

## Schedule 9

### **CALL-OFF TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS**

Where an Order Form is issued by the Authority that refers to the Framework Agreement, this Contract is made between the Authority and the Supplier on the date of that Order Form. This Contract is subject to the terms set out in the schedules listed below ("**Schedules**").

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

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

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

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

### Schedules

<b>Schedule 1</b>	Key Provisions
<b>Schedule 2</b>	General Terms and Conditions
<b>Schedule 3</b>	Information Governance Provisions
<b>Schedule 4</b>	Definitions and Interpretations
<b>Schedule 5</b>	Additional Terms
<b>Schedule 6</b>	Operational Requirements for Suppliers
<b>Schedule 7</b>	Supplier Code of Conduct

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## Schedule 1

### Key Provisions

#### 1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 6 (inclusive) of this Schedule 1 shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are agreed between the Parties and documented in writing by both Parties.

#### 2 Term

- 2.1 This Contract commences on the Commencement Date.
- 2.2 The Term of this Contract shall be as set out in the Order Form.
- 2.3 The Term may be extended in accordance with Clause 15.2 of Schedule 2.

#### 3 Contract Managers

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

#### 4 Names and addresses for notices

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

#### 5 Management levels for escalation and dispute resolution

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

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

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3	Director or equivalent	Director or equivalent
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## 6 Order of precedence

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

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

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## Schedule 2

### General Terms and Conditions

#### Contents

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## **1 Supply of Goods**

- 1.1 The Supplier shall supply the Goods and any Services ordered by the Authority under this Contract:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 using reasonable skill and care in their delivery and supply;
  - 1.1.4 in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
  - 1.1.5 in accordance with the Law and with Guidance;
  - 1.1.6 in accordance with Good Industry Practice;
  - 1.1.7 in accordance with the Policies; and
  - 1.1.8 in a professional and courteous manner.

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

- 1.2 The Supplier shall comply fully with its obligations set out in the Specification and the Tender Response Document and/or the Order Form (to include, without limitation, all obligations in relation to the quality standards, performance characteristics, supply, delivery and installation and training in relation to use of the Goods and/or provision of the Services).
- 1.3 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the requirements set out in the Specification and the Supplier's response to such requirements in the Tender Response Document) and any applicable manufacturers' specifications.
- 1.4 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to supply the Goods and/or Services are in place prior to the delivery of any Goods and/or Services to the Authority.

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- 1.5 If there are any incidents that in any way relate to or involve the use of the Goods or provision of the Services by the 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 escalation, and shall respond promptly (which, in the case of any incidents which may have an effect on patient safety, shall mean within one (1) Business Day) to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods and Services.
- 1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly (which, in the case of any incidents which may have an effect on patient safety, shall mean within one (1) Business Day) provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier and the Supplier shall cooperate fully in all matters relating to any such request.

## **2 Delivery**

- 2.1 The Supplier shall deliver the Goods and Services in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location (including requisition point) and delivery times) set out in the Specification, ORS, the Tender Response Document and in the relevant Order Form or as otherwise agreed with the Authority in writing.
- 2.2 Provision of the Services shall be complete when the Services have been performed at the delivery location, within the timescales and to the standards set out in the Specification and relevant Order Form or as otherwise agreed with the Authority in writing.
- 2.3 Delivery of the Goods shall be completed when the Goods have been unloaded at the location specified by the Authority and such delivery has been received by a duly authorised agent, employee or location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or location representative of the Authority is at the delivery location at the agreed delivery date and times in order to accept such delivery. Any arrangement by which the Goods are collected by the Authority in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the Authority collects the Goods, collection is deemed delivery for the purposes of the Contract.

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- 2.4 The Supplier shall ensure that a delivery note (or collection note in the case of Ex Works Goods and Services or Goods and Services otherwise collected by the Authority by the agreement of the Parties) shall accompany each delivery of the Goods and associated Services. Such delivery note shall contain the information specified in the Specification or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, reference to the Framework Agreement, the name and address of the Authority and Supplier, the delivery location (including requisition point reference, if appropriate) a description and quantity of the Goods and any associated Services, the MPC and/or NPC codes for the Goods and any associated Services, the date or batch numbers, any special handling instructions (including a local reference, if appropriate), the sell by/use by dates, the ASN number and shall show separately any extra agreed charges for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned. The Supplier must ensure that no manual amendments (with the exception of the addition of a delivery booking reference) are made to the delivery documents prior to delivery to the Authority. All amendments to delivery documents must be made electronically before delivery.
- 2.5 Part deliveries and/or deliveries may be refused if any of the circumstances set out in Clause 2.5 of Schedule 5 exist unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.5 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the Authority accepts delivery more than five (5) days before the agreed delivery date, the Authority shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 2.6 Where the Authority agrees to accept delivery of Goods by instalments a Contract shall be construed as a single contract in respect of each instalment and a failure by the Supplier to deliver in accordance with the terms of this Contract shall entitle the Authority, in its reasonable discretion, to treat the whole Contract as repudiated.
- 2.7 Unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other reasonable costs associated with the delivery of the Goods and/or Services to the delivery location and unloading of the Goods at that location and the provision of the Services. Without limitation to the foregoing provision of this Clause 2.6 of this Schedule 2, unless otherwise agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Authority as to the country of origin of the Goods and shall be liable to the Authority for any extra duties or taxes for which the Authority may be accountable

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should the country of origin prove to be different from that set out in the Specification and the Supplier's response to the Specification in the Tender Response Document.

- 2.8 All third party carriers and sub-contractors engaged to deliver the Goods and any Services shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers and sub-contractors engaged to deliver the Goods and/or provide the Services to the Authority.

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

- 3.1 Subject to Clause 3.2, risk in the Goods shall pass to the Authority when the Goods are delivered as specified in this Contract or in the case of Goods which require installation by the Supplier, when that installation process is complete.

