

## Schedule 7

### Ordering Procedure and Order Form

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**DPS Agreement  
Order Form**

**Applicable terms and conditions**

The following terms and conditions are applicable to the Contract for this Order:

<b>Appendix A</b>	Call-off Terms and Conditions for the Supply of Goods and the Provision of Services	<b>Applicable to this Contract</b>																										
<b>Appendix B</b>	Optional Additional Call-off Terms and Conditions for Installation and Commissioning Services	<input type="checkbox"/> (Only applicable if this box is checked)																										
<b>Appendix C</b>	Optional Additional Call-off Terms and Conditions for Maintenance Services	<input type="checkbox"/> (Only applicable if this box is checked)																										
<b>Appendix D</b>	Optional Additional Call-off Terms and Conditions for Consumables Rental	<input type="checkbox"/> (Only applicable if this box is checked)																										
<b>Appendix E</b>	Optional Additional Call-off Terms and Conditions for Managed Equipment Services	<input type="checkbox"/> (Only applicable if this box is checked)																										
<b>Appendix F</b>	<p>Further Optional Additional Call-off Terms and Conditions</p> <p>Each of the following clauses in Appendix F is only applicable to this Contract if the relevant box is checked:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">1. TUPE applies at the commencement of the provision of Services</td> <td style="text-align: center; width: 50px;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">2. TUPE on exit</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">3. Different levels and/or types of insurance</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">4. Induction training for Services</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">5. Further Authority obligations</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">6. Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">7. Inclusion of a Change Control Process</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">8. Authority step-in rights</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">9. Guarantee</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">10. Termination for convenience</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">11. Pre-Acquisition Questionnaire</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">12. Time of the essence (Goods)</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">13. Time of the essence (Services)</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	1. TUPE applies at the commencement of the provision of Services	<input type="checkbox"/>	2. TUPE on exit	<input type="checkbox"/>	3. Different levels and/or types of insurance	<input type="checkbox"/>	4. Induction training for Services	<input type="checkbox"/>	5. Further Authority obligations	<input type="checkbox"/>	6. Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services	<input type="checkbox"/>	7. Inclusion of a Change Control Process	<input type="checkbox"/>	8. Authority step-in rights	<input type="checkbox"/>	9. Guarantee	<input type="checkbox"/>	10. Termination for convenience	<input type="checkbox"/>	11. Pre-Acquisition Questionnaire	<input type="checkbox"/>	12. Time of the essence (Goods)	<input type="checkbox"/>	13. Time of the essence (Services)	<input type="checkbox"/>	<p><b>(Only applicable if one or more boxes are checked)</b></p>
1. TUPE applies at the commencement of the provision of Services	<input type="checkbox"/>																											
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13. Time of the essence (Services)	<input type="checkbox"/>																											

14. Specific time periods for inspection	<input type="checkbox"/>
15. Specific time periods for rights and remedies under Clause 3.6 of Schedule 2 of Appendix A	<input type="checkbox"/>
16. Right to terminate following a specified number of material breaches	<input type="checkbox"/>
17. Expert Determination	<input type="checkbox"/>
18. Consigned Goods	<input type="checkbox"/>
19. Improving visibility of Sub-contract opportunities available to Small and Medium Size Enterprises and Voluntary, Community and Social Enterprises	<input type="checkbox"/>
20. Management Charges and Information	<input type="checkbox"/>
21. COVID-19 Related Enhanced Business Continuity Provisions	<input type="checkbox"/>
22. Buffer stock requirements	<input type="checkbox"/>
The additional Order-specific Key Provisions set out at Annex A (Order-specific Key Provisions) to this Order Form shall also apply to this Contract.	<input type="checkbox"/> <b>(Only applicable if this box is checked)</b>
<b>Appendix H – Key Performance Indicators</b>	<b>Applicable to this Contract</b>

## **Appendix B**

### **Optional Additional Call-off Terms and Conditions for Installation and Commissioning Services**

#### **1 Installation and Commissioning Services**

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

#### **2 Inspection and Testing**

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

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

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

### **3 Relocation of Goods**

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

### **4 Supplier's obligation to make good any damage**

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







## Appendix C

### Optional Additional Call-off Terms and Conditions for Maintenance Services

#### 1 **Maintenance Services**

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

#### 2 **General maintenance requirements**

- 2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacturer's guidelines and recommendations, shall:
- 2.1.1 provide effective planned preventative maintenance for all Goods to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing; and

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

### **3 Service visits**

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

### **4 Provision of information**

4.1 Without prejudice to any specific records keeping requirements set out in this Contract, including as part of the Specification and Tender Response Document, the Supplier shall:

4.1.1 maintain a record of all Goods that are covered by the Maintenance Services ("**Maintenance Inventory**"). For the avoidance of doubt, such Maintenance Inventory shall be deemed to form part of the Specification and Tender Response Document and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time;

4.1.2 maintain records of all maintenance work carried out on any Goods in connection with this Contract; and

4.1.3 provide all required management information to the Authority promptly upon the Authority's written request to demonstrate, to the Authority's reasonable satisfaction, compliance with requirements to provide planned preventative maintenance and, where applicable, remedial maintenance in connection with all Goods listed in the Maintenance Inventory.

4.2 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Maintenance Services, the Maintenance Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.

4.3 Subject always to the provisions of Clause 8 of this Appendix C, the Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any Goods forming part of the Maintenance Inventory:

4.3.1 the Supplier will no longer be able to maintain the item of Goods as any required third-party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or

4.3.2 the Supplier will no longer not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Maintenance Services in relation to those Goods.

