance. If this default position is not appropriate in relation to the nature and risks of the particular project, you need to check the box above and insert in the table what different types and/or levels of insurance the Supplier must have in place. There should be clarity in the specification as to who is responsible for insuring the Equipment whilst it is located at the Authority’s premises.*

1. **Further Authority obligations  (only applicable to the Contract if this box is checked and the Schedule inserted)**
   1. The Authority’s Obligations are set out in Schedule **[*insert schedule number*]**.

*Guidance: For some procurements, there will be specific responsibilities on and requirements of your own organisation. These could include preparatory steps to enable the equipment to be installed. If there are specific responsibilities on your own staff it is important to include these in a Schedule. This will help to avoid arguments, if implementation is late, as to who is responsible for any delay.*

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

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

1. **Inclusion of a Change Control Process  (only applicable to the Contract if this box is checked and the Schedule inserted)**
   1. Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule **[8.**

*Guidance: Clause 21 of Schedule 2 states that any changes to the Services or other parts of the Contract can only be implemented if agreed between the Authority and the Supplier. In large projects where complex changes may be required then a more detailed change control process might be appropriate. Where you require a detailed change control process, check the box above and insert a Schedule number in this Clause and a corresponding numbered Schedule at the back of the Services Contract called “Change Control Process”.*

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

1. **Supplier as Data Processor  (only applicable to the Contract if this box is checked)**
   1. The Parties acknowledge that the Authority is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data Processed under this Contract.

*Guidance: If the Supplier is processing personal data as part of the provision of the Services and doing so on your behalf as a data processor you should check the above box. This will ensure that the respective roles are clear for the purpose of the Contract.*

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

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

1. **Purchase Orders  (only applicable to the Contract if this box is checked)**
   1. The Authority shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier’s risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.

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

1. **Monthly payment profile  (only applicable to the Contract if this box is checked)**
   1. The payment profile for this Contract shall be monthly in arrears.

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

1. **Termination for convenience  (only applicable to the Contract if this box is checked and Clause 17.1 of this Schedule 1 is completed)**
   1. The Authority may terminate this Contract forthwith in writing to the Supplier at any time on **[*one (1)/three (3)/six (6)* months’]** written notice. **[**Such notice shall not be served within one (1) year of the Actual Services Commencement Date**]**.
   2. **[**Should the Authority terminate this Contract in accordance with Clause 17.1 of this Schedule 1, then the Authority shall pay to the Supplier the termination sum calculated in accordance with Schedule**] [*insert schedule number*]**.

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

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

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

*Where it is appropriate for the contracting authority to pay certain costs should you terminate without cause, you will need to include the highlighted text at Clause 22.2 above referring to this and set out in Schedule 6 what these costs will cover and how these costs will be calculated. If for your project it would not be appropriate to pay such costs, delete Clause 22.2 from the Key Provisions, but retain Clause 22.1*.

**Extra Key Provisions**

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

1. (Managed Services Terms & Conditions)

**General Terms and Conditions**

|  |
| --- |
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| 1. Provision of Services |
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| 29. Assignment, novation and subcontracting |
| 30. Prohibited Acts |
| 31. General |

1. **Provision of Services**
   1. The Authority appoints the Supplier and the Supplier agrees to provide the Services:
      1. promptly and in any event within any time limits as may be set out in this Contract;
      2. in accordance with all other provisions of this Contract;
      3. with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
      4. in accordance with the Law and with Guidance;
      5. in accordance with Good Industry Practice;
      6. in accordance with the Policies; and
      7. 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. Immediately following the Commencement Date, the Supplier shall implement the Services fully in accordance with the Implementation Plan set out at Schedule 7 (to include, as appropriate, the delivery, installation and commissioning of all Equipment). If the Implementation Plan set out at Schedule 7 is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
  2. The Supplier shall commence delivery of the Services on the Services Commencement Date.
  3. The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
  4. The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services and to provide the Equipment and Consumables are in place at the Actual Services Commencement Date and are maintained throughout the Term.
  5. If there are any incidents that in any way relate to or involve the Services and/or the use of the Equipment and/or Consumables by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority’s application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Services, Equipment and/or Consumables.
  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 Services and/or Equipment and/or Consumables, the Supplier shall promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
  7. Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.7 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
  8. The Services and the Equipment shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing (“**Premises and Locations**”).
  9. Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
  10. Any access granted to the Supplier and its Staff under Clause 1.10 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 1.11 of this Schedule 2.
  11. Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 22 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 23.3 of this Schedule 2.
  12. The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.
  13. The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier’s obligations.
  14. The Authority shall inform the Supplier of any equipment which requires removal from the Premises and Locations and disposal of prior to the provision, installation and / or commissioning of the Equipment (and, where applicable, this shall be carried out in accordance with any relevant KPI). Where such notification is given prior to entering into the Contract, the cost of such removal and disposal shall be included within the Contract Price. Where such removal and disposal of any such equipment is not identified by the Authority prior to entering into this Contract, then the Supplier shall be entitled to charge a fair and reasonable fee for such removal and disposal. Where any such equipment being removed has a residual value the parties shall discuss and agree how this shall be dealt with. In the event that the parties cannot agree how equipment with a residual value should be dealt with, the issue is to be resolved in accordance with the dispute resolution procedure set out at Clause 23 of this Schedule 2.

1. Provision of Equipment
   1. As part of the Services, the Supplier shall provide the Equipment for use by the Authority for the Term. The Equipment shall be of first class quality and shall be new at the point they are provided, installed and/or commissioned at the relevant Premises and Locations (unless otherwise agreed by the Authority in writing, for example where existing Equipment is brought within the scope of the Services or as set out in the Specification and Tender Response Document. For the avoidance of doubt, where existing Equipment is brought within the scope of the Services, the cost of defect, repair and replacement of existing Equipment shall be borne by the Authority and agreed on a case-by-case basis).
   2. The Equipment shall be supplied and maintained throughout the Term by the Supplier so as to comply with:
      1. any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority’s requirements set out in the Specification and Tender Response Document and the Supplier’s response to such requirements set out as part of the Specification and Tender Response Document); and
      2. any applicable manufacturers’ specifications.
   3. Subject to any relevant Authority Obligations, the Supplier shall be responsible for all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Equipment to the Premises and Locations and the unloading, installation and commissioning of the Equipment at the Premises and Locations. For the avoidance of doubt, the Supplier shall be liable for any damage caused to the Equipment by any act or omission of any subcontractor of the Supplier involved in the delivery of the Equipment. Without limitation to the foregoing provision of this Clause 2.3 of this Schedule 2, unless otherwise stated in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Equipment 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 Equipment supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Equipment and shall be liable for any additional duties or taxes should the country of origin prove to be different from that advised by the Supplier.
   4. All third party carriers engaged to deliver the Equipment shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Equipment to the Authority.
   5. Once the Equipment have been delivered, installed and commissioned, the Supplier shall inform the Authority in writing that the Equipment is ready for use as part of the Services. The following process will then apply:
      1. within five (5) Business Days of receipt of such written confirmation from the Supplier that the Equipment is ready to use, the Authority may carry out any such reasonable inspections and testing of the Equipment as the Authority deems appropriate (in accordance with the relevant manufacturers’ technical manuals relating to the Equipment and/or as otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed by the Parties in writing) to confirm that the Equipment complies with the requirements of this Contract and is ready for use;
      2. as part of the Contract Price, the Supplier shall provide the Authority with all reasonable assistance and/or information requested by the Authority in relation to any such reasonable inspections and testing of the Equipment;
      3. if, acting reasonably, the Authority on inspection and testing is of the view that the Equipment has been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and is ready for use, it shall issue an Authority Confirmation to this effect to the Supplier;
      4. if, acting reasonably, the Authority on inspection and testing is not of the view that the Equipment has been supplied, installed and commissioned (as appropriate) in conformance with the requirements of this Contract and are ready for use, it shall inform the Supplier in writing and Clauses 2.7 and 2.8 of this Schedule 2 shall apply; and
      5. if the Authority chooses not to inspect and/or test the Equipment, then the Authority shall be deemed to have provided an Authority Confirmation in relation to such Equipment on the sixth Business Day following receipt by the Authority of the written confirmation from the Supplier in accordance with Clause 2.5.1 of this Schedule 2 that the Equipment is ready to use as part of the this Services.
   6. The issue by the Authority of any Authority Confirmation shall be a confirmation that the correct Equipment appears to have been supplied and reasonable installation and commissioning procedures look to have been followed by the Supplier in accordance with the requirements and standards of this Contract. It does not imply any acceptance of such Equipment or any endorsement of such installation and commissioning procedures. Responsibility for supplying the correct Equipment in accordance with the requirements and standards of this Contract and the appropriateness of any installation and commissioning procedures together with responsibility for the operational performance of the Equipment during the Term shall remain with the Supplier notwithstanding any such Authority Confirmation.
   7. Without prejudice to any other rights and remedies of the Authority under this Contract, in relation to any failure by the Supplier to provide, install or commission the correct Equipment in accordance with the requirements and standards of this Contract, the Supplier shall, at its own expense as part of the Contract Price, re-supply, re-install and/or re-commission the Equipment until such time as Equipment in compliance with the requirements of this Contract are delivered, installed, and commissioned to the reasonable satisfaction of the Authority and the Authority has provided an Authority Confirmation to the Supplier to this effect. The Contract Price for the Services payable by the Authority under this Contract may be withheld by the Authority in full or part (to be determined at the Authority’s sole discretion) until the correct Equipment in accordance with the requirements and standards of this Contract is supplied, installed and commissioned in accordance with the requirements and standards of this Contract to the reasonable satisfaction of the Authority and the Authority has provided its Authority Confirmation to this effect.
   8. In the event of any dispute between the Authority and the Supplier regarding the issue of an Authority Confirmation, the dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
   9. In the event that the Specification and Tender Response Document and/or Implementation Plan states that Equipment shall be installed and commissioned on a phased basis and/or upon request, then the process for the inspection and testing of Equipment set out in Clauses 2.5 to 2.8 (inclusive) of this Schedule 2 shall apply to the Equipment within each phase and/or instance of supply. In the event that the Specification and Tender Response Document stipulates a refresh programme and/or that substitute or replacement Equipment shall otherwise be installed in accordance with the requirements of this Contract (to include, without limitation, in accordance with any maintenance requirements), then, following the installation and commissioning of the substitute or replacement Equipment, the process for the inspection and testing of Equipment set out in Clauses 2.5 to 2.8 (inclusive) of this Schedule 2 shall apply in relation to the inspection and testing of each item of substitute or replacement Equipment.
   10. Title in the Equipment shall remain with the Supplier at all times throughout the Contract Period. For the Term, from the point it is installed at the Premises and Locations, the Authority shall bear the risk of (i) loss or damage to the Equipment occurring whilst it is at the Premises and Locations to the extent such loss or damage is due to the negligent acts or omissions of the Authority or its agents, employees, or subcontractors and/or (ii) other loss or damage to the Equipment to the extent that such loss or damage results from the use of the Equipment otherwise than in accordance with (a) the relevant Equipment operating manuals; or (b) the Supplier’s reasonable instructions as notified to the Authority in writing in relation to the operation of the Equipment. The Supplier shall be solely liable throughout the Term for all other loss or damage to the Equipment and shall make good such loss or damage as part of the Services.
   11. The Supplier shall not sell, purport to sell, transfer, mortgage or part with ownership of the Equipment, use the Equipment as security for a loan or any other obligation, allow the creation of any charge or lien over the Equipment or create or allow to be created any right for a third party to seize, acquire or retain the Equipment during the Term without the prior written agreement of the Authority.
   12. Following the issue of the Authority Confirmation, the Supplier shall allow the Authority quiet possession of the Equipment throughout the Term subject to the terms of this Contract. The Authority shall not:
       1. modify or alter the Equipment without the prior consent of the Supplier; or
       2. sell, purport to sell, mortgage, transfer or part with possession of the Equipment (other than to a statutory successor), use the Equipment as security for a loan or any other obligation, allow the creation of any charge or lien over the Equipment or create or allow to be created any right for a third party to retain the Equipment.
   13. Upon reasonable written notice from the Authority, the Supplier shall relocate such Equipment within the Premises and Locations or to another suitable location (to include, without limitation, as may be referred to in the Specification and Tender Response Document) and the process for the inspection and testing of the Equipment set out in Clauses 2.5 to 2.8 (inclusive) of this Schedule 2 shall apply in relation to the inspection and testing of any relocated Equipment in order to confirm that the Equipment has been installed and commissioned at the new location to the reasonable satisfaction of the Authority and in accordance with the requirements and standard of this Contract. The Authority shall meet the Supplier’s reasonable charges and expenses incurred in complying with this Clause 2.13 of this Schedule 2 provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.
   14. The Supplier shall make good at the Supplier’s expense any damage to any property or equipment caused by the installation, commissioning, relocation and/or removal of Equipment by the Supplier.
   15. Unless otherwise specified and agreed by the Parties, the Authority shall report to the Supplier any fault with the Equipment within 10 Business Days of identification of the fault, or otherwise in accordance with the provisions at Clause 1.15 of this Schedule 2 and/or the KPIs. The repair of the Equipment shall be completed in the timescales agreed between the Parties in Schedule 5 (Specification and Tender Response Document) or in the Service Level Agreement.
   16. Where there is a fault with Equipment and ongoing repairs are taking place, the Authority’s payment obligations set out in clause 10 shall still apply in relation to the payment of all undisputed amounts of an invoice.
2. **Authority damage or misuse of Equipment** 
   1. Where the Authority damages or misuses the Equipment in accordance with Clause 2.10, the Authority shall be liable to fund the repair and/or replacement of the Equipment. For the avoidance of doubt, repair(s) should only be carried out by the original Equipment manufacturer, or by an individual or body corporate authorised by the original Equipment manufacturer to carry out such repairs. Where Equipment is unavailable due to Authority damage or misuse, the Supplier shall be relieved of obligations to provide the Services and of the KPIs during the time of unavailability, and at its sole discretion may loan alternative equipment for a fee.
   2. If a Dispute arises as to:
      1. the Authority’s damage or misuse of the Equipment in accordance with Clause 2.10, and/or
      2. the nature and/or extent of the relief claimed by the Supplier

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the unavailability of the Equipment.