- 3.2 Where the Goods are purchased by via the E-Direct Route of Supply, risk in the Goods shall pass to NHS Supply Chain's customer (and not the Authority) when the Goods are delivered to the customer as specified in this Contract or in the case of Goods which require installation by the Supplier, when that installation process is complete.

- 3.3 Ownership of the Goods shall pass to the Authority on the earlier of:

3.3.1 full payment for such Goods; or

3.3.2 where the goods are consumables or are non-recoverable (e.g. used in clinical procedures), at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3.3.2 of this Schedule 2, then the full Contract Price for such Goods shall be recoverable by the Supplier from the Authority as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the Authority in relation to such Goods.

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

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

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

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holding and quality assurance processes are in accordance with the requirements of this Contract.

- 4.2 Without prejudice to the provisions of Clause 4.7 of this Schedule 2 and subject to Clause 4.8 of this Schedule 2, the Authority shall visually inspect the Goods within the time frame set out for Goods subject to the relevant route of supply as set out in the Order Form in accordance with the ORS or, if a time frame is not set out for inspection of the Goods in the ORS, within ten (10) Business Days following delivery and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Contract (“**Rejected Goods**”). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Contract.
- 4.3 Without prejudice to the provisions of Clause 4.6 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 4.2 and/or 4.7 of this Schedule 2, the Supplier shall at the Authority’s written request:
- 4.3.1 collect the Rejected Goods at the Supplier’s risk and expense within ten (10) Business Days of issue of written notice from the Authority rejecting the Goods; or
  - 4.3.2 make arrangements to receive any Rejected Goods returned to the Supplier by the Authority at the Supplier’s risk on a date and at a time agreed with the Authority and agree an appropriate charge with the Authority to be paid by the Supplier in return for the Authority agreeing to return the Rejected Goods to the Supplier; and
  - 4.3.3 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority subject to the Authority not cancelling its purchase obligations in accordance with Clause 4.6 of this Schedule 2.
- 4.4 If the Supplier requests and the Authority accepts that the Rejected Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods.
- 4.5 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.3 of this Schedule 2; or (b) following notification that the Authority shall return the Rejected Goods to the Supplier in accordance with Clause 4.3.1; or (c) immediately following the expiry of ten (10) Business Days from the Authority issuing written notification rejecting the Goods, whichever is sooner. If, in the case of Clause 4.3.1, Rejected Goods are not collected within ten (10) Business Days of the Authority issuing written notification rejecting the Goods, the Authority may return the Rejected Goods at the

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Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.

- 4.6 Where the Authority rejects any Goods in accordance with Clauses 4.2 and/or 4.7 of this Schedule 2 the Authority may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the Authority have paid for such Rejected Goods the Supplier shall, at the Authority's request, either:
- 4.6.1 refund such payment to the Authority within thirty (30) days of the Authority cancelling such purchase obligations and informing the Supplier that the Authority does not require replacements for such Rejected Goods; or
  - 4.6.2 in the case of a shortfall, pursuant to a new Order Form raised by the Authority for any Goods which were not delivered in accordance with the original Order Form, deliver the Goods set out in the new Order Form at no additional cost to the Authority, or arrange an additional collection with the Authority at the Supplier's expense (such costs to be advised by the Authority prior to collection), as appropriate.
- 4.7 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 4.8 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:
- 4.7.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
  - 4.7.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.2 to 4.6 of this Schedule 2.
- 4.8 The Supplier shall be relieved of its liabilities under Clauses 4.2 to 4.6 (inclusive) and/or Clause 4.7 of this Schedule 2 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 4.9 The Authority's rights and remedies under Clause 4.7 of this Schedule 2 shall cease within a reasonable period (which in any event shall not be less than sixty (60) days) of time from the date on which the Authority discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out as part of the requirements in the Specification, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point

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such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification.

4.10 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall (“**Requirement to Recall**”) in respect of the Goods, the Supplier shall:

4.10.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;

4.10.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.7 of this Schedule 2;

4.10.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and

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

4.11 Without prejudice to any other provisions of this Contract, if the Supplier fails to perform the Services in accordance with this Contract the Authority shall notify the Supplier of such failure and the Supplier shall re-perform the Services to the standard required by this Contract within ten (10) days of such notification. If the Supplier fails to re-perform the Services within ten (10) days or such re-performance does not render the Services in conformance with this Contract, the Authority shall be entitled, in its discretion, to either:

4.11.1 procure alternative services at the Supplier’s expense; or

4.11.2 cancel the Services and claim a full refund for the Services (and any associated Goods detailed on the same or a related Order) to be paid within thirty (30) days of the notification from the Authority.

## 5 **Staff**

5.1 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff during Staff holidays or absence.

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- 5.2 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.3 The Supplier shall employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed and shall maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) and has the qualifications to carry out their duties.
- 5.4 The Supplier shall comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.

**6 Business continuity**

- 6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
  - 6.1.1 the criticality of this Contract to the Authority; and
  - 6.1.2 the size and scope of the Supplier's business operations,
 regarding continuity of the supply of Goods and Services during and following a Business Continuity Event.
- 6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.3 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.
- 6.4 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods and/or Services in accordance with this Contract.

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**7 The Authority's obligations**

- 7.1 Subject to the Supplier supplying the Goods and Services in accordance with this Contract, the Authority will pay the Supplier for the Goods and Services in accordance with Clause 9 of this Schedule 2.
- 7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the supply and delivery of the Goods and provision of the Services.
- 7.3 The Authority shall comply with the Authority's Obligations.
- 7.4 The Authority shall provide the Supplier with any reasonable and proportionate cooperation necessary to enable the Supplier to comply with its obligations under this Contract. The Supplier shall at all times provide reasonable advance written notification to Authority of any such cooperation necessary in circumstances where such cooperation will require the Authority to plan for and/or allocate specific resources in order to provide such cooperation.