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

## **5 Loan Goods and replacement Goods**

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

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

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

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

## **6 Additional warranties**

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

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

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

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

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

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

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

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

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

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

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

9.2 If the Parties are unable to agree the pro-rata adjustment to the Contract Price in accordance with Clause 9.1.1 of this Appendix C within thirty (30) days of the effective date of the removal of such Goods from the Maintenance Inventory, this failure to agree shall be referred to (and resolved in accordance with) the Dispute Resolution Procedure.

**10 Additional termination provisions**

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

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

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

**11 Non-performance**

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

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

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

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

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

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

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

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

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

## **12 Supplier’s obligation to make good any damage**

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

## Appendix D

### Optional Additional Call-off Terms and Conditions for Consumables Rental

#### 1 Definitions

- 1.1 In this Appendix D, the following words shall have the following meanings unless the context requires otherwise:

<b>“Total Loss”</b>	means for any reason, other than a reason due to the default or negligence of the Supplier, the Goods are lost, stolen, or damaged beyond repair.
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#### 2 Rental Terms

- 2.1 The Authority shall rent the Goods that are equipment for the Term from the date of the issue of the Authority Confirmation in accordance with Appendix B (which shall be deemed to apply to this Contract).
- 2.2 The rental charges for Goods that are equipment shall be amortised into the Contract Price for the Goods that are consumables. Where associated Maintenance Services are required (as may be set out in the Order Form), the Contract Price for the maintenance charges may also be amortised into the Contract Price for the Goods that are consumables or, alternatively, may form a separate charge as may be required by the Authority and set out in the Order Form.
- 2.3 The Supplier shall allow the Authority quiet possession of the Goods throughout the Term, subject to compliance by the Authority with its obligations under the Contract.
- 2.4 The Authority shall not:
- 2.4.1 modify or alter the Goods that are equipment without the prior consent of the Supplier;
  - 2.4.2 sell, purport to sell, mortgage or part with possession of the Goods that are equipment (other than to a statutory successor), use such Goods as security for a loan or any other obligation, allow the creation of any charge or lien over such Goods or create or allow to be created any right for a third party to retain such Goods; or
  - 2.4.3 do anything that otherwise interferes with the Supplier’s ownership of or other rights in the Goods that are equipment.
- 2.5 The Authority shall allow the Supplier, on reasonable notice and subject to its compliance with any relevant Policies, to enter the relevant Premises and Locations in which any Goods that are equipment are located for the purposes of inspecting such Goods and checking that the Authority is complying with its obligations under the Contract. Where the Contract is exclusive of maintenance, the Authority shall also ensure that such Goods are maintained during the Term in accordance with any relevant manufacturer’s specifications.



### **3 Consumables**

- 3.1 The Supplier shall supply the consumable Goods to the Authority when requested by the Authority and the Authority shall pay the relevant charges for such Goods as set out as part of the Contract Price. Subject to Clause 9.2 of this Appendix D, where the Contract Price for such consumable Goods includes a minimum volume commitment for any given periods ("**Minimum Volume**"), except to the extent that the Authority's failure to purchase the Minimum Volume during any such given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Volume for a given period, the Supplier may charge the Authority for any shortfall between:
- 3.1.1 the Contract Price of the Minimum Volume in the relevant period; and
  - 3.1.2 the Contract Price for consumable Goods purchased by the Authority in that period.
- 3.2 Where Clause 9 of Appendix F applies to this Contract, any termination sums payable in accordance with Clause 9 of Appendix F (if any) shall be set out as part of the Contract Price, shall reflect an early settlement discount and shall be the total charges payable by the Authority upon early termination of this Contract in accordance with Clause 9 of Appendix F ("**Termination Sum Payment**").
- 3.3 The amount of any Termination Sum Payment (including any early settlement discount) shall be shown separately on any invoice.

### **4 Title, risk and insurance**

- 4.1 From the point the Supplier receives the Authority Confirmation, the Authority shall bear the risk of loss or damage to the Goods that are equipment occurring other than in the normal use of such Goods for the Term except for loss or damage caused by any act or omission of the Supplier (including, without limitation, any failure to provide the Maintenance Services to the extent such Maintenance Services form part of the Contract), for which the Supplier shall be solely liable.
- 4.2 Title in the Goods that are equipment shall remain with the Supplier at all times throughout the Term.
- 4.3 Title and risk in Goods that are consumables shall pass to the Authority in accordance with the relevant provisions of Appendix A.
- 4.4 The Authority shall, at its sole cost, effect and maintain throughout the duration of this Contract a programme of self-insurance or other insurance or risk pooling arrangements in respect of the Goods that are equipment.
- 4.5 In the event during the Term, following any relevant Authority Confirmation, of a Total Loss of any Goods that are equipment, the Authority shall pay the Supplier the reasonable replacement charges for such Goods, as set out as part of the Contract Price.

### **5 Right to cease use and require replacement**

- 5.1 The Authority may cease use of any Goods that are found not to comply with the requirements of the Law, Guidance or Good Industry Practice and such Goods shall be replaced by the Supplier with Goods that comply with such requirements.

**6 Further consequences of termination**

- 6.1 Unless otherwise agreed by the Parties in writing, within seven (7) days following the termination or expiry of this Contract, the Supplier shall remove (at its own cost) the Goods that are equipment from the Premises and Locations and ensure the removal is carried out in such manner to minimise disruption on the day-to-day operations of the Authority. The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the removal of such Goods by the Supplier.
- 6.2 Subject to Clauses 9.3 and 10.1 of this Appendix D, the only charges or expenses payable by the Authority upon the expiry or termination of this Contract (for whatever reason) shall be the outstanding Contract Price in relation to any consumable Goods that are delivered to the Authority prior to the date of the termination or expiry of the Contract.