Any change that is required to the Implementation Plan or to the Charges pursuant to this Clause 3 shall be agreed by the Parties in accordance with Clause 22 of this Schedule 2.

1. Provision of Consumables
   1. The Supplier shall supply all Consumables required for the operation of the Equipment during the Term in accordance with the relevant provisions of the Specification and Tender Response Document.
   2. The Supplier shall deliver the Consumables in accordance with any delivery timescales, delivery dates, and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, a Purchase Order or as otherwise agreed with the Authority in writing. Except where installation of the Consumables forms part of the Services, delivery shall be completed when the Consumables have been unloaded at the relevant Premises and Locations and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery Premises and Locations at the agreed delivery date and times in order to accept such delivery. Where the installation of the Consumables forms part of the Services, delivery shall be completed when such Consumables have been installed at the Premises and Locations in accordance with any requirements set out in the Specification and Tender Response Document.
   3. Part deliveries of Consumables and/or deliveries of Consumables outside of the agreed delivery times/dates may be rejected unless the Authority has previously agreed in writing to accept such deliveries.
   4. Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Supplier shall be responsible for all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Consumables to the delivery Premises and Location and unloading of the Consumables at the Premises and Locations. Without limitation to the foregoing provision of this Clause 4.4 of this Schedule 2, unless otherwise stated in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Consumables 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 Consumables supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Consumables and shall be liable to the Authority for any additional duties or taxes for which the Authority may be accountable should the country of origin prove to be different from that advised by the Supplier.
   5. All third party carriers engaged to deliver the Consumables shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Consumables to the Authority.
   6. Unless otherwise set out in the Specification and Tender Response Document, risk in the Consumables shall pass to the Authority when the Consumables are delivered as specified in this Contract.
   7. Unless otherwise set out in the Specification and Tender Response Document, ownership of the Consumables shall pass to the Authority on delivery, payment or part payment, whichever is the first to occur.
   8. Consumables found to be damaged or otherwise not in accordance with the requirements of this Contract may be rejected by the Authority by written notice to the Supplier within a reasonable period of time of the Authority becoming aware (or should have become aware of the same had it acted reasonably) that the Consumables were damaged or otherwise not in accordance with this Contract (“**Rejected Consumables**”). Unless otherwise set out in the Specification and Tender Response Document, the Supplier shall collect the Rejected Consumables at the Supplier’s risk and expense within five (5) Business Days of issue of written notice from the Authority rejecting the Consumables and, without additional charge, promptly (and in any event within five (5) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Consumables to the Authority. Unless otherwise set out in the Specification and Tender Response Document, risk and title in respect of any Rejected Consumables shall pass to the Supplier on the earlier of (i) their collection by the Supplier in accordance with this Clause 4.8 of this Schedule 2; or (ii) the latest date such Rejected Consumables should have been collected by the Supplier in accordance with this Clause 4.8 of this Schedule 2 . The whole of any delivery may be rejected if a reasonable sample of the Consumables taken indiscriminately from that delivery is found not to conform in any material respects to the requirements of the Contract.
2. Use of Authority equipment
   1. Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
      1. shall be provided at the Authority’s sole discretion;
      2. shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
      3. must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
      4. shall be used by the Supplier at the Supplier’s risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).
3. Staff
   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.
   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 to provide the Services during Staff holidays or absence.
   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 and Tender Response Document 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 Authority, such approval not to be unreasonably withheld or delayed.
   4. The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
   5. The Supplier shall:
      1. employ only those Staff who are careful, skilled and experienced in the duties required of them;
      2. ensure that every member of Staff is properly and sufficiently trained and instructed;
      3. ensure all Staff have the qualifications to carry out their duties;
      4. maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier’s expense) in respect of the Staff; and
      5. ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
   6. The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority’s staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
   7. The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
      1. are questioned concerning their Convictions; and
      2. obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
   8. The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier’s cost and expense.
   9. The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority’s prior written consent if:
      1. the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 6.7.1 of this Schedule 2;
      2. the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 6.7.2 of this Schedule 2; or
      3. the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 6.7.2 of this Schedule 2.
   10. In addition to the requirements of Clause 6.7 to Clause 6.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
       1. warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
       2. warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
       3. shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.
   11. The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority’s written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
   12. The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 6.7 to Clause 6.11 of this Schedule 2 have been met.
   13. The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority’s concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
4. Business continuity
   1. The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority’s business continuity plan where relevant to the provision of the Services.
   2. Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
      1. the criticality of this Contract to the Authority; and
      2. the size and scope of the Supplier’s business operations,

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

* 1. The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier’s business operations. The Supplier shall promptly provide to the Authority, at the Authority’s written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 7.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
  2. The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
  3. Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
  4. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

1. The Authority’s obligations
   1. Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 10 of this Schedule 2.
   2. The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
   3. The Authority shall comply with the Authority’s Obligations, as may be referred to in the Key Provisions.
2. Contract management 
   1. Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority’s Contract Manager.
   2. Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
   3. Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
      1. details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
      2. details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
      3. the information specified in the Specification and Tender Response Document;
      4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
      5. such other information as reasonably required by the Authority.
   4. Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure set out in Clause 5 of the Key Provisions and Clause 23.3 of this Schedule 2.
   5. The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (“**Third Party Body”**). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
   6. Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
      1. storing and analysing the management information and producing statistics; and
      2. sharing the management information or any statistics produced using the management information with any other Contracting Authority.
   7. If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 9.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
   8. The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month’s written notice of any changes.
3. Price and payment
   1. The Contract Price shall be calculated as set out in the Commercial Schedule.
   2. Unless otherwise stated in the Commercial Schedule the Contract Price:
      1. shall be payable from the Actual Services Commencement Date;
      2. shall remain fixed during the Term; and
      3. is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, use of Equipment, supplies used by the Supplier, all Consumables, all costs associated with the maintenance of Equipment provided by the Supplier as part of the Services, travel costs, accommodation expenses and the cost of Staff.
   3. Unless stated otherwise in the Commercial Schedule:
      1. where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
      2. where Clause 10.3.1 of this Schedule 2 does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

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

* 1. The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
  2. The Authority shall pay each undisputed invoice received in accordance with Clause 10.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.
  3. Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 23 of this Schedule 2. For the avoidance of doubt, where a query is raised with respect to an invoice, the Authority shall pay any undisputed amount in relation to such invoice in accordance with the payment terms set out in clause 10.5.
  4. The Supplier shall pay to the Authority any service credits that may become due in accordance with the provisions of the Specification and Tender Response Document.
  5. The Authority reserves the right to deduct any monies due to the Supplier from the Authority from any monies due to the Authority from the Supplier under this Contract.

1. Warranties
   1. The Supplier warrants and undertakes that:
      1. it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
      2. it has all rights, consents, authorisations, licences and accreditations required to provide the Services, Equipment and Consumables and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
      3. it has and shall maintain a properly documented system of quality 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 processes;
      4. it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
      5. where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
      6. receipt of the Services (to include, without limitation, the use of any Equipment) by or on behalf of the Authority and use of the deliverables, Consumables, or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
      7. it will comply with all Law and Guidance and Polices in so far as they relevant to the provision of the Services, the Equipment and/or Consumables;
      8. it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
      9. unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
      10. without limitation to the generality of Clause 11.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier’s access to the Premises and Locations in accordance with this Contract;
      11. without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
      12. any Equipment used in the provision of the Services shall comply with all relevant Law and Guidance, and be fit for its intended purpose;
      13. it shall maintain, repair and/or replace all Equipment used in the provision of the Services throughout the Term in accordance with the provisions of this Contract;
      14. unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that any products purchased by the Supplier partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out at 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 products being purchased;
      15. any Consumables supplied and/or used in the provision of the Services shall comply with all relevant Law and Guidance, and be fit for their intended purpose;
      16. it will manufacture, or procure the manufacture of, the Equipment and Consumables using all reasonable skill and care and in accordance with Good Industry Practice;
      17. any equipment used in the manufacture, delivery, or installation of the Equipment and/or Consumables shall comply with all relevant Law and Policy, be fit for its intended purpose and shall maintained fully in accordance with the manufacturer’s specifications;
      18. it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
      19. it will promptly respond to all requests for information regarding this Contract and the provision of the Services at the frequency and in the format that the Authority may reasonably require;
      20. all information included within the Supplier’s responses in the Specification and Tender Response Document and all accompanying materials is accurate;
      21. 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;
      22. 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;
      23. all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
      24. 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;
      25. 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;
      26. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
      27. 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.
   2. Where the provision and/or installation of Equipment and/or Consumables under this Contract relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that:
      1. at the point the Equipment and Consumables are provided to the Authority, all such Equipment and Consumables 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 Equipment and Consumables shall have been complied with. Without limitation to the foregoing provisions of this Clause 11.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required; and
      2. for the Term of this Contract, 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 Equipment and Consumables in accordance with Law and Guidance.
   3. If the Supplier is in breach of Clause 11.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to cease use of the Equipment and/or Consumables, and to require the provision of replacement Equipment and/or Consumables from the Supplier that comply with Clause 11.2 of this Schedule 2. The Supplier shall, subject to Clause 14.2 of this Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach Clause 11.2 of this Schedule 2.
   4. The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
   5. Without prejudice to the generality of Clause 11.2 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
   6. The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.
   7. The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance. If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
      1. notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
      2. promptly provide to the Authority:
         1. 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
         2. such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
   8. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 11 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
   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.
2. Intellectual property
   1. Unless specified otherwise in the Specification and Tender Response Document, the Supplier hereby grants to the Authority:
      1. for the life of the use of the Services, Equipment and Consumables by the Authority, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Services, Equipment and Consumables (to include any associated technical or other documentation and information supplied or made accessible to the Authority in any media) in accordance with this Contract; and
      2. for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority’s normal business operations.
3. Indemnity
   1. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
      1. any injury or allegation of injury to any person, including injury resulting in death;
      2. any loss of or damage to property (whether real or personal); and/or
      3. any breach of Clause 11.1.6 and/or Clause 12 of this Schedule 2; and/or
      4. any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

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

* 1. Liability under Clauses 13.1.1, 13.1.3 and 18.13 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 13.1.2 and 13.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 14 of this Schedule 2.
  2. In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
     1. relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
     2. relating to the Authority’s membership of any indemnity and/or risk pooling arrangements.

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

1. Limitation of liability
   1. Nothing in this Contract shall exclude or restrict the liability of either Party:
      1. for death or personal injury resulting from its negligence;
      2. for fraud or fraudulent misrepresentation; or
      3. in any other circumstances where liability may not be limited or excluded under any applicable law.
   2. Subject to Clauses 13.2, 14.1, 14.3 and 14.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.
   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:
      1. extra costs incurred purchasing replacement or alternative services;
      2. costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
      3. the costs of extra management time; and/or
      4. 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.