**8 Contract management**

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day-to-day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.
- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day-to-day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification. Should the Specification not state the frequency, then meetings shall take place at intervals as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification), the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods and provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
  - 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;

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- 8.3.2 details of any complaints by the Authority in relation to the supply of Goods and/or 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;
  - 8.3.3 any information required by the Specification;
  - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless otherwise agreed between the Parties, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached, the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.2 of this Schedule 2.
- 8.5 The Supplier shall provide such management information in accordance with the ORS (including, for the avoidance of doubt, monthly statements) and 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 ORS or the Authority and, where requested to do so, the Supplier shall also provide such management information to a Contracting Authority whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("**Third Party Body**"). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Goods and Services purchased, any payments made under this Contract and any other information relevant to the operation of this Contract.
- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and

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8.6.2 sharing the management information or any statistics produced using the management information with any Contracting Authority.

8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

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

## **9 Price and payment**

9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:

9.2.1 shall remain fixed during the Term; and

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

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

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Supplier in association with the manufacture and supply of the Goods and provision of the Services.

9.3 Unless stated otherwise in the Commercial Schedule or in writing by the agreement of the Authority, the Supplier may invoice the Authority for the Goods and/or Services following completion of the delivery of an Order in full in accordance with a Contract. Each invoice shall contain the information required in accordance with Clause 9.4 of this Schedule 2 and shall be addressed to such individual as the Authority may inform the Supplier from time to time.

9.4 Unless stated otherwise in the Commercial Schedule or in writing by the agreement of the Authority, the Supplier must provide one invoice per Contract rendered on the Supplier's own invoice form, sent electronically via the Electronic Trading System to the Authority. An invoice will not be valid unless it contains as a minimum requirement the following information:

9.4.1 NHS Supply Chain or customer order number (as appropriate);

9.4.2 the period to which the invoice relates;

9.4.3 the Goods and/or Services to which the invoice relates;

9.4.4 the Contract Price;

9.4.5 unit of purchase and unit price as stated on the Order;

9.4.6 at least one of either the MPC code or NPC code as stated on the Order;

9.4.7 local reference of the Authority (if appropriate); and

9.4.8 in relation to goods:

(i) the name and address of the delivery location (including the requisition point, if appropriate);

(ii) the description and quantity of the Goods as set out in the Order;

(iii) details of any item forming part of the relevant delivery which is not included in the Contract Price;

(iv) whether any containers supplied are required to be returned or collected; and

(v) if available, the GTIN (GS1 Code) for the Goods;

9.4.9 in relation to Services:

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- (i) the name and address of the service recipient;
- (ii) at least one of either the MPC code or NPC code as stated on the Order (if any); and
- (iii) a description of the Services.

- 9.5 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.6 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including reductions in price by reason of the application of such schemes.
- 9.7 Where NHS Supply Chain is the Authority, the Authority shall use reasonable endeavours to pay each undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice and in any event shall pay such undisputed invoices within forty five (45) days of receipt.
- 9.8 Where the Authority is not NHS Supply Chain, the Authority shall pay each undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.
- 9.9 The Supplier may approach the Authority to offer discount opportunities for prompt payment of invoices. The Authority may agree such arrangements in its absolute discretion.
- 9.10 By agreement with the Supplier, the Authority shall be entitled to set off:
- 9.10.1 any monies due or to become due to the Supplier as against any monies due to the Authority from the Supplier under this Contract; and
  - 9.10.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.11 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)

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days the Parties shall refer to dispute resolution in accordance with Clause 20 of this Schedule 2. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.11 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.

## **10 Warranties**

10.1 The Supplier warrants and undertakes that:

10.1.1 it shall comply with the Framework Agreement;

10.1.2 the Goods shall be suitable for the purposes and/or treatments as referred to in the Specification, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Contract;

10.1.3 unless otherwise confirmed by the Authority in writing (to include, without limitation, as part of the Specification and Tender Response Document), it will ensure that the Goods comply with requirements five (5) to eight (8), as set out in Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant Goods;

10.1.4 the Services shall be provided in accordance with the Specification and the Tender Response Document and shall comply with the standards and requirements set out in this Contract;

10.1.5 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;

10.1.6 the Services shall be provided using reasonable skill and care and in accordance with Good Industry Practice;

10.1.7 without prejudice to the generality of the warranty at 10.1.5 of this Schedule 2, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good distribution practice, as may be defined under any Law and/or Guidance relevant to the Goods, and any specific instructions of the manufacturer of the Goods;

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- 10.1.8 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.9 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.10 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.11 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.12 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.13 where there is any instruction information, including without limitation patient information leaflets, that accompany the Goods, it shall provide a sufficient number of copies to the Authority(in accordance with the Authority's requirements) and provide updated copies should the instruction information change at any time during the Term;
- 10.1.14 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Specification;
- 10.1.15 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with and make available on the Authority's and/or NHS Supply Chain's reasonable request copies of such quality controls and processes;
- 10.1.16 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and Services without notifying the Authority in writing at least twenty-one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.17 it shall not make any significant changes to, or provide substitutes for, the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, unless otherwise set out in the Commercial Schedule, any such changes or

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substitute goods, if accepted, shall not lead to an increase in the Contract Price;

- 10.1.18 any equipment it uses in the manufacture or delivery of the Goods and provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.19 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.20 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods and Services;
- 10.1.21 receipt of the Goods and Services by or on behalf of the Authority and use of the Goods or of any other item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.22 it will comply with all Law, Guidance and Policies in so far as relevant to the Goods and/or Services;
- 10.1.23 it will promptly (and in any event within one (1) Business Day) notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.24 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Authority immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 10.1.25 it shall at all times conduct its business in a manner that is consistent with any anti-slavery Policy of the Authority and shall provide to the Authority any reports or other information that the Authority may request as evidence of the Supplier's compliance with this Clause 10.1.25 and/or as may be requested or otherwise required by the Authority in accordance with its anti-slavery Policy;
- 10.1.26 it will promptly respond to all requests for information regarding the Contract and the Goods and Services at the frequency and in the format that the Authority may reasonably require;