## Appendix E

### Optional Additional Call-off Terms and Conditions for Managed Equipment Services

#### 1 **Definitions**

- 1.1 In this Appendix E, the following words shall have the following meanings unless the context requires otherwise:

<b>“Total Loss”</b>	means for any reason, other than a reason due to the default or negligence of the Supplier, the Goods are lost, stolen, or damaged beyond repair.
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#### 2 **Provision of the Managed Equipment Services**

- 2.1 The Authority appoints the Supplier, and the Supplier agrees to provide the Services for the Goods that are managed equipment on the following basis:
- 2.1.1 the Supplier shall not commence provision of the Services until it has received the Authority Confirmation in accordance with Appendix B (which shall be deemed to apply to this Contract);
  - 2.1.2 the Services shall include the provision of the Goods for the Term (including their installation and commissioning); and
  - 2.1.3 the Supplier shall maintain the Goods that are equipment throughout the Term in accordance with all relevant manufacturers’ specifications and Good Industry Practice.
- 2.2 The Supplier shall allow the Authority quiet possession of the Goods throughout the Term, subject to compliance by the Authority with its obligations under the Contract.
- 2.3 The Supplier shall not sell, purport to sell, mortgage or part with possession of the Goods that are equipment (other than to a statutory successor), use such Goods as security for a loan or any other obligation, allow the creation of any charge or lien over such Goods or create or allow to be created any right for a third party to retain such Goods.

#### 3 **Unavailability of Equipment**

- 3.1 If the Goods that are equipment are unavailable for use by the Authority at any time during the Term, the Supplier shall repair or replace the Goods at no additional cost to the Authority in compliance with any service levels or KPIs referred to in the Statement of Requirements forming part of the Specification and Tender Response Document.

#### 4 **Consumables**

- 4.1 As part of the Services the Supplier shall supply all consumable Goods to the Authority that are required for the operation of the Goods that are equipment for duration of the Term when requested by the Authority. Unless otherwise agreed by the Parties in writing and subject to Clause [X] of this Appendix E, such consumable Goods shall be supplied in accordance with the relevant provisions of Appendix A.

## **5 Title, risk and insurance**

- 5.1 From the point the Supplier receives the Authority Confirmation, the Authority shall bear the risk of loss or damage to the Goods that are equipment occurring other than in the normal use of such Goods for the Term except for loss or damage caused by any act or omission of the Supplier (including, without limitation, any failure to maintain such Goods in accordance with the requirements of this Contract).
- 5.2 Title in the Goods that are equipment shall remain with the Supplier at all times throughout the Term.
- 5.3 Title and risk in Goods that are consumables shall pass to the Authority in accordance with the relevant provisions of Appendix A.
- 5.4 The Authority shall, at its sole cost, effect and maintain throughout the duration of this Contract a program of self-insurance or other insurance or risk pooling arrangements in respect of the Goods that are equipment.
- 5.5 In the event during the Term, following any relevant Authority Confirmation, of a Total Loss of any Goods that are equipment, the Authority shall pay the Supplier the reasonable replacement charges for such Goods, as set out as part of the Contract Price.

## **6 Contract Price**

- 6.1 The Contract Price for the Services shall be payable from the Actual Services Commencement Date. The Contract Price shall be the entire price payable by the Authority and shall include all costs associated with the provision, installation, commissioning and maintenance of Goods and all consumable Goods provided by the Supplier as part of the Services during the Term.

## **7 Additional Supplier warranty**

- 7.1 The Supplier warrants and undertakes that it shall maintain, repair and/or replace (as appropriate) the Goods provided as part of the Services to ensure compliance with any service levels or KPIs referred to in the Statement of Requirements forming part of the Specification and Tender Response Document.

## **8 Right to cease use and require replacement**

- 8.1 The Authority may cease use of any Goods that are found not to comply with the requirements of the Law, Guidance or Good Industry Practice and such Goods shall be replaced by the Supplier with Goods that do comply with such requirements.

## **9 Termination**

- 9.1 The Authority may terminate the Contract by issuing a Termination Notice to the Supplier in the event of any critical service failures (as may be defined in the Statement of Requirements forming part of the Specification and Tender Response Document for the relevant Order).
- 9.2 Where Clause 9 of Appendix F applies to this Contract, any termination sums payable in accordance with Clause 9 of Appendix F (if any) shall be set out as part of the Contract Price, shall reflect an early settlement discount and shall be the total charges

payable by the Authority up to early termination of this Contract in accordance with Clause 9 of Appendix F ("**Termination Sum Payment**").

- 9.3 The amount of any Termination Sum Payment (including any early settlement discount) shall be shown separately on any invoice.

**10 Further consequences of termination**

- 10.1 Unless otherwise agreed by the Parties in writing, within seven (7) days following the termination or expiry of this Contract, the Supplier shall remove (at its own cost) the Goods that are equipment from the Premises and Locations and ensure the removal is carried out in such manner to minimise disruption on the day-to-day operations of the Authority. The Supplier shall make good at the Supplier's expense any damage to any property or equipment caused by the removal of such Goods by the Supplier.
- 10.2 Subject to Clauses 9.2 and 10.1 of this Appendix E, the only charges or expenses payable by the Authority upon the expiry or termination of this Contract (for whatever reason) shall be the outstanding Contract Price in relation to any Services provided to the Authority in compliance with the terms of this Contract prior to the date of the termination or expiry of the Contract.

## Appendix F

### Further Optional Additional Call-off Terms and Conditions

*Guidance: These further optional additional provisions enable the Authority to add further optional provisions, as applicable to the relevant Order*

#### **1 TUPE applies at the commencement of the provision of Services.**

- 1.1 The Parties agree that the commencement of the provision of the Services under this Contract shall give rise to a relevant transfer as defined in TUPE and the extra Key Provisions as set out in Annex A (Order Specific Key Provisions) relating to TUPE and pensions shall apply to such transfer.