* 1. 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.
  2. If the total Contract Price paid or payable by the Authority to the Supplier over the Term:
     1. is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
     2. is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
     3. is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 14.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
     4. is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 14.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
  3. Clause 14 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

1. Insurance
   1. Subject to Clauses 15.2 and 15.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer’s liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing. These requirements shall not apply to the extent that the Supplier is a member and maintains membership of each of the indemnity schemes run by the NHS Litigation Authority.
   2. Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
   3. Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self insure in order to meet other relevant requirements referred to at Clauses 15.1 and 15.2 of this Schedule 2 on condition that such self insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
   4. The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.
   5. The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
   6. The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 15 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
   7. Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.
2. Term and termination
   1. This Contract shall commence on the Commencement Date and, unless terminated   
      earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
   2. The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
   3. In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach (“**Remedial Proposal**”) before exercising any right to terminate this Contract in accordance with Clause 16.4.1(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
      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;
      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
      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 16.4.1(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

* 1. Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:
     1. commits a material breach of any of the terms of this Contract which is:
        1. not capable of remedy; or
        2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
     2. has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.
  2. The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:
     1. the Supplier does not commence delivery of the Services by any Long Stop Date;
     2. 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;
     3. the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
     4. the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 29.1 of this Schedule 2; or
     5. pursuant to and in accordance with any termination rights set out in the Key Provisions and Clauses 16.6, 24.8; 26.2; 26.4 and 30.2 of this Schedule 2; or
     6. the warranty given by the Supplier pursuant to Clause 11.7 of this Schedule 2 is materially untrue, the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 11.7 of this Schedule 2, or the Supplier fails to provide details of proposed mitigating factors as required by Clause 11.7 of this Schedule 2 that in the reasonable opinion of the Authority are acceptable.
  3. If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:
     1. the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
     2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 16.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
     3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 23.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 16.4.1(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 16.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

* 1. If the Authority novates this Contract to any body that is not a Contracting Authority or a body which is not capable of funding the Services, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 16.5.2 to Clause 16.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
  2. Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

1. Consequences of expiry or earlier termination of this Contract
   1. Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier (by or on the date of expiry or earlier termination) for all and any Services which have been completed by the Supplier in accordance with this Contract (and any other sums owing ) prior to expiry or earlier termination of this Contract.
   2. Immediately following expiry or earlier termination of this Contract:
      1. the Supplier shall comply with its obligations under any agreed exit plan;
      2. all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and
      3. any licences relevant to the Equipment shall be transferred to the Authority as required or ended with the removal of the Equipment (as applicable).
   3. The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 17.2 of this Schedule 2 for the period set out in Clause 25.1 of this Schedule 2.
   4. The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
   5. Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
   6. The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
   7. The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
   8. The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.
   9. Only in the event of earlier termination of this Contract shall the Authority have the option to purchase the Equipment. In addition to the amount payable under clause 17.1, the Authority shall pay the Termination Sum to the Supplier, and the Supplier shall on payment of the Termination Sum, transfer title of the Equipment to the Authority, or where the Supplier has previously transferred title of the Equipment to a third party provider of funding or finance, procure that such third party provider of funding or finance transfers title of the Equipment to the Authority. Any agreement regarding the purchase of the Equipment will be outside of this Contract. If the Authority does not wish to exercise the option to purchase the Equipment, the Supplier has the right to remove the Equipment and the Authority will bear any costs associated with the removal of the Equipment.
   10. The obligations set out in clause 17.1 and 17.9 shall take effect on the date on which the Contract terminates. The Authority shall pay any amount due under clauses 17.1 and 17.9 to the Supplier within 30 days following receipt of a valid VAT invoice from the Supplier.
   11. Upon expiry of this Contract, the Authority shall have the following options:
       1. The Authority may purchase the Equipment for the Termination Sum, in which case the Supplier shall, on payment of the Termination Sum, transfer title to the Authority, or where the Supplier has previously transferred title of the Equipment to a third party provider of funding or finance, procure that such third party provider of funding or finance transfer title to the Equipment to the Authority; or
       2. The Authority may renew the Contract on terms mutually agreeable to the Supplier and the Authority; or
       3. The Authority may require the Supplier to remove all of the Equipment, in which case:
          1. The Authority shall have no further right to use or operate the Equipment;
          2. The Authority and the Supplier (acting reasonably) shall agree an exit plan relating to the removal of the Equipment, including the milestone dates on which the Supplier will remove the Equipment (these milestone dates shall be as soon as reasonably practicable following expiry of the Contract), the locations from which the Supplier shall remove the Equipment and any matters relating the packaging and storing of the Equipment prior to the removal of the Equipment on the agreed milestone dates;
          3. The Authority shall allow the Supplier to access any parts of the Premises or Locations to which the Supplier requires access in order to remove the Equipment; and
          4. The Supplier shall bear the costs relating to or arising out of the removal of the Equipment, provided that the relevant option is exercised and the terms thereof are agreed by both Parties by no later than 180 days prior to the expiry of the Term. If the Authority fails to exercise any of its options by no later than 180 days prior to the expiry of the Term, the Authority shall be deemed to have exercised its option to require the Supplier to removal the Equipment.
   12. The Authority shall pay any amount due under Clause 17.11 to the Supplier within 30 days following receipt of a valid VAT invoice from the Supplier.
2. Staff information and the application of TUPE at the end of the Contract
   1. Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
   2. No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
   3. If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 18.1 and 18.2 of this Schedule 2, the Authority may withhold payment under Clause 10 of this Schedule 2.
   4. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 18.1 and 18.2 of this Schedule 2.
   5. Subject to Clauses 18.6 and 18.7 of this Schedule 2, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
      1. make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
      2. increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
      3. replace any of the Supplier Personnel or increase the total number of employees providing the Services;
      4. deploy any person other than the Supplier Personnel to perform the Services;
      5. terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
      6. increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
      7. introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
   6. Clause 18.5 of this Schedule 2 shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
   7. Where the obligations on the Supplier under Clause 18 of this Schedule 2 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
   8. Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
   9. The Parties agree that where a Successor or the Authority provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or subcontractor (in whole or in part) on expiry or earlier termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 18.11 to Clause 18.14 of this Schedule 2 and (where relevant) the requirements of Clause 1.13 of Part D of Schedule 7 of the Terms and Conditions for the Provision of Managed Services (Contract Version) ( Updated version [July] 2021) shall apply.
   10. If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
   11. In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
   12. The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:
       1. pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
       2. account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
       3. pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
       4. pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
       5. subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any subcontractor warrant that such records are accurate and up to date.
   13. The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
       1. the Supplier’s or subcontractor’s failure to perform and discharge its obligations under Clause 18.12 of this Schedule 2;
       2. any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
       3. any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
       4. any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
       5. any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor as a term of such Subsequent Transferring Employee’s contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
       6. any act or omission of the Supplier or any subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor’s or Authority’s failure to comply with regulation 13(4) of TUPE.
   14. The Supplier will, or shall procure that any subcontractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 18.13 of this Schedule 2 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
   15. The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
   16. If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any subcontractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
       1. the Authority will or shall procure that the Successor will within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
       2. the Supplier may offer (or may procure that a subcontractor may offer) employment to such person within twenty eight (28) days of the notification by the Authority or Successor;
       3. if such offer of employment is accepted, the Authority will or shall procure that the Successor will immediately release the person from their employment; and
       4. if after the period in Clause 18.16.2 of this Schedule 2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority will, or shall procure that the Successor will, (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.
3. Packaging, identification and end of use 
   1. The Supplier shall comply with all obligations imposed on it by Law relevant to the Equipment and Consumables in relation to packaging, identification, and obligations following end of use by the Authority.
   2. Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Consumables shall be securely packed in trade packages of a type normally used by the Supplier for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
   3. Unless otherwise (a) specified in the Specification and Tender Response Document; (b) agreed with the Authority in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package of Consumables:
      1. a description of the Consumables which shall include, without limitation, the weight of the Consumables where available and any order number allocated to the Consumables by the Authority and/or the Supplier;
      2. the quantity in the package where available;
      3. any special directions for storage;
      4. the expiry date of the contents where applicable;
      5. the batch number; and
      6. the name and address of the manufacturer of the Consumables and the Supplier.
   4. All Equipment and Consumables that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Equipment and Consumables provided to the Authority, and the packaging of such Equipment and Consumables, to highlight environmental and safety information as required by applicable Law.
   5. Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the Authority at the Supplier’s expense or otherwise disposed of at the Authority’s discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection or return.
4. Sustainable development
   1. The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services, Equipment and Consumables. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
      1. comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Services, Equipment and Consumables and the Supplier’s supply chain;
      2. maintain relevant policy statements documenting the Supplier’s significant social and environmental aspects as relevant to the Services, Equipment and Consumables being provided and as proportionate to the nature and scale of the Supplier’s business operations; and
      3. maintain plans and procedures that support the commitments made as part of the Supplier’s significant social and environmental policies, as referred to at Clause 20.1.2 of this Schedule 2.
   2. The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier’s compliance with the provisions of Clause 20 of this Schedule 2.
5. Electronic services information
   1. Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
   2. The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 21 of this Schedule 2.
   3. If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
   4. The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority’s contracts from time to time. Subject to Clause 21.5 of this Schedule 2, no obligation to illustrate or advertise the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 21.4 of this Schedule 2.
   5. The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
   6. Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 21.6 of this Schedule 2 or otherwise under the terms of this Contract.
   7. If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.
6. Change management
   1. The Supplier acknowledges to the Authority that the Authority’s requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
   2. Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
7. Dispute resolution
   1. During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
   2. In the case of a dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 23.3 of this Schedule 2 before commencing court proceedings.
   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. Level 1 of the management levels of the dispute as set out in Clause 5 of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.
   4. If the procedure set out in Clause 23.3 of this Schedule 2 above fails to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution (“**CEDR**”); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.
   5. To initiate mediation a Party shall:
      1. give notice in writing (“**Mediation Notice**”) to the other Party requesting mediation of the dispute; and
      2. send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.
   6. Neither Party may issue a Mediation Notice until the process set out in Clause 23.3 of this Schedule 2 has been exhausted.
   7. The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation 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. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
   8. Nothing in this Contract shall prevent:
      1. the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
      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 and other service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.
   9. Clause 23 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
8. Force majeure
   1. Subject to Clause 24.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
   2. The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 24 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
      1. the Supplier has fulfilled its obligations pursuant to Clause 7 of this Schedule 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
      3. the Supplier has complied with the procedural requirements set out in Clause 24 of this Schedule 2.
   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.
   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.
   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.
   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.
   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.
   8. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
   9. Following such termination in accordance with Clause 24.8 of this Schedule 2 and subject to Clause 24.10 of this Schedule 2, neither Party shall have any liability to the other.
   10. Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 24.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.
9. Records retention and right of audit 
   1. Subject to any statutory requirement and Clause 25.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
   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.
   3. The Authority shall have the right to audit the Supplier’s compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier’s compliance with its obligations under this Contract.
   4. Should the Supplier subcontract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier’s obligations under this Contract that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
   5. The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier’s compliance with this Contract for the purposes of:
      1. the examination and certification of the Authority’s accounts; or
      2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
   6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 25 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3)(d) and 6(5) of the National Audit Act 1983.
   7. The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
   8. The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier’s compliance with the requirements of this Contract.
10. Conflicts of interest and the prevention of fraud
    1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
    2. The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 26.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
    3. The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
    4. If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.
11. Equality and human rights
    1. The Supplier shall:
       1. ensure that (a) it does not, whether as employer or as provider of the 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 provider of the 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;
       2. in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority’s obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
       3. the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 27 of this Schedule 2.
    2. The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier’s compliance with the provisions of Clause 27 of this Schedule 2.
12. Notice
    1. Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
    2. A notice shall be treated as having been received:
       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
       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
       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.
13. Assignment, novation and subcontracting

Assignment

* 1. The Supplier shall not, except where Clause 29.2 of this Schedule 2 applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
  2. Notwithstanding Clause 29.1 of this Schedule 2, the Supplier may assign to a third party (“**Assignee**”) the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 29.2 of this Schedule 2 shall be subject to:
     1. the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 10.8 of this Schedule 2;
     2. all related rights of the Authority in relation to the recovery of sums due but unpaid;
     3. the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee’s contact information and bank account details to which the Authority shall make payment;
     4. the provisions of Clause 10 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
     5. payment to the Assignee being full and complete satisfaction of the Authority’s obligation to pay the relevant sums in accordance with this Contract.

**Novation**

* 1. The Authority shall be liable for any error or omission in providing details of existing managed services arrangements that are to be novated into this Contract. Where an existing managed services arrangement has a management fee, the Authority shall procure that the original provider shall novate this management fee to the Supplier.

**Subcontracting**

* 1. Any authority given by the Authority for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.
  2. Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Authority in writing, which:
     1. contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such subcontracting;
     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;
     3. contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
     4. contain a right for the Authority to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract; and
     5. require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.
  3. For the avoidance of doubt, any such subcontracting shall not relieve the Supplier from its obligations and the Supplier shall remain liable for all of its liabilities, obligations and responsibilities under this Contract.
  4. Where the Authority pays the Supplier’s undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its subcontractors.
  5. The Authority shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
  6. The Authority shall not transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract to any body that is not a Contracting Authority or any body which is incapable of funding the Services without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier. The Supplier shall have a right to immediately terminate the Contract if the Authority does not obtain the prior written consent of such a transfer, assignment, novation, sub-contract or disposal of such rights and obligations under this Contract.
  7. The Authority confirms its approval of the appointment of the Key Sub-Contractors.
  8. Where the Supplier wishes to enter into a Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written approval of the Authority, such approval not be unreasonably withheld or delayed. For these purposes, the Authority may withhold its approval to the appointment of a Key Sub-Contractor if it reasonably considers that:
     1. The appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

or

* + 1. The proposed Key Sub-contractor employs unfit persons.
  1. Where a Key Sub-Contractor is replaced under clause 29.11 of this Schedule 2, the name of the Key Sub-Contractor shall be included in the list of Key Sub-Contractors set out in Schedule 9, as agreed on a case by case basis between the Parties.