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- 10.1.27 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to the Specification and in the Tender Response Document and/or Order Form and all accompanying materials is accurate;
  - 10.1.28 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
  - 10.1.29 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
  - 10.1.30 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
  - 10.1.31 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 10.1.32 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
  - 10.1.33 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
  - 10.1.34 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods or provision of the Services under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:
- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of Clauses 10.1 and 10.2 of this Schedule 2, the Supplier shall, upon written request

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from the Authority, make available to the Authority evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required;

- 10.2.2 at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law and Guidance in order to supply the Goods to the Authority and that all relevant authorisation, labeling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of this Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labeling, registrations, approvals or documentation required; and
- 10.2.3 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 If the Supplier is in breach of Clause 10.2 of this Schedule 2, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject the Services and reject and/or return the Goods and the Supplier shall, subject to Clause 13.2 of this Schedule 2, indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.
- 10.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.5 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.6 Unless the Parties otherwise agree in writing, the Supplier warrants and undertakes to the Authority that it shall comply with any E-Procurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable the Authority to comply with such E-Procurement Guidance.

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- 10.7 The Supplier warrants and undertakes that at the Commencement Date it is not and throughout the term of this Contract it will not be, involved in any Occasion of Tax Non-compliance.
- 10.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

**11 Intellectual property**

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

**12 Indemnity**

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

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

- 12.1.2 any loss of or damage to property (whether real or personal); and/or

- 12.1.3 any breach of Clause 10.1.21 and/or Clause 11 of this Schedule 2;

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

- 12.2 Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 4.10.4, 12.1.2 and 10.3 of this

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Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.

- 12.3 In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
- 12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
  - 12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

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

### **13 Limitation of liability**

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
  - 13.1.2 for fraud or fraudulent misrepresentation; or
  - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Goods and/or Services.
- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to

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include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

- 13.3.1 extra costs incurred purchasing replacement or alternative goods and/or services;
- 13.3.2 costs incurred in relation to any product recall;
- 13.3.3 costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;
- 13.3.4 the costs of extra management time; and/or
- 13.3.5 loss of income due to an inability to provide health care services,

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

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

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

- 13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with one million pounds (£1,000,000);
- 13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with three million pounds (£3,000,000);
- 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five per cent (125%) at Clause 13.2 of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and fifteen per cent (115%); and
- 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five per cent (125%) at Clause 13.2

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of this Schedule 2 shall be deemed to have been deleted and replaced with one hundred and five per cent (105%).

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

**14 Insurance**

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

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

**15 Term and termination**

15.1 This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term. For the avoidance of doubt, expiry or earlier termination of this Contract shall not automatically terminate the Framework Agreement.

15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation subject to Clause 9.11 of this Schedule 2 of these Call-Off Terms and Conditions, any breach of any payment obligations 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 15.4.1(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:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

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

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shall be deemed, for the purposes of Clause 15.4.1(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.

15.4 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:

15.4.1 commits a material breach of any of the terms of this Contract which is:

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

15.4.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

15.5 The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:

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

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

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- material impact on the performance of this Contract or the reputation of the Authority;
- 15.5.3 the Supplier purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28 of this Schedule 2;
  - 15.5.4 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2; Or
  - 15.5.5 the Supplier is in breach of Clause 10.7 of this Schedule 2.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material Sub-contractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a Sub-contract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
  - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
  - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.2 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4.1(i) of this Schedule 2.
  - 15.6.4 In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

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- 15.7 The Authority may terminate this Contract forthwith by notice in writing to the Supplier where:
- 15.7.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
  - 15.7.2 the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
  - 15.7.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
  - 15.7.4 there has been a failure by the Supplier and/or one its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.7.4.

**16 Consequences of expiry or earlier termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Goods and Services which have been supplied or provided by the Supplier and not rejected by the Authority in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.1 Subject to the Supplier receiving all undisputed outstanding sums due under this Contract, following expiry or earlier termination of this Contract in accordance with Clause 15 of this Schedule 2, all equipment and materials provided and/or assembled by (or which are in the process of being assembled by) the Supplier or materials which are being altered or modified by the Supplier in accordance with the Contract, shall be transferred into the ownership of the Authority, regardless of whether the assembly of such equipment and materials has been completed.
- 16.2 Subject to Clause 16.4 of this Schedule 2, the Supplier agrees that where this Contract has been terminated properly in accordance with Clause 15 of this Schedule 2 it shall not be entitled to make a claim against the Authority (if NHS Supply Chain is not the Authority) in relation to costs incurred in the provision of the Goods and/or Services which do not form part of the Contract Price paid or payable by the Authority.

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- 16.3 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.4 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.5 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.6 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.