*Guidance: Clause 1 is required if any staff will transfer to the Supplier at the commencement of the Services. If staff will transfer on the commencement of the Services check this Clause 1 as part of the Order Form and ensure that appropriate extra Key Provisions are added to the Order Form accordingly (these Key Provisions should make it clear that they replace Clause 8 of Schedule 1 of Appendix A for the purposes of that Contract). For example, central government Participating Authorities may require the relevant TUPE on exit related provisions from the Cabinet Office Model Services Contract to apply (see <https://www.gov.uk/government/publications/model-services-contract>), as may be supplemented, amended or replaced to reflect any supplemental requirements of the specific Contract to which the Order Form relates. By way of further example NHS Trusts may require the relevant TUPE on exit related provisions from the standard NHS Terms and Conditions for the Provision of Services to apply (see <https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services>), as may be supplemented, amended or replaced to reflect any supplemental requirements of the specific Contract to which the Order Form relates.*

#### **2 TUPE on exit**

- 2.1 The provisions at Clause 17 of Schedule 2 of Appendix A (to include any associated definitions) shall be supplemented, amended and/or replaced as set out in Annex A (Order Specific Key Provisions) to the Order Form to reflect the supplementary requirements of the Authority relating to this Contract.

*Guidance: Clause 2 is required if any replacement, amended and/or supplementary TUPE provisions are required on Exit. For example, some central government Participating Authorities may require the relevant TUPE related provisions from the Cabinet Office Model Services Contract to apply (see <https://www.gov.uk/government/publications/model-services-contract>), as may be supplemented, amended or replaced to reflect the requirements of the specific Contract to which the Order Form relates. Where this is the case, check this Clause 2 as part of the Order Form and ensure that appropriate extra Key Provisions are added to the Order Form accordingly.*

#### **3 Different levels and/or types of insurance**

- 3.1 The Supplier shall put in place and maintain in force the insurances with the minimum cover per claim as set out in Annex A (Order Specific Key Provisions) to the Order Form in the following format:

Format of Table for Order Form:

Type of insurance required for this Contract	Minimum cover per claim
[Employer's liability insurance]	[To be inserted]
[Public liability insurance]	[To be inserted]
[Product liability]	[To be inserted]
[Professional indemnity insurance]	[See Order Form]
[Insert other types of insurance as appropriate]	[To be inserted]

*Guidance: This Clause relates to Clause 14 of Schedule 2 of Appendix A. Clause 14 of Schedule 2 of Appendix A requires the Supplier to have in place a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law in respect of employer's liability, public liability, professional indemnity, and product liability insurance. If this default position is not appropriate in relation to the nature and risks of the particular Order, you need to check this Clause 3 as part of the Order Form and insert the table as an extra Key Provision in Annex A of the Order Form confirming the different types and/or levels of insurance the Supplier must have in place.*

#### **4 Induction training for Services**

4.1 The Supplier shall ensure that all Staff complete the Authority's induction training. All Staff shall complete the training prior to the Actual Services Commencement Date (or immediately following the Services Commencement Date where this date is the date of this Contract) and all new Staff appointed throughout the Term shall also complete the training. The Supplier shall further ensure that all Staff complete any extra training that the Authority makes available to its own staff and notifies the Supplier in writing that it is appropriate for the Staff.

*Guidance: If you require staff of the Supplier to undertake training provided by the Authority, check this Clause 4 as part of the Order Form. This may apply when the Services are provided on site and staff of the Supplier may require training in any site-specific policies or procedures.*

#### **5 Further Authority obligations**

5.1 The Authority's Obligations set out as part of Annex A (Order Specific Key Provisions) to the Order Form shall apply to this Contract.

*Guidance: For some Orders, there may be specific responsibilities on and requirements of your own staff. These could include individuals working alongside the Supplier's staff to develop processes or to ensure the Supplier's staff have an understanding of current systems and processes. Alternatively, where prototypes or samples of any Goods are to be reviewed as part of the manufacturing process this may involve your own staff working alongside the Supplier's staff to review and comment on such prototypes/samples. If there are specific responsibilities on your own staff or other Authority responsibilities, check this Clause 5 as part of the Order Form and include these further obligations as part of Annex A to the Order Form.*

## **6 Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services**

- 6.1 The Supplier confirms and agrees that all Intellectual Property Rights in and to the deliverables, material and any other output developed by the Supplier as part of the Services in accordance with the Specification and Tender Response Document, shall be owned by the Authority. The Supplier hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such deliverables, material and other outputs. The Supplier shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such deliverables, material and other outputs to the Supplier to give effect to this Clause 6 of this Appendix F and that such Staff absolutely and irrevocably waive their moral rights in relation to such deliverables, material and other outputs. This Clause 6 of this Appendix F shall continue notwithstanding the expiry or earlier termination of this Contract.