1. Prohibited Acts
   1. The Supplier warrants and represents that:
      1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
         1. offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
         2. in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
      2. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
   2. If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
      1. the Authority shall be entitled:
         1. to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
         2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
         3. 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;
      2. any termination under Clause 30.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
      3. notwithstanding Clause 23 of this Schedule 2, any dispute relating to:
         1. the interpretation of Clause 30 of this Schedule 2; or
         2. the amount or value of any gift, consideration or commission,

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

1. General
   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.
   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.
   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.
   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.
   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.
   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.
   7. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 31.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
   8. Unless otherwise expressly stated in this Contract 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 except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
   9. This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the 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.
   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.
   11. Subject to Clause 23 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
   12. All written and oral communications and all written material referred to under this Contract shall be in English.
2. (Managed Services Terms & Conditions)

**Information Governance Provisions**

1. **Confidentiality**
   1. In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
      1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
      2. the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
         1. which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
         2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
         3. which is authorised for disclosure by the prior written consent of the Discloser;
         4. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
         5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
   2. Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).
   3. The Authority may disclose the Supplier’s Confidential Information:
      1. on a confidential basis to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
      2. on a confidential basis to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
      3. to any relevant party for the purpose of the examination and certification of the Authority’s accounts;
      4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
      5. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
      6. on a confidential basis to a proposed successor body in connection with any proposed or actual assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

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

* 1. The Supplier may only disclose the Authority’s Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the Supplier’s obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority’s written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this Contract.
  2. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
  3. The Supplier considers that any pricing information and technical specification provided to the Authority in relation to this Contract (and any communications in advance of entering into this Contract) should be treated as commercially sensitive information, the release of which would prejudice the commercial interests of the Supplier.
  4. Clause 1 of this Schedule 3 shall remain in force:
     1. without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
     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.

1. Data protection
   1. Both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement and shall not perform their obligations under this Contract in such a way as to cause the other Party to breach any of its obligations under the Data Protection Legislation.
   2. In so far as the Supplier is a Data Processor processing any Personal Data on behalf of the Authority as Data Controller under or in connection with this contract, the Parties agree that:
      1. The Authority shall not disclose any Personal Data to the Supplier save where it is lawful and in a form which is lawful;
      2. The Supplier shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation;
      3. The subject-matter and duration of the Processing, nature and purpose of the Processing, types of Personal Data, and categories of Data Subjects are set out in Schedule 10 to this Contract;
      4. The Authority may make reasonable amendments to Schedule 10 (which, for the avoidance of doubt, may include amendments proposed by the Supplier) by providing thirty (30) days’ written notice to the Supplier as the Authority considers necessary to meet the requirements of the Data Protection Legislation.
   3. In so far as the Supplier is a Data Processor processing any Personal Data on behalf of the Authority as Data Controller under or in connection with this Contract, the Supplier shall:
      1. only process Personal Data on the written instructions of the Authority unless Processing is required by applicable laws to which the Supplier is subject, in which case the Supplier shall to the extent permitted by such applicable laws inform the Authority of that legal requirement before Processing;
      2. ensure that any personnel with access to Personal Data are subject to a duty of confidentiality (whether contractual or statutory) and ensure that access is strictly limited to those individuals who need to know/access the Personal Data;
      3. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall, in relation to the Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the UK GDPR;
      4. only engage Sub-Processors with the prior written consent of the Authority and under a written contract, imposing equivalent data protection obligations as set out in this Contract and in particular in this Clause 2 of Schedule 3, remaining liable to the Authority for compliance of any Sub-Processor engaged and informing the Authority of any changes concerning the addition or replacement of Sub-Processors giving the Authority sufficient opportunity to object to such changes;
      5. assist the Authority by appropriate technical and organisational measures, insofar as possible, for the fulfilment of the Authority’s obligations to respond to requests for exercising the Data Subject's rights laid down in the Data Protection Legislation;
      6. notify the Authority within five (5) Working Days if it receives a request from a Data Subject under the Data Protection Legislation in respect of the Personal Data and not respond to any such request without the written authorisation of the Authority or as required by the Data Protection Legislation to which the Supplier is subject but only after informing the Authority of such legal requirement before responding to the request;
      7. notify the Authority without undue delay, and at least within 48 hours, upon becoming aware of a Personal Data Breach, providing the Authority with sufficient information to allow it to meet its obligations under the Data Protection Legislation and assisting the Authority, as directed, in the investigation, mitigation and remediation of such Personal Data Breach;
      8. assist the Authority in ensuring compliance with the obligations pursuant to the Data Protection Legislation taking into account the nature of the Processing for the purposes of this Contract and the information available to the Supplier, including but not limited to those obligations relating to:
         1. security of processing;
         2. notification of a Personal Data breach to the Commissioner;
         3. communication of a Personal Data Breach to the Data Subject; and
         4. Data Protection impact assessments and any subsequent consultations with the Commissioner;
      9. on the expiry or termination of this Contract, promptly upon request from the Authority (at the Authority's discretion) either:
         1. return all Personal Data to the Authority and delete all existing copies, or procure such deletion; or
         2. securely destroy such Personal Data, unless an applicable law requires storage of the Personal Data but only to the extent and for such period as required by such law;
      10. notify the Authority of the deletion of Personal Data within 21 days of the expiry or termination of this Contract;
      11. not transfer Personal Data outside the UK without the prior written consent of the Authority and fulfilling the following conditions:
          1. the Supplier is processing Personal Data in a territory which is subject to a current finding under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. The Supplier must identify in Schedule 10 the territory that is subject to such an adequacy finding;
          2. the Supplier has appropriate safeguards in relation to the transfer to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR. The Supplier must identify in Schedule 10 the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and the Supplier must immediately inform the Authority of any change to that status; or
          3. the transfer otherwise complies with the Data Protection Legislation for the reasons set out in Schedule 10;
      12. make available to the Authority on request all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the UK GDPR and allow for and contribute to audits, including inspections, conducted by the Authority or another auditor mandated by the Authority;
   4. The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
   5. Where, as a requirement of this Contract, the Supplier is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to patients and/or service users as part of the Services, the Supplier shall:
      1. complete and publish an annual information governance assessment using the NHS information governance toolkit;
      2. achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
      3. nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
      4. report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
      5. put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
      6. put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient’s integrated electronic care record);
      7. put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract; and
      8. where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.
   6. The Supplier shall, at all times during and after the Term, indemnify the Authority and keep the Authority indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Supplier's obligations under this clause except and to the extent that such liabilities have resulted directly from the Authority’s instructions.
   7. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
2. **Freedom of Information and Transparency**
   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.
   2. The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Authority shall share with the Supplier details of timescales for responding to a request made under the FOIA. The Supplier agrees:
      1. that this Contract and any recorded information held by the Supplier on the Authority’s behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
      2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
      3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within five (5) Business Days) provide a copy of the request and any response to the Authority;
      4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within five (5) Business Days) transfer the request to the Authority;
      5. if the Authority receives a request for information under FOIA or the Environmental Regulations to disclose information that relates to the Supplier, the Authority will notify the Supplier as soon as is reasonably practicable, and in any event not later than five (5) Business Days after receiving the request. The Authority will consult with the Supplier in accordance with all applicable guidance. Notwithstanding any other provision in this Contract, the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the Environmental Regulations. Where the Authority determines that it will disclose information, it will notify the Supplier as applicable in writing, giving at least five (5) Business Days’ notice of its intended disclosure;
      6. to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge;
      7. to provide continual and ongoing assistance to the Authority on information to be disclosed under FOIA until the Authority’s obligation to disclose under the FOIA has been discharged.
   3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information. The Authority shall treat commercially sensitive information as Confidentiality Information and not disclose the Supplier’s commercially sensitive information under a request for disclosure under the FOIA.
   4. Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
   5. In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority’s absolute discretion.
   6. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
   7. Where any information is held by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such subcontractor were the Supplier.
3. **Information Security**
   1. Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
      1. notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority’s information governance Policies; and
      2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
   2. Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
   3. Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain, certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.
4. (Managed Services Terms & Conditions)

Definitions and Interpretations

1. **Definitions**
   1. In this Contract the following words shall have the following meanings unless the context requires otherwise:

|  |  |
| --- | --- |
| “Actual Services Commencement Date” | * 1. means the date the Supplier actually commences delivery of all of the Services following the achievement by the Supplier of Authority Confirmation in respect of all of the items of Equipment to be provided by the Supplier to the Authority by the Services Commencement Date; |
| “Authority” | * 1. means the authority named on the form of Contract on the first page; |
| “Authority Confirmation” | means the confirmation provided (or deemed to be provided) by the Authority that the Equipment can commence use in a live environment and that the Services may commence accordingly; |
| “Authority’s Obligations” | * 1. means the Authority’s further obligations, if any, referred to in the Key Provisions; |
| “Business Continuity Event” | * 1. means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event; |
| “Business Continuity Plan” | * 1. means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event; |
| “Business Day” | * 1. means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales (or a national public bank holiday outside of England Wales where the Supplier is based outside of England and Wales); |
| “Cabinet Office Statement” | * 1. the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced; |
| “Change Control Process” | * 1. means the change control process as outlined at Schedule 8; |
| “Codes of Practice” | * 1. shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “Commencement Date” | * 1. means the date of this Contract; |
| “Commercial Schedule” | * 1. means the document set out at Schedule 6; |
| “Confidential Information” | * 1. 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:  1. Personal Data or Special Category Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; 2. 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) including, but not limited, to the Supplier’s commercially sensitive information; and/or 3. Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet; |
| “Consumables” | * 1. means any consumables supplied to the Authority by the Supplier under this Contract (to include, without limitation, any consumables referred to in the Specification and Tender Response Document) |
| “Contract” | * 1. means the form of contract at the front of this document and all schedules attached to the form of contract; |
| **“Contracting Authority”** | means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (as amended), other than the Authority; |
| “Contract Manager” | * 1. means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 9.1 of Schedule 2; |
| “Contract Price” | * 1. means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract; |
| “Convictions” | * 1. means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act); |
| “Data Controller” | * 1. has the meaning as set out in the Data Protection Legislation; |
| “Data Processor” | * 1. has the meaning as set out in the Data Protection Legislation; |
| “Data Protection Legislation” | * 1. means the UK Data Protection Legislation and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. |
| “Data Subject” | * 1. has the meaning as set out in the Data Protection Legislation; |
| “Dispute Resolution Procedure” | * 1. means the process for resolving disputes as set out in Clause 23 of Schedule 2; |
| “DOTAS” | * 1. means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| “DPA 2018” | * 1. means the Data Protection Act 2018 (and any regulations made thereunder); |
| “Electronic Trading System(s)” | * 1. means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time; |
| “Employment Liabilities” | * 1. means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever; |
| “Environmental Regulations” | * 1. shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “eProcurement Guidance” | means the NHS eProcurement Strategy available via:  <http://www.gov.uk/government/collections/nhs-procurement>   * 1. together with any further Guidance issued by the Department of Health in connection with it; |
| “Equality Legislation” | * 1. means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998; |
| “Equipment” | means the equipment required to be provided by the Supplier as part of the Services, as set out in the Specification and Tender Response Document, or as otherwise provided by the Supplier in connection with this Contract; |
| “Fair Deal for Staff Pensions” | means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced); |
| “FOIA” | * 1. shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| “Force Majeure Event” | * 1. means any event beyond the reasonable control of the Party in question to include, without limitation:  1. 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; 2. acts of terrorism; 3. flood, storm or other natural disasters; 4. fire; 5. 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; 6. 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; 7. compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; 8. industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any subcontractor of the Supplier; and 9. a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; |
| “Framework Agreement” | means the Angiography and Hybrid Theatres Equipment and Related Services, and Managed Services Framework Agreement previously entered into between the Supplier and NHS Supply Chain; |
| “Fraud” | means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority; |
| “General Anti-Abuse Rule” | means  (a) the legislation in Part 5 of the Finance Act 2013; and   * 1. (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contribution; |
| “Good Industry Practice” | * 1. 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 service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations; |
| “Guidance” | * 1. means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body; |
| “Halifax Abuse Principle” | * 1. means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| "HM Government Cyber Essentials Scheme" | * 1. means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview; |
| “Implementation Plan” | * 1. means the implementation plan set out at Schedule 7; |
| **“Intellectual Property Rights”** | means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs; |
| “Interested Party” | * 1. means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Authority; |
| “Key Provisions” | * 1. means the key provisions set out in Schedule 1; |
| “Key Sub-Contract” | * 1. means each sub-contract with a Key Sub-Contractor; |
| “Key Sub-Contractors” | * 1. means sub-contractors with whom the Supplier has entered into a Key Sub-Contract to deliver some or all of the Services; |
| “KPI” | * 1. means the key performance indicators as set out in Schedule 5; |
| “Law” | * 1. means:  1. any applicable statute or proclamation or any delegated or subordinate legislation or regulation; 2. any applicable European Union directive, regulation, decision or law; 3. any enforceable community right within the meaning of section 2(1) European Communities Act 1972; 4. any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; 5. requirements set by any regulatory body; and 6. any applicable code of practice,   in each case as applicable in England and Wales; |
| **“Long Stop Date”** | means the date, if any, specified in the Key Provisions; |
| “Mediation Notice” | has the meaning given under Clause 23.5.1 of Schedule 2; |
| “Net Book Value” | means the cost of the item of equipment in question less the depreciation on a straight line basis; |
| “NHS” | means the National Health Service; |
| “Notice of Assignment” | means an assignment of the Contract to a third party funder; |
| “Occasion of Tax Non-Compliance” | means:  (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;  (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or  (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion; |
| “Party” | means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier; |
| “Personal Data” | has the meaning as set out in the Data Protection Legislation; |
| “Personal Data Breach” | has the meaning as set out in the Data Protection Legislation; |
| “Policies” | means the policies, rules and procedures of the Authority as notified to the Supplier from time to time; |
| **“Premises and Locations”** | has the meaning given under Clause 2.1 of Schedule 2; |
| “Processing” | has the meaning as set out in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly; |
| “Purchase Order” | means the purchase order required by the Authority’s financial systems, if a purchase order is referred to in the Key Provisions; |
| “Rejected Consumables” | has the meaning give under Clause 4.8 of Schedule 2; |
| “Relevant Tax Authority” | means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established; |
| “Remedial Proposal” | has the meaning given under Clause 16.3 of Schedule 2; |
| “Services” | means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements) and shall include, without limitation, the provision of the Equipment and Consumables; |
| “Services Commencement Date” | means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date; |
| “Services Information” | means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 21 of Schedule 2 for inclusion in the Authority's services catalogue from time to time; |
| “Special Categories of Personal Data” | means Sensitive Personal Data or Special Categories of Personal Data, as defined in the Data Protection Legislation, which is Processed by the Data Processor on behalf of the Data Controller pursuant to or in connection with this Contract |
| “Specification and Tender Response Document” | means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract; |
| “Staff” | means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any subcontractors and person employed or engaged by such subcontractors; |
| “Sub-Processor” | means any third party appointed to Process Personal Data on behalf of the Data Processor related to the Agreement; |
| “Subsequent Transfer Date” | means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE; |
| **“Subsequent Transferring Employees”** | means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate; |
| “Successor” | means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract; |
| “Supplier” | * 1. means the supplier named on the form of Contract on the first page; |
| “Supplier Personnel” | means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services; |
| “Term” | means the term as set out in the Key Provisions; |
| “Termination Sum” | means the aggregate sum to be paid in accordance with Clause 17.9 or Clause 17.11 (as applicable) and in accordance with the methodology as outlined in Schedule 11; |
| “Third Party” | means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date; |
| “Third Party Body” | has the meaning given under Clause 9.5 of Schedule 2; |
| “Transfer Date” | means the Actual Services Commencement Date; |
| "TUPE" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and |
| “UK Data Protection Legislation” | means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the DPA 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and the guidance and codes of practice issued by the Commissioner and which are applicable to a party; |
| “UK GDPR” | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018; |
| **“VAT”** | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