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

- 17.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 17.2 Unless otherwise specified in the Specification and Tender Response Document or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom and in relation to Goods imported into the united Kingdom for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and all applicable product and safety liability legislation in force in the United Kingdom from time to time, the Supplier shall assume all obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging, in addition to any other obligations the Supplier may have pursuant to such Regulations and other legislation.
- 17.3 Unless otherwise (a) specified in the Specification or ORS; (b) agreed with the Authority in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown by labels on at least two sides of the outside of every package, each package containing no more than one type of product:
  - 17.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the Authority and/or the Supplier;

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- 17.3.2 the relevant NHS Supply Chain or customer order number (as appropriate) and the customer's local reference number (if appropriate);
  - 17.3.3 the quantity in the package where available;
  - 17.3.4 any special directions for storage;
  - 17.3.5 the expiry date of the contents where applicable;
  - 17.3.6 the delivery date;
  - 17.3.7 at least one of either the MPC code or NPC code as stated on the Order;
  - 17.3.8 the name and address of the delivery location (including the requisition point, if any);
  - 17.3.9 the batch number;
  - 17.3.10 the route of supply (i.e. Stock, E-Direct, Blue Diamond, Direct, as more particularly described in Schedule 4; and
  - 17.3.11 the name and address of the manufacturer of the Goods and the Supplier.
- 17.4 All Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the Authority, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.
- 17.5 Unless otherwise set out in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty-one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the Authority at the Supplier's expense or otherwise disposed of at the Authority's discretion. The Supplier shall credit the Authority in full for any containers for which the Authority has been charged upon their collection or return. The Authority will not accept transfer of costs or liabilities in respect of any local, regional or national pool pallets. The Authority will not exchange any damaged or sub-standard pallets on delivery and all responsibility for the same shall remain with the Supplier.

**18 Coding requirements**

- 18.1 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 18.2 of this Schedule 2, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health in relation to the adoption of GS1 and

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PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting.

- 18.2 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 18 of this Schedule 2 the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 18.3 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

**19 Sustainable development**

19.1 The Supplier shall comply in all material respects with applicable environmental and social and labour Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification. Without prejudice to the generality of the foregoing, the Supplier shall:

- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification in relation to any stated environmental and social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
- 19.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being supplied and as proportionate to the nature and scale of the Supplier's business operations; and
- 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to in Clause 19.1.2 of this Schedule 2.

19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2.

**20 Electronic product information**

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

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- 20.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2.
- 20.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available in the Authority's product catalogue in relation to any catalogues produced during the Term. Subject to Clause 20.5 of this Schedule 2, no obligation to illustrate or advertise the Product Information is imposed on the Supplier by the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2.
- 20.5 The Authority may reproduce for its sole use the Product Information provided by the Supplier in the Authority's product catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 or otherwise under the terms of this Contract.
- 20.7 The Authority may approach the Supplier during the Term to offer the Supplier the opportunity to take part in specific promotions or to purchase additional advertising space in relation to the Goods and/or Services, the Framework Agreement and any Contract and the Parties shall agree an appropriate price for any such advertising. If any such opportunity is cancelled by the Authority it shall refund the purchase price to the Supplier but for the avoidance of doubt, the Authority shall not be liable for any incidental costs incurred by the Supplier, including costs associated with the development of an advert
- 20.8 The Supplier agrees to indemnify and keep indemnified the Authority against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings arising out of or in connection with the Authority's use of the Product Information, provided always that the Authority has not materially misused the Product Information.

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**21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority’s requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, as may be requested by the Authority from time to time.
- 21.2 Any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

**22 Dispute resolution**

- 22.1 During any dispute it is agreed that the Supplier shall continue its performance of the provisions of the Contract to the extent that such obligations are not the subject of the dispute (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 22.2 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.
- 22.3 If any dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the dispute. The Parties shall first seek to resolve the dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the dispute before escalating the matter to the next level until all of the levels have been exhausted. Level 1 will commence on the date of service of the dispute resolution notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.
- 22.4 If the procedure set out in Clause 22.2 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 actring reasonably attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 22 of this Schedule 2 of these Call-Off Terms and Conditions, the mediator shall be nominated by the Centre for Effective Dispute Resolution, London.

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- 22.5 The mediation shall commence within twenty-eight (28) days of the confirmation of the mediator in accordance with Clause 22.4 of this Schedule 2 of these Call-off Terms and Conditions or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.6 Nothing in this Contract shall prevent:
- 22.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or Services; or
- 22.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the Dispute Resolution Procedure.
- 22.7 Clause 22 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

**23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

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- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 2.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 and subject to Clause 23.10 of this Schedule 2, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.
- 24 Records retention and right of audit**
- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such

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

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

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

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

25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

**26 Equality and human rights**

26.1 The Supplier shall:

26.1.1 ensure that (a) it does not, whether as employer or as supplier of the Goods and Services engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or supplier of the Goods and Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote

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equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

26.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.

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

## **27 Notice**

27.1 Subject to Clause 22.5 of Schedule 2 of these Call-off Terms and Conditions, 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 Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

27.2 A notice shall be treated as having been received:

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

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

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

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

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

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Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

28.2 Notwithstanding Clause 28.1 of this Schedule 2, the Supplier may:

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

28.2.2 Sub-contract the carriage only of the Goods to the delivery location;

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

- (i) the setting off of any sums in respect of which the Authority exercises its right of set off under Clause 9.10 of this Schedule 2;
- (ii) all related rights of the Authority in relation to the recovery of sums due but unpaid;
- (iii) the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
- (iv) the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
- (v) payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.

28.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.

28.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply and delivery of the Goods or

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the provision of the services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:

- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply and delivery of the Goods or the provision of the Services to the extent relevant to such Sub-contracting;
- 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
- 28.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
- 28.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
- 28.4.5 requires the Supplier or other party receiving goods under the Sub-contract to consider and verify invoices under that contract in a timely fashion;
- 28.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 28.4.5 of this Schedule 2 of these Call-off Terms and Conditions, the invoice shall be regarded as valid and undisputed for the purpose of Clause 28.4.7 of this Schedule 2 of these Call-Off Terms and Conditions after a reasonable time has passed;
- 28.4.7 requires the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed.
- 28.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.4 of this Schedule 2 of these Call-off Terms and Conditions;
- 28.4.9 permitting the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier is required to replace such Sub-contractor in accordance with Clause 28.5 of this Schedule 2 of these Call-Off Terms and Conditions;

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28.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 28.4 of this Schedule 2 of these Call-off Terms and Conditions in any Sub-contract which it awards.