*Guidance: Clause 11 of Schedule 2 of Appendix A is structured so that the Supplier owns any intellectual property rights in the output of the Services and the Authority is granted a licence of the necessary usage rights. For most Contracts this will be the approach that attracts the most suppliers and provides best value for money.*

*In exceptional circumstances, and if the relevant requirements have not already been addressed as part of another Appendix / relevant extra Key Provisions also applicable to this Contract, it may be appropriate for the Authority to own the intellectual property rights in the outputs of the Services. If there will be intellectual property created as part of the Services and it is appropriate for you to own such rights, check the box above. This does not transfer to your contracting authority any intellectual property rights in the Goods.*

## **7 Inclusion of a Change Control Process**

- 7.1 Any changes to this Contract, including to the Goods and/or Services, may only be agreed in accordance with the Change Control Process set out as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: Clause 21 of Schedule 2 of Appendix A states that any changes to the Goods, Services or other parts of the Contract can only be implemented if agreed between the Authority and the Supplier. In Contracts where complex changes may be required then a more detailed change control process might be appropriate. Where you require a detailed change control process, check this Clause 7 and include the change control process as part of Annex A.*

## **8 Authority step-in rights**

- 8.1 If the Supplier is unable to provide the Services, then the Authority shall be entitled to exercise the step-in rights set out as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: Exceptionally, for certain types of business critical services, if the Supplier cannot provide the Services or fails to provide them to an acceptable standard, you may want the right to step into the position of the Supplier to provide the Services yourself or to appoint a third party to do so to the extent your relevant requirements have not already been addressed as part of another Appendix / relevant extra Key Provisions also applicable to this Contract,.*

*Before including this right in the Contract you need to consider if in practice it is possible to step into the shoes of the Supplier and provide the Services yourself or through a third party. If not, the inclusion of this right may attract a risk premium from suppliers to account for the*



*risk of step-in being triggered, but with no corresponding benefit as the right is unlikely to be used.*

*Where step-in rights are considered proportionate to the risks of critical service failure and are thought to be a realistic, practical and value for money solution to mitigating these risks, check this Clause 8 as part of the Order Form and include the required step-in provisions as part of Annex A to the Order Form. Such provisions must include the rights required and set out how the step-in and step-out process will operate.*

## **9 Guarantee**

- 9.1 Promptly (and in any event within 10 Business Days) following the execution of this Contract, the Supplier shall, if it has not already delivered an executed deed of guarantee to the Authority, deliver the executed deed of guarantee to the Authority as required by the call-off process followed by the Authority. Failure to comply with this Clause shall be an irremediable breach of this Contract.

*Guidance: If you require that a third party guarantees the Supplier's performance, this must be in the call-off documentation, and you should check this Clause 9 as part of the Order Form. This Clause then leads to a right of termination should signature of the guarantee be delayed.*

## **10 Termination for convenience**

- 10.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time in accordance with any notice period as may be referred to as part of the Order Form as an extra Key Provision. Where this Clause has been checked as part of the Order Form, but the Order Form does not refer to any such notice period, the Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time giving three (3) months written notice.
- 10.2 Should the Authority terminate this Contract in accordance with Clause 10.1 of this Appendix F, then the Authority shall pay to the Supplier the termination sum (if any) referred to as part of the Order Form as an extra Key Provision.

*Guidance: If checked as part of the Order Form, this Clause entitles you, as the Authority, to terminate the Contract for no reason on a given period of notice, as proportionate to the particular Goods or Services. Unless otherwise set out in the Order Form as an extra Key Provision in Annex A, the notice period shall be 3 months. The Clause should not be checked as a matter of course or where such a right already exists as part of another Appendix applicable to this Contract, but exceptionally where the contracting authority considers that such flexibility is reasonable and proportionate in the given circumstances.*

*For some Contracts, particularly where there is an initial investment from the Supplier which will be recovered in monthly charges over the contract term (e.g. as is normally the case with contracts for managed equipment services and reagent rental), suppliers will expect to be able to recover some costs should you terminate without cause. This is reasonable and if this is not included you may find suppliers are reluctant to supply without a mechanism to offset this risk.*

*Where it is appropriate for the contracting authority to pay certain costs should you terminate without cause, you will need to address the termination sum payable in Annex A to the Order Form as an extra Key Provision.*

## **11 Pre-Acquisition Questionnaire**

- 11.1 The Supplier warrants and undertakes that its responses to the Pre-Acquisition Questionnaire issued by the Authority are correct and will remain correct and binding on the Supplier until no longer applicable notwithstanding any earlier expiry or termination of this Contract. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that the foregoing warranty and undertaking in this Clause 11.1 of this Appendix F has been breached or there is a risk that it may be breached. Should the Supplier be in breach of this warranty, the Supplier shall take all such actions necessary to put the Authority in such a position as if the Supplier had continued to comply fully with the warranty.

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

## **12 Time of the essence (Goods)**

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

*Guidance: This Clause can be used where, exceptionally, the delivery dates under the particular Contract are critical and you require the right to terminate the Contract if such dates are not met. Where time of the essence is required, this Clause 12 should be checked as part of the Order Form.*

## **13 Time of the essence (Services)**

- 13.1 Time is of the essence as to any critical timescales relating to the Services under this Contract and if the Supplier fails to meet any such critical timescales this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4(i) of Schedule 2 of Appendix A. For the purposes of this Contract, a "critical timescale" shall be any timescale described as such as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: This Clause can be used where, exceptionally, certain timescales relating to the Services under the particular Contract are critical and you require the right to terminate the Contract if such timescales are not met. Where time of the essence is required in relation to such critical timescales, this Clause 13 should be checked as part of the Order Form and the critical timescales detailed in Annex A to the Order Form.*

## **14 Specific time periods for inspection**

- 14.1 For the purposes of Clause 3.2 of Schedule 2 of Appendix A, the Authority shall visually inspect the Goods within any specific period referred to as part of the Order Form as an extra Key Provision following the date of delivery of the relevant Goods.

*Guidance: If you are to visually inspect the Goods within a fixed period of time for the purposes of Clause 3.2 of Schedule of Appendix A (e.g. to reflect market practice in certain industry sectors), this Clause 14 should be checked as part of the Order Form and the time period included as part of Annex to the Order Form as an extra Key Provision.*

## **15 Specific time periods for rights and remedies under Clause 3.6 of Schedule 2 of Appendix A**

- 15.1 The Authority's rights and remedies under Clause 3.6 of Schedule 2 of Appendix A shall cease within any specific period referred to as part of the Order Form as an extra Key Provision following the date of delivery of the relevant Goods.