* 1. References to any statute or order shall include any statutory extension, modification or re‑enactment, and any order, regulation, bye‑law or other subordinate legislation.
  2. References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
  3. References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
  4. 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.
  5. Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 31.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
  6. The headings are for convenience only and shall not affect the interpretation of this Contract.
  7. Words denoting the singular shall include the plural and vice versa.
  8. Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
  9. Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
  10. Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
  11. Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
  12. Any guidance notes in grey text do not form part of this Contract.

1. (Managed Services Terms & Conditions)

**Specification and Tender Response Document**

**[*To be inserted as part of the final Contract*]**

1. (Managed Services Terms & Conditions)

**Commercial Schedule**

**[*To be inserted as part of the final Contract*]**



**Schedule 7 (Managed Services Terms & Conditions)**

**Implementation Plan**

**[*To be inserted as part of the final Contract*]**

1. (Managed Services Terms & Conditions)

**Change Control Process**

1. The process in this Schedule 8 shall apply to any request by either Party (”requesting party”) to the other (“responding party”) (each such request being a **Change Control Notice** (“**CCN**”) in the form attached to Appendix 1 of this Schedule 8 for:

1.1. Changes to Services;

1.2. Changes to the physical location of the Equipment;

1.3. Increases in the volume of Equipment and/or Premises or Location supported under this Contract;

1.4. Any other change to the content and subject matter of this Contract.

2. The following shall apply for each CCN:

2.1. the requesting party shall submit a CCN in writing with adequate detail to allow proper consideration of the same to the responding party;

2.2. the responding party shall, acting reasonably and within a reasonable period of time following receipt of the CCN, and by no later than twenty (20) Business Days after receipt of the CCN (unless the requesting party agrees to an extension of time, acting reasonably), submit a “**Change Response”** to the requesting party by completing details in the CCN, stating whether it accepts, rejects or proposes amendments to the requested change, together with a “**Change Estimate”** (if applicable) detailing any price, time or other impact to the Services The relevant prices and proposals with respect to the Change Estimate are to remain applicable for ninety (90) days;

2.3. where the responding party accepts the CCN or the requesting party accepts proposed amendments in the Change Response and in both cases the requesting party accepts the Change Estimate (if applicable), the Parties shall implement the change by executing the completed CCN. Fulfilment of the agreed Change Response shall be implemented in accordance with the timeframe stipulated in the CCN;

2.4. where the responding party rejects the CCN, or if the requesting party rejects proposed amendments in the Change Response and/or rejects the Change Estimate, the Parties shall meet to consider the Change Response and try to reach agreement;

2.5. where the Parties reach agreement, they will either execute a CCN or the CCN will be withdrawn (as applicable). Where they are unable to reach agreement, the matter shall be dealt with as a dispute in accordance with the dispute resolution procedure.

3. Until agreement on the CCN is reached pursuant to this Schedule or the matter is resolved through dispute resolution, the Contract shall continue in full force and effect and the Parties shall remain bound by its terms, un-amended by such CCN.

**Appendix 1 – Form of Change Control Notice (CCN)**

# Change Control Notice (CCN)

|  |  |
| --- | --- |
| **Title of Change** | xx |
| **Framework Owner** | Name and contact number/email |
| **Framework Agreement contract relates to**  **F/W Reference number** | xx  SBS/xx/xx/xxx/xxxx |
| **Authority Contract Manager** | Name and contact number/email |

|  |  |  |
| --- | --- | --- |
| **Contract Control Notice (CCN):** | | |
| **Agreement Name and Reference Number** | | **Start Date of Agreement** |
| Customer contract Reference - xxxx | | xx/xx/xxxx |
| **Date Change Requested** | **Date CCN Raised** | **Expiry Date of CCN** |
| xx/xx/xxxx | xx/xx/xxxx | Term of agreement, currently expiring xx/xx/xxxx, (with the option to extend until xx/xx/xxxx) |

|  |  |  |  |
| --- | --- | --- | --- |
| **Contact information for the proposed Change** | | | |
| **Originator** | | **Other Party** | |
| **Name:** | xx | **Name:** | xx |
| **Company:** | xx | **Company:** | xx |
| **Telephone:** | xx | **Telephone:** | xx |
| **Email:** | xx | **Email:** | xx |

|  |
| --- |
| **Clauses and Schedules affected and reasons for change** |
| The contract initiated under the Framework Agreement for (enter framework title and reference number) has the following clauses and schedules detailed below which are affected as part of this change notice.  DETAIL ALL RELEVANT INFORMATION AS PER THE ORIGINAL AGREEMENT  NOTE THAT MAIN CLAUSES OF THE F/W AGREEMENT ARE NOT TO BE AMENDED UNDER ANY CIRCUMSTANCES WITHOUT EXPRESS PERMISSION AND AGREEMENT OF THE FRAMEWORK OWNER |
| **Description of Change** |
| INSERT DETAILS OF RELEVATN CHANGE AND BRIEF EXPLANATION AS TO WHY THE CHANGE HAS COME ABOUT |

|  |
| --- |
| **Changes to contract charges and revised payment schedules** |
| DETAIL OR STATE Not applicable |

|  |
| --- |
| **Price to implement change** |
| DETAIL OR STATE Not applicable |
| Impact of Change on other Agreement Provisions |
| DETAIL OR STATE Not applicable |

|  |
| --- |
| **Timetable for Implementation** |
| This CCN relates to contract reference - xxx ENTER NAME OF FRAMEWORK and the detailed change(s) will be effected on Date/Month/Year. |

|  |  |  |
| --- | --- | --- |
| **Acceptance** | | |
| **Signed for and on behalf of:**  **Name of Supplier** | **Signed:** | |
| **Print Name:** |  |
| **Title:** |  |
| **Date:** |  |
| Signed for and on behalf of: **Name of Authority** | **Signed:** | |
| **Print Name:** |  |
| **Title:** |  |
| **Date:** |  |

1. (Managed Services Terms & Conditions)

**Key Sub-Contractors**

1. (Managed Services Terms & Conditions)

**Data Processing**

This Schedule includes certain details of the Processing of Personal Data as required by the Data Protection Legislation.

1. **The subject-matter AND DURATION of the Processing**
   1. The subject-matter and duration of the Processing of Personal Data in accordance with this Contract shall consist of:
      1. [*Description of the subject-matter and duration of the Processing*].
2. **THE NATURE AND PURPOSE OF THE PROCESSING**
   1. The nature and purpose of the Processing of Personal Data in accordance with this Contract shall consist of:
      1. [*Description of the nature and purpose of the Processing*].
3. **THE types of personal data TO BE PROCESSED**
   1. The types of Personal Data that shall be processed in accordance with this Contract will be:
      1. [*Description of types of Personal Data (i.e. information identifying a living individual). May include names, telephone numbers, email address, postal address, specific job title, etc*]
   2. [To be included if applicable] The types of Special Categories of Personal Data that shall be processed in accordance with this Contract will be:
      1. *[Special categories of personal data are information revealing: racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation]*
4. **categories of data subjects TO WHOM PERSONAL DATA RELATES**
   1. The categories of individuals whose Personal Data is processed in accordance with this Contract will be:
      1. [*e.g. Patients, employees, etc*].

**Supplier’s legal basis for processing personal data outside the uk**

* 1. The Supplier’s legal basis for processing Personal Data outside of the UK in order to comply with cross-border transfer restrictions is:
     1. [Located in a country with a current determination of adequacy (list country): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]
     2. [Standard Contractual Clauses between Authority as "data exporter" and Supplier as "data importer".][[1]](#footnote-1)
     3. [Standard Contractual Clauses between Supplier as "data exporter" on behalf of Authority and Supplier affiliate or subcontractor as "data importer".][[2]](#footnote-2)
     4. [Other (describe in detail): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]

1. (Managed Services Terms & Conditions)

**Termination Sum**

***Drafting note: Parties to insert methodology with respect to termination sums to be paid in the following 2 scenarios:-***

1. ***On an earlier termination as described in Clause 17.9.***
2. ***On expiry as described in Clause 17.11.***

***In both cases the Authority will have the right to acquire the Equipment but the total sum payable will be different.***

SCHEDULE 3

Information Governance Provisions

1. **Confidentiality**
   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](#Ref351042478) of this Schedule 3, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
      1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
      2. the provisions of Clause [1](#Ref351042478) of this Schedule 3 shall not apply to any Confidential Information:
         1. which is in or enters the public domain other than by breach of this Framework Agreement or other act or omissions of the Recipient;
         2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
         3. which is authorised for disclosure by the prior written consent of the Discloser;
         4. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
         5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
   2. Nothing in Clause [1](#Ref351042478) of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).
   3. NHS Supply Chain may disclose the Supplier’s Confidential Information:
      1. on a confidential basis to, any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
      2. on a confidential basis, to any consultant, contractor or other person engaged by NHS Supply Chain and/or the Contracting Authority receiving such information;
      3. to any relevant party for the purpose of the examination and certification of NHS Supply Chain’s accounts;
      4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which NHS Supply Chain has used its resources;
      5. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
      6. on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Framework Agreement;
      7. and for the purpose of this Framework Agreement, references to disclosure “on a confidential basis” shall mean NHS Supply Chain 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](#Ref352160542) of this [Schedule 3](#Ref347235111).
   4. The Supplier may only disclose NHS Supply Chain’s Confidential Information, and any other information provided to the Supplier by NHS Supply Chain in relation to the operation of this Framework Agreement, 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 Framework Agreement. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause [1](#Ref351042478) of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at NHS Supply Chain’s written discretion, destroyed securely or returned to NHS Supply Chain when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of NHS Supply Chain’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this Framework Agreement.
   5. Nothing in this Clause [1](#Ref351042478) of this [Schedule 3](#Ref347235111) shall prevent the Recipient from disclosing the Confidential Information to its Group companies, provided that the Recipient procures that such Group companies comply with this Clause 1 of this Schedule 3 as if each reference to the Recipient in this Clause [1](#Ref351042478) of this [Schedule 3](#Ref347235111) is a reference to any such Group company receiving the Confidential Information.
   6. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of NHS Supply Chain (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Framework Agreement and/or that it has been appointed as a Supplier to NHS Supply Chain and/or make any other announcements about this Framework Agreement.
   7. Clause [1](#Ref351042478) of this Schedule 3 shall remain in force:
      1. without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
      2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Framework Agreement unless otherwise agreed in writing by the Parties.
2. Data protection
   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. Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
   3. The Supplier and NHS Supply Chain 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 NHS Supply Chain under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
   4. Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to patients and/or service users as part of the Services, the Supplier shall:
      1. complete and publish an annual information governance assessment using the NHS information governance toolkit;
      2. achieve a minimum level 2 performance against all requirements in the relevant NHS information governance toolkit;
      3. nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
      4. report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
      5. put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
      6. put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient’s integrated electronic care record);
      7. put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Contract;
      8. where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
      9. at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
      10. comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by NHS Supply Chain from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
   5. Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.
   6. The Supplier shall indemnify and keep NHS Supply Chain 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** 
   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.
   2. The Supplier shall assist and cooperate with NHS Supply Chain to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
      1. that this Framework Agreement and any recorded information held by the Supplier on NHS Supply Chain’s behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of NHS Supply Chain under the FOIA, Codes of Practice and Environmental Regulations;
      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 NHS Supply Chain;
      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 NHS Supply Chain 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 NHS Supply Chain;
      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 NHS Supply Chain) and will promptly (and in any event within two (2) Business Days) transfer the request to NHS Supply Chain;
      5. that NHS Supply Chain, 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 Framework Agreement; and
      6. to assist NHS Supply Chain 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 NHS Supply Chain within five (5) Business Days of that request and without charge.
   3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.
   4. Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement 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.
   5. In preparing a copy of this Framework Agreement for publication under Clause [3.4](#Ref352159234) of this Schedule 3, NHS Supply Chain 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 NHS Supply Chain’s absolute discretion.
   6. The Supplier shall assist and cooperate with NHS Supply Chain to enable NHS Supply Chain to publish this Framework Agreement.
   7. Where any information is held by any Sub-contractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.
4. **Information Security**
   1. Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
      1. notify NHS Supply Chain 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 NHS Supply Chain’s information governance Policies; and
      2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by NHS Supply Chain and shall provide full information as may be reasonably requested by NHS Supply Chain in relation to such audits, investigations and assessments.