28.5 Where the Authority considers that the grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015 apply to any Sub-contractor, then:

28.5.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall ensure, or shall procure, that such Sub-contractor is replaced or not appointed; or

28.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to ensure, or to procure, that such Sub-contractor is replaced or not appointed and the Supplier shall comply with such a requirement.

28.6 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the provision of the Goods and/or Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.

28.7 The Authority may at any time transfer, assign, novate, Sub-contractor otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, Sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, Sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## 29 **Prohibited Acts**

29.1 The Supplier warrants and represents that:

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

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not

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showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or

- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

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

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

29.2.1 the Authority shall be entitled:

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

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

29.2.3 notwithstanding Clause 22 of this Schedule 2, any dispute relating to:

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

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

### **30 General**

30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right

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or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.

- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 30.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorized representative of each Party and any document referred to explicitly in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods and provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.

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

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### Schedule 3

#### Information Governance Provisions

#### **1** Confidentiality

1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 3, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

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

1.1.2 the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:

(i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;

(ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(iii) which is authorised for disclosure by the prior written consent of the Discloser;

(iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or

(v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.

1.2 Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

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- 1.3 The Authority may disclose the Supplier's Confidential Information:
- 1.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);
  - 1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
  - 1.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
  - 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
  - 1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

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

- 1.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.

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- 1.5 Nothing in this Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing the Confidential Information to its Group companies, provided that the Recipient procures that such Group companies comply with this Clause 1 of this Schedule 3 as if each reference to the Recipient in this Clause 1 of this Schedule 3 is a reference to any such Group company receiving the Confidential Information.
- 1.6 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.7 Clause 1 of this Schedule 3 shall remain in force:
  - 1.7.1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
  - 1.7.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

**2 Data protection**

- 2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.
- 2.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Supplier must, in particular, but without limitation:
  - 2.2.1 only Process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instructions given by the Authority under this Contract;
  - 2.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of Clause 2 of this Schedule 3, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;

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- 2.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 2 of this Schedule 3; and
  - 2.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Authority.
- 2.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such subcontractor were the Supplier.
- 2.5 For the avoidance of doubt, the Supplier must not process Sensitive Personal Data under or in connection with this Framework Agreement or a Contract unless it has complied fully with:
- 2.5.1 the requirements in Clauses 2.1 to 2.4 (inclusive) of this Schedule 3; and
  - 2.5.2 the requirements of and its obligations under the Data Protection Act 1998 and The Data Protection (Processing of Sensitive Personal Data) Order 2000 (as amended from time to time) or any successor legislation.
- 2.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data and/or Sensitive Personal Data in connection with this Contract.

**3 Freedom of Information and Transparency**

- 3.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

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- 3.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
  - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
  - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
  - 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
  - 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
  - 3.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and

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Environmental Regulations, the content of this Contract is not Confidential Information.

- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 3.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

#### **4 Information Security**

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

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## Schedule 4

### Definitions and Interpretations

#### 1 Definitions

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

<b>“Additional Terms”</b>	means the additional provisions relating to the goods and logistics of Orders placed pursuant to a Non-direct Route of Supply as set out in Schedule 5 which shall apply to this Contract;
<b>“ASN”</b>	means advance shipping notice;
<b>“Authority”</b>	means the authority named on the Order Form;
<b>“Authority’s Obligations”</b>	means the Authority’s further obligations, if any, referred to in the Specification and/or the Order Form;
<b>“Blue Diamond”</b>	means Goods and Services ordered by NHS Supply Chain on behalf of a customer which are delivered and invoiced to the required NHS Supply Chain location to be distributed by NHS Supply Chain to the relevant customer in accordance with the Order Form;
<b>“Business Continuity Event”</b>	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods and Services including an influenza pandemic and any Force Majeure Event;
<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event;
<b>“Business Day”</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>“Codes of Practice”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;

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<b>“Commencement Date”</b>	means the date of the Order Form;
<b>“Confidential Information”</b>	<p>means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:</p> <p>(a) Personal Data 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;</p> <p>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</p> <p>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet;</p>
<b>“Contract”</b>	means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions for the Supply of Goods, the Specification, the Tender Response Document and the applicable provisions of the Framework Agreement;
<b>“Contracting Authority”</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>“Contract Manager”</b>	means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
<b>“Data Protection Legislation”</b>	means the Data Protection Act 1998 and any other Law relating to the protection of personal and sensitive personal data and the privacy of individuals, including where applicable guidance and

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	codes of practice issued by the Information Commissioner;
<b>“Data Subject”</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>“Defective Goods”</b>	has the meaning given under Clause 4.7 of Schedule 2;
<b>“Direct Route of Supply”</b>	means a route of supply whereby the Authority (who is not NHS Supply Chain) places an Order with the Supplier, which is delivered and invoiced directly to that Authority;
<b>“Dispute Resolution Procedure”</b>	means the process for resolving disputes as set out in Clause 22 of Schedule 2;
<b>“DOTAS”</b>	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;
<b>“Electronic Trading System(s)”</b>	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>“E-Direct”</b>	means Goods and Services ordered by NHS Supply Chain as the Authority on behalf of a customer which are delivered directly to the customer and invoiced to NHS Supply Chain;
<b>“Environmental Regulations”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“E-Procurement Guidance”</b>	means the NHS E-Procurement Strategy available via: <a href="http://www.gov.uk/government/collections/nhs-procurement">http://www.gov.uk/government/collections/nhs-procurement</a> together with any further Guidance issued by the Department of Health in connection with it;

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<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“Ex Works”</b>	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;
<b>“FOIA”</b>	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
<b>“Force Majeure Event”</b>	<p>means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;</li> <li>(b) acts of terrorism;</li> <li>(c) flood, storm or other natural disasters;</li> <li>(d) fire;</li> <li>(e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all</li> </ul>