*Guidance: If the Authority's rights under Clause 3.6 of Schedule 2 of Appendix A in relation to defective goods are to be limited to a fixed time period (e.g. to reflect market practice in connection with certain Goods), this Clause 15 should be checked as part of the Order Form and the time period included as part Annex A of the Order Form as an extra Key Provision.*

## **16 Right to terminate following a specified number of material breaches**

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

*Guidance: This Clause is aimed at providing a termination right where one of the Parties has committed a number of material breaches whether or not they have been remedied. The aim of this Clause is to avoid a situation where one Party can keep breaching the Contract so long as it rectifies each material breach, as this can lead to nagging poor performance and additional time and resources being incurred by the non-breaching Party to manage such breaches. Where this Clause 16 is required, you should check it as part of the Order Form.*

## **17 Expert Determination**

- 17.1 Any Dispute between the Authority and the Supplier shall be dealt in accordance with the expert determination process as specified at Schedule 1 to this Appendix F.
- 17.2 For the avoidance of doubt, where this Clause 17 of this Appendix F is checked as part of the Order Form, all Disputes shall be dealt in accordance with Clause 17.1 of this Appendix F above and the entirety of Clause 22 of Schedule 2 of Appendix A shall be deemed not to apply and deleted in its entirety from this Contract.

*Guidance: This Clause is required when the expert determination process at Schedule 1 is to be adopted in place of the dispute process set out at clause 22 of Schedule 2. Further guidance on the use of expert determination can be found at <https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services> if you scroll down to "Expert determination: briefing note". Where this Clause 17 is required, you should check it as part of the Order Form.*

## **18 Consigned Goods**

- 18.1 The Authority may request for Goods to be delivered on a consignment basis ("**Consignment Request**"). Provided that such Consignment Request is consistent with the forecast requirement for the Goods (as set out in the Specification and Tender Response Document and/or as calculated in accordance with any relevant processes set out in this document and/or as otherwise agreed by the Parties in writing), the Supplier shall deliver the "**Consigned Goods**" (meaning Goods to be delivered by the

Supplier in response to a Consignment Request prior to their use by the Authority) in accordance with Clause 2 of Schedule 2 of Appendix A in response to a Consignment Request for their eventual purchase and use by the Authority in accordance with the terms set out in this Contract.

- 18.2 For the avoidance of doubt, Clause 3 of Schedule 2 to Appendix A shall apply to the inspection, rejection, return and recall of the Consigned Goods.
- 18.3 The Authority shall, or shall procure that its third-party provider shall, maintain any storage facilities throughout the term of this Contract where the Consigned Goods are to be stored in such manner that such storage facilities remain suitable to store the Consigned Goods.
- 18.4 Prior to the Consigned Goods being taken into use by the Authority, the Authority shall ensure that:
  - 18.4.1 the Consigned Goods are stored at the storage facilities in such a manner as to protect them from damage or deterioration;
  - 18.4.2 the Consigned Goods in its possession remain readily identifiable as the Supplier's property;
  - 18.4.3 any identifying marks or packaging on or relating to the Consigned Goods are not removed, defaced or obscured; and
  - 18.4.4 the Consigned Goods are kept in satisfactory condition in accordance with any reasonable and necessary instructions from the Supplier from time to time.
- 18.5 The Authority shall keep accurate stock records in relation to any Consigned Goods and shall provide the Supplier with a monthly (or such other period as agreed by the Parties in writing) sales report ("**Sales Report**") detailing current stock levels and the Consigned Goods taken into use by the Authority. For the avoidance of doubt, a sale will take place at the point any Consigned Goods are taken into use by the Authority.
- 18.6 On receipt of the Sales Report, the Supplier may invoice the Authority the Contract Price for all of the Consigned Goods taken into use by the Authority (as set out in that Sales Report).
- 18.7 Each month (or such other period as agreed by the Parties in writing) the Authority shall take into use and purchase at the Contract Price at least the minimum quantity of Consigned Goods specified in the Order Form as an extra Key Provision for such period (if any) ("**Minimum Quantity**"). If the Supplier fails to supply the Authority with any Consigned Goods required by the Authority (including, without limitation, where the Authority obtains substitute goods from a third party as a result), the Minimum Quantity for the period in question shall be reduced by the quantity of the Consigned Goods that the Supplier fails to supply. Except to the extent that the Authority's failure to purchase the Minimum Quantity during any given period is caused by the Supplier's default or a Force Majeure Event, if the Authority purchases less than the Minimum Quantity for a given period, the Supplier may charge the Authority for any shortfall between:
  - 18.7.1 the Contract Price of the Minimum Quantity in the relevant period; and