SCHEDULE 4

Definitions and Interpretations

1. **Definitions**
   1. In this Framework Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions for the Supply of Goods at Schedule 9 of this Framework Agreement. The definitions and Interpretations that apply to the Call-off Terms and Conditions for the Supply of Goods are as set out at Schedule 9 of this Framework Agreement.

|  |  |
| --- | --- |
| “Action Plan” | shall have the meaning given to it in Clause [1](#Ref369169119) of Schedule 8; |
| “Authority” | means the authority named on the Order Form; |
| “Blue Diamond” | means a route of Supply whereby NHS Supply Chain (as the Authority) places an Order with the Supplier on behalf of an NHS Supply Chain customer, which is delivered by the Supplier to NHS Supply Chain for forward delivery onto the customer; |
| “Business Continuity Event” | means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including an influenza pandemic and any Force Majeure Event; |
| “Business Continuity & Disaster Recovery Plan” | means the Supplier’s business continuity & Disaster Recovery Plans which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event; |
| “Business Day” | means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| “Call-off Terms and Conditions for the Supply of Goods” | means the call-off terms and conditions for Contracts as set out at Schedule 9 of this Framework Agreement forming part of the Contracts placed under this Framework Agreement; |
| “Codes of Practice” | shall have the meaning given to the term in Clause [1.2](#Ref351073093) of [Schedule 3](#Ref347235111); |
| “Commencement Date” | Means the date of this Framework Agreement; |
| “Commercial Schedule” | means the document set out at [Schedule 6](#Ref369163981); |
| “Commitment Deal” | has the meaning given in Clause 3 of Schedule 6; |
| “Commitment Deal Price” | means the price agreed between NHS Supply Chain and the Supplier as part of a Commitment Deal; |
| “Confidential Information” | means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is:  Personal Data or Sensitive Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history;  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  Policies and such other documents which the Supplier may obtain or have access to through NHS Supply Chain’s intranet; |
| “Contract” | means any Contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Supply of Goods; |
| “Contracting Authority” | means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended) (2015/102), other than NHS Supply Chain; |
| **“Contract Manager”** | means for NHS Supply Chain and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause [8.1](#Ref350943818) of [Schedule 2](#Ref352916352); |
| “Contract Price” | means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract; |
| “Controller” | shall have the same meaning as set out in the GDPR; |
| “Data Protection Legislation” | means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable nationals implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy; |
| “Data Protection Protocol” | means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document appended to the Order Form; |
| “Data Subject” | shall have the same meaning as set out in the Data Protection Act 1998; |
| “Direct Route of Supply” | means a route of supply whereby the Authority (which is a Participating Authority who is not NHS Supply Chain) places an Order with the Supplier, which is delivered and invoiced directly to that Authority; |
| “Dispute Resolution Procedure” | means the process for resolving disputes as set out in Clause [23](#Ref286071345) of [Schedule 2](#Ref352916352); |
| “DOTAS” | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| “Electronic Trading System(s)” | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as NHS Supply Chain may specify from time to time; |
| “E-direct” | means Goods and Services ordered by NHS Supply Chain as the Authority on behalf of an NHS Supply Chain customer which are delivered directly to the customer and invoiced to NHS Supply Chain; |
| “Environmental Regulations” | shall have the meaning given to the term in Clause [1.2](#Ref351073093) of [Schedule 3](#Ref347235111); |
| “E-Procurement Guidance” | means the NHS E-Procurement Strategy available via:  <http://www.gov.uk/government/collections/nhs-procurement>  together with any further Guidance issued by the Department of Health in connection with it; |
| “Equality Legislation” | means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998; |
| “EU GPP Guidance” | the guidance in relation to EU Green Procurement as may be amended or updated from time to time, available via:  <http://ec.europa.eu/environment/gpp/gpp_criteria_en.htm>  and all supplemental guidance; |
| “Ex Works” | means Goods and Services ordered from the Supplier based on the Contract Price, excluding delivery and other associated delivery costs, it being the responsibility of the Authority to arrange for collection of such Goods and Services from the Supplier; |
| “FOIA” | shall have the meaning given to the term in Clause [1.2](#Ref351073093) of [Schedule 3](#Ref347235111); |
| “Force Majeure Event” | means any event beyond the reasonable control of the Party in question to include, without limitation:  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 Framework Agreement;  acts of terrorism;  flood, storm or other natural disasters;  fire;  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 & disaster recovery planning;  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;  compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;  industrial action which affects the ability of the Supplier to supply the Goods and/or Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and  a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; |
| “Framework Agreement” | means the form of framework agreement at the front of this document and all schedules attached to the form of framework agreement; |
| “Fraud” | means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority; |
| “GDPR” | means the General Data Protection Regulation (Regulation (EU) 2016/679); |
| “General Anti-Abuse Rule” | means the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| “Good Industry Practice” | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods and/or services similar to the Goods and/or Services under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations; |
| “Goods” | means all goods, materials or items that the Supplier is required to supply to Participating Authorities under Contracts placed under this Framework Agreement and/or made available for purchase under the Framework Agreement in accordance with Clause 22 of Schedule 2 and/or the Commercial Schedule, details of such Goods, materials or other items being set out in the Specification and Tender Response Document and any Order; |
| “Group” | means in relation to a Party, that Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party and holding company and subsidiary company shall have the meaning given in Section 1159 of the Companies Act 2006; |
| “Guidance” | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by NHS Supply Chain and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body; |
| “Halifax Abuse Principle” | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| “Intellectual Property Rights” | means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs; |
| **“Key Provisions”** | means the key provisions set out in [Schedule 1](#Ref318785210); |
| “KPI” | means the key performance indicators as set out in Schedule 8; |
| “Law” | means any applicable legal requirements including, without limitation:  any applicable statute or proclamation or any delegated or subordinate legislation or regulation as applicable in England and Wales;  any applicable European Union directive, regulation, decision or law;  any enforceable community right within the meaning of section 2(1) European Communities Act 1972;  any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;  requirements set by any regulatory body as applicable in England and Wales; and  any applicable code of practice as applicable in England and Wales,  (g) any relevant collective agreement and/or international law  provisions (to include, without limitation, as referred to in (a) to (f) above). |
| “Management Fee” | has the meaning given under Clause [9.2](#Ref368663999) of [Schedule 2](#Ref352916352); |
| “Management Fee Report” | has the meaning given under Clause [9.3](#Ref368664011) of [Schedule 2](#Ref352916352); |
| “Monthly Service Level” | has the meaning given under Clause [3](#Ref369171249) of Schedule 8; |
| “NHS” | means the National Health Service; |
| “NHS Supply Chain’s Obligations” | means NHS Supply Chain’s further obligations, if any, referred to in the Specification and Tender Response Document; |
| “Non-direct Route of Supply” | means all routes of supply through which NHS Supply Chain (as the Authority) places an Order with the Supplier for Goods and/or Services and the Supplier invoices NHS Supply Chain for the sum of the relevant Order, whether or not such Goods and/or Services are delivered to NHS Supply Chain or another authority and whether or not such Goods and/or Services are collected Ex Works. Non-direct routes of supply include E-Direct, Blue Diamond and Stock (and any other non-direct routes which NHS Supply Chain may notify to the Supplier from time to time); |
| “Occasion of Tax Non-Compliance” | means:  any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;  the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or  any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion; |
| “Order Form” | means an order form on which Orders are to be placed, containing the details set out in Schedule 7; |
| “Ordering Procedure” | means the procedure enabling Participating Authorities to call-off Goods and Services and enter into Contracts under this Framework Agreement, as set out in Schedule 7; |
| “Orders” | means orders for Goods and Services placed under this Framework Agreement by Participating Authorities; |
| “ORS” | Operational Requirements of Suppliers |
| “Participating Authority” | means a Contracting Authority entitled to place Orders under this Framework Agreement including NHS Supply Chain and any other Contracting Authority as set out in the Key Provisions; |
| “Party” | means NHS Supply Chain or the Supplier as appropriate and Parties means both NHS Supply Chain and the Supplier; |
| “Personal Data” | Shall have the same meaning as set out in the GDPR; |
| “Policies” | means the policies, rules and procedures of NHS Supply Chain as notified to the Supplier from time to time; |
| “Process” | has the meaning given to it under the Data Protection Legislation and, for the purposes of this Framework Agreement, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly; |
| “Processor” | shall have the same meaning as set out in the GDPR; |
| “Product Information” | means information (including images) concerning the Goods and Services as may be reasonably requested by NHS Supply Chain and supplied by the Supplier to NHS Supply Chain in accordance with Clause [21](#Ref349142583) of [Schedule 2](#Ref352916352) for inclusion in NHS Supply Chain's product catalogue from time to time; |
| “Prohibited Acts” | has the meaning given under [30.1.1](#Ref362268785) of [Schedule 2](#Ref352916352); |
| “Remedial Proposal” | has the meaning given under Clause [16.3](#Ref348702851) of [Schedule 2](#Ref352916352); |
| “Sensitive Personal Data” | means sensitive personal data as defined in the Data Protection Act 2018; |
| “Services” | means any services which are ancillary to or associated with the Goods, which are purchased by Participating Authorities under Contracts placed under this Framework Agreement and/or made available for purchase under the Framework Agreement in accordance with Clause 22 of Schedule 2 and/or the Commercial Schedule, details of such Services being set out in the Specification and Tender Response Document and any Order; |
| “Specification” | means the document set out in [Schedule 5](#Ref318700713)(a) as amended and/or updated in accordance with this Framework Agreement; |
| “Staff” | means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any Sub-contractors and person employed or engaged by such Sub-contractors; |
| “Stock” | means Goods purchased by NHS Supply Chain (as an Authority) which are delivered and invoiced to NHS Supply Chain to be held as stock until such time as NHS Supply Chain customers place an order for such goods with NHS Supply Chain; |
| **“Sub-contract”** | means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Framework Agreement); |
| **“Sub-contractor”** | means a party to a Sub-contract other than the Supplier; |
| **“Supplier”** | means the supplier named on the form of Framework Agreement on the first page; |
| “Tender Response Document” | means the document set out in Schedule 5(b) as accepted by NHS Supply Chain; |
| “Term” | means the term as set out in the Key Provisions; |
| “Third Party Body” | has the meaning given under Clause [8.5](#Ref263771960) of [Schedule 2](#Ref352916352); and |
| “Turn Key” | means solutions described as ready to go, packaged solutions. For example, in the context of a Managed Service suppliers are typically required to demonstrate, the planning of all aspects of the equipment an estate, the ability to access, a dedicated project management team to oversee the building works, including design, obtaining planning permission and construction elements, and the non-building work elements of projects to ensure projects run to schedule and within forecast costs. This non-building works element includes but is not limited to a detailed implementation plan, all aspects of governance relating to projects, asset management, options for the provision and management of staff, legal considerations, the relevant facilities expertise, decommissioning and removal of redundant equipment, the provision of new equipment with associated commissioning, the ability to identify and manage all required stakeholders and secure their input at the relevant stages of the project. |
| “VAT” | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

* 1. References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
  2. References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
  3. References in this Framework Agreement to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Framework Agreement.
  4. References in this Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
  5. Unless set out in the Commercial Schedule as a chargeable item and subject to Clause [31.6](#Ref341950805) of [Schedule 2](#Ref352916352), the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.
  6. The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.
  7. Words denoting the singular shall include the plural and vice versa.
  8. Where a term of this Framework Agreement 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.
  9. Where there is a conflict between the Supplier’s responses to NHS Supply Chain’s requirements set out in the Specification in the Tender Response Document and any other part of this Framework Agreement, such other part of this Framework Agreement shall prevail.
  10. Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.
  11. Any guidance notes in grey text do not form part of this Framework Agreement.