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	<p>reasonable legal means to resist such requisition or impoundment;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p>
<b>“Framework Agreement”</b>	means the Framework Agreement referred to in the Order Form;
<b>“Fraud”</b>	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;
<b>“General Anti-Abuse Rule”</b>	<p>means</p> <p>(j) the legislation in Part 5 of the Finance Act 2013; and</p> <p>any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods and/or services similar to the Goods and/or Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;

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<b>“Goods”</b>	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract;
<b>“Group”</b>	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;
<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the 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;
<b>“Halifax Abuse Principle”</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
<b>“Key Provisions”</b>	means the key provisions set out in Schedule 1 and/or as part of the Order Form;
<b>“KPI”</b>	means the key performance indicators as set out in Schedule 8 of the Framework Agreement;
<b>“Law”</b>	means any applicable legal requirements including, without limitation: <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation as applicable in England and Wales;</li> <li>(b) any applicable European Union directive, regulation, decision or law;</li> </ul>

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	<p>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(e) requirements set by any regulatory body as applicable in England and Wales; and</p> <p>(f) any relevant code of practice, as applicable in England and Wales; and</p> <p>(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above).</p>
<b>“NHS”</b>	means the National Health Service;
<b>“NHS Supply Chain”</b>	means DHL Supply Chain Limited (registered number 00528867) whose registered office is at 251 Midsummer Boulevard, Central Milton Keynes, Milton Keynes, MK9 1EQ, acting as agent for the NHS Business Services Authority whose principal office is at Bridge House, 152 Pilgrim Street, Newcastle-upon-Tyne, NE1 6SN;
<b>“NHS Supply Chain Supplier Portal”</b>	means NHS Supply Chain’s electronic portal which contains all details and correspondence between NHS Supply Chain and the Supplier in relation to Orders that involve a Non-direct Route of Supply;
<b>“Non-direct Route of Supply”</b>	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);
<b>“Occasion of Tax Non-Compliance”</b>	means:

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	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</p> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
<b>“Order Form”</b>	means the order form for the Goods and Services issued by the Authority in accordance with the Framework Agreement;
<b>“ORS”</b>	means NHS Supply Chain’s Operational Requirements of Suppliers document (if any) at Schedule 6 as amended from time to time in the reasonable discretion of the Authority;
<b>“Party”</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>“Personal Data”</b>	means personal data as defined in the Data Protection Act 1998;
<b>“Policies”</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time (including, where NHS Supply Chain is the Authority, the Supplier Code of Conduct and the ORS);
<b>“Process”</b>	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;

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<b>“Product Information”</b>	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
<b>“Rejected Goods”</b>	has the meaning given under Clause 4.2 of Schedule 2;
<b>“Remedial Proposal”</b>	has the meaning given under Clause 15.3 of Schedule 2;
<b>“Requirement to Recall”</b>	has the meaning given under 4.10 of Schedule 2;
<b>“Sensitive Personal Data”</b>	means sensitive personal data as defined in the Data Protection Act 1998;
<b>“Services”</b>	means any services which are ancillary to or associated with the Goods that the Supplier is required to supply to the Authority under this Contract;
<b>“Specification”</b>	means the Specification set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with this Contract;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>“Stock”</b>	means, where NHS Supply Chain is the Authority, Goods purchased by the Authority which are delivered and invoiced to the Authority to be held as stock until such time as the Authority's customers place an order for such goods with the authority;
<b>“Sub-contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Framework Agreement;
<b>“Sub-contractor”</b>	means a party to a Sub-contract other than the Supplier;

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<b>“Supplier”</b>	means the supplier named on the Order Form;
<b>“Supplier Code of Conduct”</b>	means the Authority’s code of conduct (if any) set out at Schedule 7 as amended from time to time in the reasonable discretion of the Authority;
<b>“Tender Response Document”</b>	means the Tender Response Document set out in the Framework Agreement;
<b>“Term”</b>	means the term as referred to in the Key Provisions;
<b>“Third Party Body”</b>	has the meaning given under Clause 8.5 of Schedule 2;
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1.2 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

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- 1.10 Where there is a conflict between the Supplier's responses to the requirements set out in the Specification in the Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

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## Schedule 5

### Additional Terms – Goods and Logistics (Non-direct Routes of Supply)

The following additional terms apply to any Goods supplied under the Contract via a Non-direct Route of Supply. The practicalities surrounding the implementation of these provisions are set out in further detail in the ORS to which the Supplier must conform.

#### **1. Orders**

- 1.1. Orders may be sent to the Supplier via NHS Supply Chain's current Electronic Trading System or such other electronic interface, e-mail or fax. Upon receipt of an Order transmitted through NHS Supply Chain's Electronic Trading System, the Supplier must acknowledge receipt of the Order via the same Electronic Trading System. Following receipt of an Order by other electronic means the Supplier must acknowledge receipt of the Order via the NHS Supply Chain Supplier Portal. The time period for acknowledgement of Orders varies between different routes of supply and can be found in the ORS. A failure by the Supplier to acknowledge an Order within the time period set out in the ORS may result in NHS Supply Chain cancelling the Order, or refusing to take delivery of the Order if attempted, without incurring any liability.
- 1.2. The Supplier acknowledges and agrees that NHS Supply Chain may amend or terminate an Order by written notice (including e-mail, fax, or letter) at any time prior to the despatch of the Goods unless agreed otherwise in writing.
- 1.3. Where the Supplier is unable to supply Goods, the Supplier must amend the Order details on the NHS Supply Chain Supplier Portal. The Supplier must amend any Order quantities to reflect the quantity to be delivered before the time set out in the ORS on the day prior to delivery of the Order.