- 18.7.2 the Contract Price for Consigned Goods purchased by the Authority in that period.
- 18.8 The Authority (on a first in first out basis) may return to the Supplier any Consigned Goods that it is unable to use (“**Returned Goods**”) by giving written notice to that effect (“**Returns Notice**”). Upon receipt of a Returns Notice, the Supplier shall collect the Returned Goods at the Supplier’s risk and expense within ten (10) Business Days of the date of the Returns Notice. If the Supplier requests and the Authority accepts that the Returned Goods should be disposed of by the Authority rather than returned to the Supplier, the Authority may invoice the Supplier for the costs associated with the disposal of the Returned Goods and the Supplier shall pay any such costs.
- 18.9 Risk in respect of any Returned Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier; or (b) immediately following the expiry of ten (10) Business Days from the date of the Returns Notice related to such Returned Goods. If Returned Goods are not collected within ten (10) Business Days of the date of the relevant Returns Notice, the Authority may return the Returned Goods to the Supplier at the Supplier’s risk and expense and/or charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of the relevant Returns Notice. The Authority may invoice the Supplier for such return expenses and/or storage costs and the Supplier shall pay any such expenses or costs.
- 18.10 The Consigned Goods shall at all times be subject to the direction and control of the Supplier, and the Supplier may (at the Supplier’s risk and expense), upon (10) Business Days written notice to the Authority, collect (on a first in first out basis) any Consigned Goods that have not been taken into use by the Authority within three (3) months (or such other period as agreed by the Parties in writing) of their delivery to the Authority and/or which have a remaining shelf life of less than six (6) months (or such other remaining shelf life period as agreed by the Parties in writing).
- 18.11 The Authority acknowledges that it holds Consigned Goods in its possession as bailee for the Consignor until such time as ownership passes in accordance with Clause 2.8 of Schedule 2 of Appendix A.
- 18.12 On the termination or expiry of this Contract for whatever reason, all Consigned Goods not taken into use by Authority as at the point of such termination or expiry shall be deemed Returned Goods. Such Returned Goods shall be deemed the subject of a Returns Notice that shall be deemed to have been received by the Supplier with a notice date the same as the date of the expiry or earlier termination of this Contract. Clauses 18.8 and 18.9 of this Appendix F shall then apply accordingly and this Clause, together with Clauses 18.8 and 18.9 of this Appendix F, shall survive the expiry or earlier termination of this Contract for these purposes.

*Guidance: This Clause 18 can be used where a stock of Goods is to be provided by the Supplier to the Authority on a consignment basis. This Clause reflects a relatively straightforward approach to consignment stock. Where this Clause 18 is required, you should check it as part of the Order Form. To the extent a different approach is required for your particular Contract, you should include appropriate extra Key Provisions rather than checking this, Clause.*

## **19 Improving visibility of Sub-contract opportunities available to Small and Medium Size Enterprises and Voluntary, Community and Social Enterprises**

- 19.1 The Supplier shall:

- 19.1.1 subject to Clause 19.3 of this Appendix F, advertise on “Contracts Finder” (meaning the Government’s publishing portal for public sector procurement opportunities of that name) all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
  - 19.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
  - 19.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
  - 19.1.4 provide reports on the information at Clause 19.1.3 of this Appendix F to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 19.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 19.2 Each advert referred to a Clause 19.1.1 of this Appendix F above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 19.3 The obligation at Clause 19.1.1 of this Appendix F shall only apply in respect of Sub-contract opportunities arising after the Contract award date.
- 19.4 Notwithstanding Clause 19.1 of this Appendix F, the Authority may by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

*Guidance: Please see Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) for guidance on the application of this Clause 19. Where this Clause 19 is required, you should check it as part of the Order Form.*

## **20 Management Charges and Information**

- 20.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete reports (“**SME Management Information (MI) Reports**”) to the Authority which incorporate the data described in the MI reporting template (“**MI Reporting Template**”) at Annex C to Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) which is:
- 20.1.1 the total contract revenue received directly on the specific Contract;
  - 20.1.2 the total value of Sub-contracted revenues to Small and Medium Size Enterprises (“**SMEs**”) (as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises) and Voluntary, Community and Social Enterprises (“**VCSEs**”); and

- 20.1.3 the total value of Sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs).
- 20.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the MI Reporting Template which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 20.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

*Guidance: Please see Procurement Policy Note 01/18: Supply Chain Visibility (<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>) for guidance on the application of this Clause 20. Where this Clause 20 is required, you should check it as part of the Order Form.*

## **21 COVID-19 related enhanced business continuity provisions.**

- 21.1 Subject to Clause 21.2 of this Appendix F, the Supplier's Business Continuity Plan and, where required, its implementation must ensure the continuity of the supply of the Goods and/or the provision of the Services under this Contract in all circumstances where there is a COVID-19 related Business Continuity Event and the text in Clause 6.4 of Schedule 2 of Appendix A to "use reasonable endeavours to" shall be deemed deleted for the purposes of any COVID-19 related Business Continuity Events. For the avoidance of doubt, to the extent that the Supplier fails to ensure such continuity, it shall be deemed not to have fulfilled its business continuity obligations pursuant to Clause 6 of Schedule 2 of Appendix A for the purposes of Clause 23.2.1 of Schedule 2 of Appendix A.
- 21.2 To the extent only that the Supplier is prohibited from implementing its Business Continuity Plan (in full or part) due to any Laws or Guidance, it shall be relieved of its obligations under Clause 21.1 of this Appendix F.

*Guidance: This Clause should only be used for Contracts where the Supplier is required to supply COVID-19 related Goods and/or Services in all circumstances during a pandemic and so needs to have in place appropriate enhanced business continuity plans to enable it to do so. Where this Clause 21 is required, you should check it as part of the Order Form.*

## **22 Buffer stock requirements**

- 22.1 The Supplier shall comply with any buffer stock requirements. For the purposes of this Contract, a "buffer stock requirement" shall be any stock keeping requirement (to include any related notification requirements) described as such as part of Annex A (Order Specific Key Provisions) to the Order Form.