**SCHEDULE 5**

**5(a) Specification**

**[*To be inserted as part of the final Framework Agreement*]**

**5(b) Tender Response Document**

**[*To be inserted as part of the final Framework Agreement*]**

SCHEDULE 6

**Commercial Schedule**

The Parties acknowledge that the Contract Price is the basis upon which the Framework Agreement is awarded and unless amended in accordance with this Schedule 6 and/or Schedule 7 (as the case may be) the Contract Price shall remain fixed during the Term. For the avoidance of doubt the Supplier shall not be entitled to unilaterally adjust the Contract Price.

1. **Contract Price** 
   1. The Contract Price shall be the price (including volume related pricing) set out in the Tender Response Documents and shall include all lines as listed in Appendix 6a and 6b – Pricing Schedule.
   2. The Parties acknowledge that the price of the Evaluated Lines and/or Scenarios set out in Appendix 6 to this ITT is the basis upon which the Framework Agreement is awarded and unless amended in accordance with this Schedule 6 the tendered prices shall not be subject to any increase for a minimum of twelve (12) months from the Commencement Date. For the avoidance of doubt the Supplier shall not be entitled to unilaterally adjust the Contract Price.
   3. Unless Paragraphs 2, 3 or 6 of this Schedule 6 apply, after a minimum period of twelve (12) months from the Commencement Date, the Supplier may request a price review with NHS Supply Chain. If the Supplier requests an increase to the price of any tendered Goods or services it must provide justification to NHS Supply Chain for such increase including evidence of an increase in costs to the Supplier and NHS Supply Chain may in its absolute discretion consent to such increase. An indicative template for demonstrating price increases has been provided in Appendix 9, however this is subject to change through the life of the Framework Agreement at the absolute discretion of NHS Supply Chain.
   4. The Parties acknowledge that the price of Equipment and Service Options may vary on an Order by Order basis and the Supplier agrees to work with Participating Authorities to achieve reasonable and competitive Options pricing.
2. **Special Offers and discounts**
   1. At any time during the Term of the Framework Agreement either Party may approach the other to discuss special offers (“**Special Offer Price**”) and/or discounts to the price of goods/services.
   2. Where the Parties agree a Special Offer Price such price shall remain on offer through the Framework Agreement for no less than three (3) months.
   3. For the avoidance of doubt, neither Party shall be obliged to accept any offer made by the other.
3. **Commitment Deals**
   1. From time to time NHS Supply Chain and Supplier may enter into Commitment Deals whereby the Supplier offers a discount on the Contract Price in return for a commitment from NHS Supply Chain to purchase multiple Goods (the “**Commitment Deal Price**”).
   2. Where the Parties enter into a Commitment Deal they shall set out the terms of such Commitment Deal in a Commitment Deal Supplemental Agreement, which shall be in materially the form set out at Schedule 11.
4. **Reference Sites**
   1. From time to time the Supplier may enter into Contracts offering a reduced price to Participating Authorities which act as Reference Sites.  Where such reductions are offered the Supplier must, prior to accepting an Order from the relevant Participating Authority, provide to NHS Supply Chain in writing evidence of the Participating Authority’s obligations as a Reference Site. NHS Supply Chain shall be entitled to verify such evidence with the Participating Authority.
   2. Upon request, the Supplier shall demonstrate to any Participating Authority considering entering into a Contract such Goods and in such manner as that Participating Authority may request.
5. **Disputes in relation to price changes**
   1. Any requests to vary the Contract Price (either upwards or downwards) made by either Party must be notified in writing to the other at least three (3) months (or such other period as is agreed by the Parties) prior to the proposed price change date. Any dispute in relation to price variation should be referred to the dispute resolution procedure in accordance with Clause 23 of Schedule 2 of this Framework Agreement.
6. **Implementation of price changes**
   1. Once a price variation has been agreed by both Parties pursuant to this the new Contract Price shall take effect within a period as is agreed by the Parties.
   2. Any price changes made within the framework agreement must be applied to any contracts awarded to the framework agreement (including agreements already in commencement).
7. **Management Fee**
   1. The successful applicant(s) may be required to pay a direct Management Fee to NHS Supply Chain as detailed within the pricing schedule of the order value excluding VAT in accordance with the Framework Terms
8. **Sustainable Development**
   1. The Supplier shall support NHS Supply Chain and the Department of Health with the implementation of the voluntary instrument entitled: “*Green Public Procurement Criteria for Electrical and Electronic Equipment used in the Healthcare Sector (EU GPP for EEE)*” and shall in particular provide upon request the following:
      1. User instructions for green performance management, including instructions on how to maximise the environmental performance of the Goods;
      2. Training with energy efficiency optimisation, including on the adjustment and fine-tuning of the Goods in relation to their consumption of electricity (using parameters (for example, standby mode) in order to optimise the electricity use);
      3. Installation with energy efficiency optimisation, and a ‘needs assessment’ for the Participating Authority so the Participating Authority understands how to optimise the Goods’ electricity consumption;
      4. Confirmation of the energy profiles of the Goods (where pre-determined use scenarios exist within EU GPP Guidance). For Goods with no pre-determined use scenarios, NHS Supply Chain may develop these during the term of the Framework Agreement.
9. **Additional and Associated Goods and Services**
   1. Without limitation to the provisions of Clause [22.1](#Ref440356021) of [Schedule 2](#Ref352916352), the Supplier acknowledges to NHS Supply Chain that over the Term, additional goods and services may be made available for purchase under the Framework Agreement. Such additional goods and services may also include the provision of associated goods, materials or items associated with those additional goods and services (which together shall be “the Additional and Associated Goods and Services”).
   2. Additional and Associated Goods and Services to NHS Supply Chain will be made available for purchase under the Framework Agreement at the sole discretion of NHS Supply Chain. In order to determine whether the Additional and Associated Goods and Services will be made available for purchase under the Framework Agreement NHS Supply Chain shall consider a number of different factors, including (but not limited to) whether the proposed Additional Solutions and Associated Goods are deemed to be within scope of the procurement exercise under which the Framework Agreement was awarded.
   3. The Supplier acknowledges and agrees that, to the extent relevant, any Additional and Associated Goods and Services must comply with the standards set out in the Specification and the Tender Response Document.
   4. Without prejudice to any of the other provisions set out in [Schedule 2](#Ref352916352), NHS Supply Chain reserves the right to undertake at its absolute discretion a review of the Goods and Services which are supplied under the Framework Agreement. Following such review, NHS Supply Chain may change supply routes for any of the Goods and Services and/or remove certain Goods and Services and/or Additional and Associated Goods and Services from the Framework Agreement.
10. **Price Saving Initiatives**
    1. NHS Supply Chain reserves the right to share savings information in order to assist Authorities with making informed procurement decisions.
    2. Such savings initiatives shall include (but shall not be limited to):
       1. The publication of price ranking sheets showing the Supplier’s ranking as to price for particular Good(s) and or Scenario(s);
       2. Data arising from the Compare and Save Programme;
       3. Commitment based deals associated with the National Pricing Matrix (NPM);
       4. Re-opening of competition in accordance with Schedule 7 for the supply of certain Goods and/or listing in the NHS Supply Chain Catalogue through a particular route of supply for a specified period of time;
    3. Notwithstanding the provisions of Schedule 7 NHS Supply Chain recognises that:
       1. the pricing set out in Appendix 6 may be used where commitment can be gained from an Authority and without reopening competition;
       2. during the lifetime of the Framework Agreement, the Supplier may want to offer additional savings to a Participating Authority (or group of Participating Authorities) through the provision of discounted pricing, value added offerings, commitment, bulk buy initiatives, direct rebates (i.e. payments which are agreed directly between the Supplier and a Participating Authority or groups of Participating Authorities for Orders which are placed under the Framework Agreement), occasional special offers, (for instance in relation to new product introductions), NHS year-end spend and market growth incentives.
       3. NHS Supply Chain may request pricing on behalf of a Participating Authority or group of Participating Authorities in return for commitment by NHS Supply Chain or a Participating Authority or group of Participating Authorities to purchase an agreed value and/or volume of Goods that may or may not be for an agreed period of time. In these instances NHS Supply Chain may request and agree improved or different terms from those which are set out in the Framework Agreement (and pass these to the Participating Authority or group of Participating Authorities (as the case may be) for their consideration), including terms in relation to the matters set out below:
          1. the Contract Price in respect of some or all of the Goods;
          2. the quantity of Goods which shall be ordered and whether the Goods subject to any Order shall be delivered in single or multiple instalments;
          3. whether the Goods subject to an Order shall be delivered to NHS Supply Chain, or delivered directly to the relevant Participating Authority;
          4. whether the Supplier shall be required to monitor the volume of Goods stored at any Participating Authority’s premises and to deliver further Goods in accordance with any instructions agreed with or given by NHS Supply Chain or the relevant Participating Authority;
          5. the time at which the Supplier may issue its invoice in respect of any Goods subject to an Order, and whether such invoice shall be paid by NHS Supply Chain or the relevant Participating Authority;
          6. the transfer of risk in and title to any Goods subject to an Order.
11. **Compare and Save Programme**
    1. NHS Supply Chain may, during the lifetime of the Framework Agreement, undertake a ‘Compare & Save’ (or similar) programme aimed at updating an alternative database for goods which have been awarded across this Framework Agreement.
    2. Alternatives may include both like for like products and products which require a change of practice, training or switch of existing equipment by the Authority but which ultimately offer the same output. There may also be the option for the Supplier to add comments regarding specific information about the product i.e. training required, additional products required, only compatible with a certain machine. Suggested comparable products will be reviewed by NHS Supply Chain before they are made available to an Authority. Where the Supplier updates an alternative with another supplier’s product NHS Supply Chain will automatically reverse this so that the other product is also detailed as an alternative.
    3. In order to ensure this comparable database contains accurate like for like goods, NHS Supply Chain may from time to time request support from the Supplier in order to verify and update the data which is stored on this database.
    4. The comparable products will be:
       1. Used to suggest alternatives to Authorities in the event of a stock out situation;
       2. Used to record savings from Authorities who are switching products to achieve savings – this information will then be reported to NHS Business Services Authority; and
       3. accessed by NHS Supply Chain staff and shared with Authorities at the Authorities’ request.
    5. Without prejudice to the provisions of paragraph 3.1 above, NHS Supply Chain reserves the right, in order to support Authorities on their savings initiatives, to actively market the information and inform Authorities of the savings opportunities through the Compare and Save programme.
12. **National Pricing Matrix**
    1. The Supplier acknowledges and agrees that where its Tender Response Document includes a pricing matrix pursuant to Appendix 6, the prices set out in such matrix will be made available to a Participating Authority (or group of Participating Authorities) who meet the volume or value thresholds provided by the Supplier in such matrix, as assessed between the Participating Authority (or group of Participating Authorities) and the Supplier. The Supplier agrees that the prices set out in its discount matrix (if applicable) are exclusive of NHS Supply Chain’s costs to serve and VAT at the applicable rate.
    2. The matrix submitted will be converted into sell prices to a Participating Authority (or group of Participating Authorities). NHS Supply Chain reserves the right to make such matrix and/or sell prices available to a Participating Authority (or group of Participating Authorities) by publication in its electronic catalogue (or otherwise).
13. **Supply Chain Simplification** 
    1. NHS Supply Chain reserves the right to engage with the Supplier with regard to implementing supply chain simplification initiatives in order to assist in reducing the cost of Goods throughout the lifetime of the Framework Agreement. The supply chain simplification initiatives will aim to remove complexity and cost from the inbound supply chain from the point of manufacture through to delivery to NHS Supply Chain warehouses. Examples of such initiatives include, but are not exclusive to:
    2. Packaging optimisation (i.e. cubic volume reduction, component elimination, material Specification reduction, etc.);
    3. Logistics/transport optimisation (i.e. pallet fill increase, vehicle/container fill increase, etc.);
    4. Direct inbound delivery (i.e. supply of product into NHS Supply Chain Distribution Centres on a containerised basis directly from overseas manufacturing facilities, bypassing UK / EU warehousing).
14. **Incoterms**
    1. In addition to the provisions mentioned at paragraph 4 above (Supply Chain Simplification) NHS Supply Chain reserves the right to engage with the Supplier on various Incoterms (as more particularly set out in the ORS) throughout the lifetime of the Framework Agreement.
15. **Samples**
    1. From time to time, NHS Supply Chain may request samples of the Goods to be provided to such location (as may be reasonably required by NHS Supply Chain) to a Participating Authority. Such samples shall be provided Free of Charge and may be used to inform a Participating Authority’s purchasing decision under the Framework Agreement.
    2. Without prejudice to the provisions set out in paragraph 15.1 above, NHS Supply Chain may request samples to be provided by the Supplier (on a free of charge basis) over the lifetime of the Framework Agreement. Such samples shall be assessed by such persons as designated by NHS Supply Chain in order to determine whether such Goods shall be included in the reopening of competition in accordance with the terms of this Framework Agreement.
    3. Where such samples are requested in accordance with paragraph 15.2 above they must be provided to a “Ward Ready Standard” and which shall mean that such samples shall be provided in the packaging, box and Unit of Issue as a Participating Authority would expect to see at ward level. Failure to provide samples to a Ward Ready Standard or in accordance with the timescales which may reasonably be required by NHS Supply Chain may result in the Supplier being excluded from any reopening of competition in accordance with is held in accordance with the terms of the Framework Agreement.