#### **2. Delivery**

##### **Delivery Times**

- 2.1. If, after a delivery time has been agreed, the Supplier wishes to amend the delivery time, the Supplier must contact the delivery location as set out in the Order at least twenty-four (24) hours prior to the planned delivery to request authorisation to amend such delivery time. Any such authorisation shall be given at the reasonable discretion of NHS Supply Chain. For the avoidance of doubt, the new agreed delivery time shall become the time against which the Supplier's compliance with the KPIs is measured.
- 2.2. Any delivery that fails to arrive at the delivery location at the agreed delivery time which has not been amended in accordance with Clause 2.1 of this Schedule 5 may result in a rescheduled delivery time at the reasonable discretion of NHS Supply

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Chain. Any rescheduled time may be outside the Supplier's normal working hours at no additional cost to NHS Supply Chain.

- 2.3. In certain exceptional circumstances NHS Supply Chain may require the Goods to be delivered on a same day or next day basis. In such circumstances, NHS Supply Chain will contact the Supplier to discuss such requirement and arrange a mutually acceptable delivery time and the Supplier agrees that it will not unreasonably withhold or delay its agreement to a mutually acceptable delivery time. In such circumstances there shall be no additional cost payable by either party unless otherwise agreed in writing.
- 2.4. In the event that the Supplier ceases operations for any duration during the Christmas/Easter holiday season, the NHS Supply Chain may be required to forward purchase Goods. In such circumstances, the NHS Supply Chain will contact the Supplier to discuss its requirements and arrange a mutually acceptable delivery time and the Supplier agrees that it will not unreasonably withhold or delay its agreement to a mutually acceptable delivery time. There shall be no additional costs payable by either party pursuant to this Clause 2.4 of this Schedule 5 unless otherwise agreed in writing prior to delivery.

### **Refusal of Deliveries**

- 2.5. In accordance with Clause 4 of Schedule 2, NHS Supply Chain reserves the right to refuse deliveries if any of the following circumstances occur:
- 2.5.1. the delivery is dangerous to unload or load (including but not limited to poor presentation of pallets or the vehicle or premises being unsuitable for safe unloading);
  - 2.5.2. there is any breach of the requirements for containers and pallets as set out in 17 of Schedule 2 or as detailed in the ORS document;
  - 2.5.3. the Goods are damaged and not fit for sale by NHS Supply Chain and/or use by NHS Supply Chain's customers;
  - 2.5.4. the Goods show visible signs of tampering or theft;
  - 2.5.5. the delivery arrives more than 30 minutes before or after the agreed delivery time;
  - 2.5.6. the delivery arrives without a delivery (or collection) advice note which complies with the requirements set out in 2.4 of Schedule 2;
  - 2.5.7. the remaining shelf life of the Goods is less than that stated as a requirement in the Specification or as otherwise previously agreed between the Parties in writing;

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- 2.5.8. the Supplier's delivery driver is abusive and/or fails to comply with NHS Supply Chain's Policies;
  - 2.5.9. the Supplier's delivery driver arrives at the location without the necessary manual handling equipment to facilitate the movement of the Goods within the delivery vehicle thereby making the unloading of the Goods impossible; or
  - 2.5.10. the Goods do not have an ASN prior to delivery.
- 2.6 NHS Supply Chain reserves the right to accept a sub-standard delivery in order to continue supply to its customers. In these circumstances NHS Supply Chain will be entitled to charge the Supplier for any costs incurred by NHS Supply Chain for re-working of the delivery including but not limited to costs associated with re-stacking or re-packaging the delivery so that it is safe to store within an NHS Supply Chain depot and subsequently deliver to NHS Supply Chain customers.

**Returns**

- 2.7 The Supplier acknowledges and agrees that NHS Supply Chain customers may from time to time return Goods for convenience. NHS Supply Chain shall notify the Supplier of any such returns and the Supplier must collect the returned Goods within ten (10) Working Days of such notification at the Supplier's cost, unless otherwise agreed between the Parties in writing. If the Supplier fails to collect the returned Goods in accordance with this Clause 2.7 of Schedule 5, the NHS Supply Chain shall be entitled to dispose of the Goods at the Supplier's expense. Any such disposal shall not affect the right to a refund in accordance with Clause 2.8 of this Schedule 5.
- 2.8 The Supplier shall issue a full refund for all returned Goods which are undisputed in accordance with Clause 2.9 of this Schedule 5 within thirty (30) days.
- 2.9 Where a Supplier disputes that the condition of returned Goods is the same as the condition in which the Goods were delivered to the NHS Supply Chain or NHS Supply Chain's customer, the onus shall be on the Supplier to provide photographic evidence to support its claim. Failure to provide such suitable photographic evidence will result in NHS Supply Chain claiming a full refund for the returned Goods, but for the avoidance of doubt, such photographic evidence will be required to be conclusive in the reasonable opinion of NHS Supply Chain to be deemed acceptable.

**3 Sale or Return**

Where NHS Supply Chain notifies the Supplier in writing that any Stock Goods the Supplier supplies or is to supply under the terms of the Framework Agreement and this Contract have not been previously stocked by NHS Supply Chain or there are exceptional circumstances in relation to such Goods, this Clause 3 of Schedule 5 shall apply to those Goods. Until such time as NHS Supply Chain considers that it has a reliable history of demand, all purchases of Goods to which this Clause 3 of Schedule 5 applies shall be supplied by the Supplier on

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the basis of six (6) months' "sale or return". Should any Goods be returned under this arrangement which have at least half of the remaining shelf life stated in the Specification or six (6) months' shelf life remaining, whichever is less, the Supplier shall refund the returned Goods to NHS Supply Chain, or, by agreement with NHS Supply Chain arrange for an exchange of other Stock goods of equal value.

#### **4 Minimum Order Quantities**

NHS Supply Chain cannot accept minimum order quantities in relation to any Orders except in exceptional circumstances pre-agreed in writing by the parties.

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**Schedule 6**

**Operational Requirements for Suppliers**

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**Schedule 7**

**Supplier Code of Conduct**

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