Schedule 7

## Ordering Procedure and Order Form

1. **Ordering Procedure and Order Form**
   1. A Participating Authority can award a contract via the two following methods:
      1. Direct Award of a call-off contract utilising framework pricing (see section 2)
      2. Further Competition, where the Participating Authority has a specific requirement (see section 3)
2. **Contracts based on Framework Agreement without amendments**
   1. For ‘Direct’ routes of supply:
      1. NHS Supply Chain or its customer may elect to purchase Goods and/or Services from such supplier(s) on the Framework Agreement as it may at its discretion choose, on the terms and at the Contract Price as calculated in accordance with Schedule 6.
      2. As set out at paragraph 2.1.1 above, NHS Supply Chain or its customer may place an Order for Goods and/or Services from the supplier(s) based on the terms of this Framework Agreement, including the Call-off Terms and Conditions for the Supply of Goods and Provision of Services, at any time during the Term. Such Order(s) shall form a Contract between the supplier(s) and the Participating Authority which shall comprise the following documents:
         1. Call-Off Terms and Conditions for the Supply of Goods and Provision of Services;
         2. a completed Order Form;
         3. the applicable parts of the Specification and Tender Response Document set out at Schedule 5 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Order Form; and
         4. any relevant provisions applicable to the Contract as set out in the Framework Agreement.
3. **Contracts based on Framework Agreement with amendments** 
   1. NHS Supply Chain may at any time reopen competition in order to establish the Contract Price, for a specific requirement of Goods and Services that is not already defined and priced, but is covered within the scope of the framework specification, at which Goods and Services may be purchased under this Framework Agreement or to establish the terms (including price) of any Contract using further competition.
   2. The Participating Authority may choose to approach one, some or all suppliers. Where more than one supplier is invited to submit an offer, the offers shall be evaluated using such criteria as determined by the Participating Authority,  (including (i) price only; (ii) quality only; or (iii) a combination of quality and price) and in each case, the terms of the resulting Contract (including the Contract Price and Specification of the relevant Goods) may differ from those set out in the Framework Agreement and Call-Off Terms and Conditions.
   3. A Participating Authority will provide a detailed specification and evaluation questions for their bespoke requirement. Their requirement MUST fall within the parameters of the framework as detailed in the Framework Specification (Schedule 5 of the Framework Agreement). Each further competition will clearly state the process it will go through up front (including details on site visits/ presentations/ references etc. as applicable) and how marks will be awarded at each stage. They will also detail at what stage(s) supplier numbers may be reduced. The Participating Authority must set out a clear scoring methodology for evaluation within their further competition documents and must demonstrate within the documents what they will expect to see in an Applicant’s response in order to achieve the scoring.
   4. The further competition will be issued to suppliers, and it is the responsibility of the supplier to register interest and submit an offer within the timeframe stipulated should they wish to participate.
   5. For the avoidance of doubt, any competition pursuant to this Framework Agreement shall be carried out by NHS Supply Chain only on behalf of one or more Participating Authorities. No Participating Authority (other than NHS Supply Chain) shall be entitled to carry out a competition under this Framework Agreement without the express consent of NHS Supply Chain.
   6. Once an offer has been accepted, and where applicable a contract awarded, orders may be placed by NHS Supply Chain or the Participating Authority.  Such Order(s) shall form a Contract between the supplier(s) and Participating Authority which shall comprise the following documents:
      * 1. the Call-off Terms and Conditions for the Supply of Goods or the Call-off Terms and Conditions for the Supply of Goods and Provision of Services;
        2. a completed Order Form;
        3. the applicable parts of the Specification and Tender Response Document set out at Schedule 5 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Order Form; and
        4. any relevant provisions applicable to the Contract as set out in the Framework Agreement.

SCHEDULE 8

**Service Levels**

1. **Inventory KPIs**

The Supplier agrees to conform to the following KPIs during the Term of this Framework Agreement:

|  |  |
| --- | --- |
| **On time**  Deliveries on time subject to a tolerance of +/- thirty (30) minutes (for the avoidance of doubt, deliveries which arrive on time but are not unloaded due to the driver’s decision, deliveries which do not arrive and deliveries which arrive at the wrong delivery location shall also be considered late) | 98% |
| **Quantity**  Quantity of delivery correct against the relevant Order (including deliveries in excess and shortfall of the Order quantity) | 98% |
| **Quality**  Quality of delivery in accordance with the Framework Agreement and Contracts (including delivery presentation in accordance with the Framework Agreement and Contracts (the delivery must be presented in such a way that it can be unloaded safely and in a ready for use condition taking into consideration the Framework Agreement and Contract requirements) and damaged Goods (the Goods must be in a condition that is new and ready to use)) | 95% |
| **Administration**  Timely and accurate administration(including booking/amending delivery times and Orders and invoices, delivery advice notes and labels being in accordance with the requirements of the Framework Agreement and Contracts) | 99% |

* 1. Any KPI discrepancy attributable to an act or omission of NHS Supply Chain (or another Participating Authority) shall not be used to calculate the Supplier’s sub-standard performance level.
  2. A service level shall be generated for each of the KPIs in relation all Orders placed on the Supplier within each calendar month during the Term of the Framework Agreement and a monthly average service level for each KPI shall be calculated (“**Monthly Service Level**”).

The Supplier’s performance shall be measured:

* 1. in relation to Orders placed pursuant to a Non-direct Route of Supply by NHS Supply Chain; and
  2. in relation to Orders placed pursuant to a Direct Route of Supply by the Authority and the Supplier.
  3. In relation to Orders placed pursuant to a Direct Route of Supply the Supplier shall submit monthly reports to NHS Supply Chain outlining its performance in relation to the KPIs for the preceding month. Such report shall be submitted to NHS Supply Chain not later than the 14th day of the month following the month to which the report relates. NHS Supply Chain may verify the information provided by the Supplier with the Authority and reserves the right to amend the Supplier’s monthly service level report in accordance with the findings of such verification exercise.
  4. Should the Monthly Service Level of the Supplier fall below the relevant KPI:
     1. on two (2) or more occasions in any six (6) month period in relation to On time and/or Quantity; and
     2. on three (3) or more occasions in any six (6) month period in relation to Quality and/or Administration,
     3. NHS Supply Chain may serve a performance notice on the Supplier. The Supplier shall present to NHS Supply Chain within thirty (30) days of receipt of such performance notice an action plan to improve the Supplier’s Monthly Service Level (“**Action Plan**”). The Parties shall, within ten (10) Business Days of NHS Supply Chain receiving the Action Plan meet to discuss and agree the Action Plan. NHS Supply Chain may make reasonable amendments to the Action Plan to improve the Supplier’s performance. The Action Plan must include a timetable for improvement of the Supplier’s performance to, as a minimum, the level required by Clause 1 of this Schedule 8 in relation to the relevant KPI. Such timetable shall be agreed by the Parties but shall in any event be no longer than six (6) months.
  5. In the event that the Supplier:
     1. fails to produce an Action Plan in accordance with Clause 1.6.3 of this Schedule 8; or
     2. fails to improve its Monthly Service Level to the minimum level required by Clause 1 of this Schedule 8 within the timetable set out in the Action Plan in accordance with Clause [1.6.3](#Ref369169119) of this Schedule 8,
     3. the Supplier shall be considered to have committed a material breach capable of remedy for the purpose of Clause [16.3](#Ref348702851) of [Schedule 2](#Ref352916352).
  6. Notwithstanding Clauses 1.[6](#Ref369169119) and 1.[7](#Ref369173302) of this Schedule 8, where the Monthly Service Level in relation to Quantity, Quality or On time of Goods delivered against the relevant Order(s) falls below the relevant KPI, NHS Supply Chain shall (without prejudice to its rights to claim for any other categories of loss arising from such failure to meet the relevant KPI) be entitled to raise a debit note to the Supplier for a sum equal to the loss NHS Supply Chain has incurred or suffered in relation to lost margin and the cost, if any, of purchasing alternative goods and/or services (and any related administrative costs) as a result of the shortfall in ready to use delivery quantity against the relevant Orders. The Parties agree this is a true and fair assessment of loss suffered through lost margin and the cost of purchasing alternative goods and/or services (and any related administrative costs). Where NHS Supply Chain does not elect to raise a debit note in the manor detailed in this paragraph, then it shall remain entitled to claim damages.
  7. If the Supplier disputes NHS Supply Chain’s Monthly Service Level as applicable to the Supplier, the Supplier shall provide evidence to NHS Supply Chain that the Monthly Service Level is incorrect within seven (7) days of disputing such Monthly Service Level and the Parties shall meet to discuss any necessary amendment to the Monthly Service Level. If the Parties cannot agree the Monthly Service Level the matter shall be referred to the dispute resolution procedure set out in Clause [23](#Ref286071345) of [Schedule 2](#Ref352916352).
  8. For the avoidance of doubt, nothing in this Schedule 8 shall limit in any way either Party’s rights and remedies, including the right to claim damages and or termination rights which may arise, under this Framework Agreement or any Contract.

1. **Contract Management KPIs**

The Supplier agrees to conform to the following KPIs during the Term of this Framework Agreement:

|  |  |
| --- | --- |
| **Framework Support**  Responses to general requests for information regarding framework management (including but not limited to: product matching, supplementary product information, alternative items) should be provided within 10 business days. | 98% |
| **Sales Reporting**  The Supplier shall provide any management information required in accordance with the ORS (including, for the avoidance of doubt, monthly statements) and as NHS Supply Chain may request from time to time within seven (7) Business Days of the date of the request. | 98% |

* 1. Should the Monthly Service Level of the Supplier fall below the relevant KPI:
     1. on two (2) or more occasions in any six (6) month period
     2. NHS Supply Chain may serve a performance notice on the Supplier. The Supplier shall present to NHS Supply Chain within thirty (30) days of receipt of such performance notice an action plan to improve the Supplier’s Monthly Service Level (“**Action Plan**”). The Parties shall, within ten (10) Business Days of NHS Supply Chain receiving the Action Plan meet to discuss and agree the Action Plan. NHS Supply Chain may make reasonable amendments to the Action Plan to improve the Supplier’s performance. The Action Plan must include a timetable for improvement of the Supplier’s performance to, as a minimum, the level required by Clause 2 of this Schedule 8 in relation to the relevant KPI. Such timetable shall be agreed by the Parties but shall in any event be no longer than six (6) months.
  2. In the event that the Supplier:
     1. fails to produce an Action Plan in accordance with Clause 2.1.2 of this Schedule 8; or
     2. fails to improve its Monthly Service Level to the minimum level required by Clause 2 of this Schedule 8 within the timetable set out in the Action Plan in accordance with Clause 2.1.2 of this Schedule 8,
     3. the Supplier shall be considered to have committed a material breach capable of remedy for the purpose of Clause [16.3](#Ref348702851) of [Schedule 2](#Ref352916352).
  3. If the Supplier disputes NHS Supply Chain’s Monthly Service Level as applicable to the Supplier, the Supplier shall provide evidence to NHS Supply Chain that the Monthly Service Level is incorrect within seven (7) days of disputing such Monthly Service Level and the Parties shall meet to discuss any necessary amendment to the Monthly Service Level. If the Parties cannot agree the Monthly Service Level the matter shall be referred to the dispute resolution procedure set out in Clause [23](#Ref286071345) of [Schedule 2](#Ref352916352).
  4. For the avoidance of doubt, nothing in this Schedule 8 shall limit in any way either Party’s rights and remedies, including the right to claim damages and or termination rights which may arise, under this Framework Agreement or any Contract.

SCHEDULE 9

## Call Off Terms and Conditions

For purchases made under Lot 1 of the Framework, please refer to Appendix 3b

For purchases made under Lot 2 of the Framework, please refer to Appendix 3c

**SCHEDULE 10**

**Pricing Schedule**

*[Insert pricing schedule from tender response, including in relation to any options, accessories and “Additional Lines” submitted. Options, Accessories and Additional Lines to be referred to under heading of “Options”.]*

DOCUMENT END

1. Drafting note: it is best practice to include the standard contractual clauses as an annex to this Schedule 10 if this is applicable. [↑](#footnote-ref-1)
2. See drafting note above. [↑](#footnote-ref-2)