*Guidance: This Clause can be used where there are any buffer stock requirements relating to the Contract. Where there are such requirements relating to the Contract, this Clause 22 should be checked as part of the Order Form and the precise buffer stock requirements detailed in Annex A to the Order Form. Buffer stock requirements may be relevant to both Goods (e.g. where the Order relates to critical Goods and the Authority wishes for a level of buffer stocks to be held in a specific location / territory to mitigate against any risks identified in relation any supply chains) and Services (e.g. where critical Services depend on certain consumable items / replacement parts being available and the Authority wishes for a level of*

*buffer stocks to be held in a specific location / territory to mitigate against any risks identified in relation any supply chains).*



**SCHEDULE 1**  
**Expert Determination**

**1 Dispute Process**

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

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

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

## EXAMPLE 7

### Appendix G

#### Further Optional Additional Call-off Terms and Conditions for Licensing of Software

- 1 As part of the supply of the Goods and/or Provision of the Services, the Supplier will provide the following Software Items for use by the Authority on the licence terms set out below:

1. Software Item	2. Licensor	3. Licence Terms	4. Restrictions on user numbers
[e.g. XYZ Records Management Application]	[e.g. the Supplier or XYZ third party]	[e.g. sections C to D of XYZ user licence terms, as attached at Annex A to this Appendix G]	[e.g. number of total user licenses and/or limits on number of concurrent users]

*Guidance: When completing the table at paragraph 1 above:*

- *Column 1 should list relevant Software Items;*
  - *Column 2 should make it clear who the licensor is for each Software Item. This could be the Supplier (i.e. where it is the Supplier's software and/or third-party software that the Supplier has rights to sublicense to the Authority) or a third party (i.e. where a direct sublicense of third-party software is procured by the Supplier on behalf of the Authority);*
  - *Column 3 should make clear the usage rights, but should not incorporate other terms relevant to other aspects of the supply of Goods or Services (e.g. liability provisions or supply terms etc), which are already covered by the other Schedules to this Contract; and*
  - *Column 4 should set out any restrictions on user numbers.*
- 2 To the extent such rights are not further restricted by the provisions referred to in the table under paragraph 1 of this Appendix G, the Supplier hereby grants to Authority a direct licence or sub-licence in relation to all Software Items **[to be defined as any items listed above or otherwise made available for use by the Authority]** of the following rights:
- 2.1 Each licence shall be perpetual, royalty free and non-exclusive and shall allow the Authority to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) the Software Item;
- 2.2 The Authority may sub-license the rights granted to it pursuant to paragraphs 1 and 2 of this Appendix G to a third party (including for the avoidance of doubt any Successor or third-party maintenance supplier) provided that:

- 2.2.1 the sub-licence only authorises the third party to exercise such rights for the benefit of the Authority; and
- 2.2.2 upon the written request of the Supplier, the third party enters into a signed a confidentiality undertaking in favour of the Supplier that is substantially the same as the confidentiality undertaking given by the Authority to the Supplier under this Contract.
- 2.3 The Authority may copy the Software Item in order to create an archival copy and a back-up copy of it. When copying the Software Item, the Authority shall include any original machine-readable copyright notice and a label affixed to the media identifying the software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [name of owner]."
- 2.4 The Authority may transfer the licences granted under paragraphs 1 and 2 of this Appendix G to other hardware or users within the Authority without incurring any additional charges over and above the charges set out in the Commercial Schedule for the provision and/or licensing of the Software Items by the Supplier to the Authority.
- 2.5 The licences granted under paragraphs 1 and 2 of this Appendix G shall be for an unlimited number of users (in total and concurrent) unless there are explicit restrictions on user numbers applicable to a particular Software Item, which are set out in column 4 of the table at paragraph 1 of this Appendix G.

*[Note: The above licensing approach is based on the purchase of off-the-shelf software as part of an associated purchase of goods]*

Medical Technology Innovation DPS

Appendix H - Key Performance Indicators

The following provides details regarding KPI measures to support the management for the DPS call off arrangements.

NHS Supply Chain and relevant Participating Authorities reserve the right to add KPIs as circumstances dictate during the period of the DPS and Call Off Contracts.

Compliance with the KPIs will form part of the review meeting process.

KEY PERFORMANCE INDICATORS		Performance Measure		
		Green	Amber	Red
KPI				
1	Perfect Order – on-time delivery, in full delivery, damage-free delivery, and appropriate, accurate documentation.	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
2	Invoicing Accurate invoices supplied with required supporting documentation	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
2.1	Credit notes actioned within 14 days of agreement that a credit is pertinent	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month
3	MI reports & KPI reports Issued monthly within 10 working days at the end of the month	Supplied within time frame	Supplied up to 5 working days late	Supplied more than 5 working days late
3.1	Response to ad-hoc report/data requests i.e. Bench marking/sales data delist/product change/range extension data within 5 working days of request.	Supplied within time frame	Supplied up to 5 working days late	Supplied more than 5 working days late
4	Service/product complaints Complaints raised dealt with and resolved within time frames agreed	0 – 5 failure Incidences per month	6-10 failure incidences per month	11 plus failure incidences per month

5	LSAS - Continued compliance and score improvement over the lifetime of the Framework	Within time frames	Up to 3 months late	Over 3 months late – possible suspension of contract.
6	Compliance with Medical Device Regulations & Human Tissue Authority	Updated registrations, certificates etc provided on the anniversary of their expiry.	Up to 1 month late - subject to approval by NHS Supply Chain/the Participating Authority – otherwise risk suspension from the Framework Agreement under clause 17 of Schedule 2 of the Framework Agreement.	More than 1 month late – automatic suspension from the Framework Agreement under clause 17 of Schedule 2 of the Framework Agreement

1. Any KPI discrepancy attributable to an act or omission of NHS Supply Chain or the Participating Authority shall not be used to calculate the Supplier’s sub-standard performance level.
2. The Supplier’s performance shall be measured as indicated in the KPI Schedule above.
3. Except for KPI’s 5 and 6 - Should the Service Level of the Supplier fall below the KPI measure stated for a single or combination of KPI’s 1 - 4:

**3.1.** on three (3) or more occasions in any six (6) month period relating to the RED alerts;

**3.2.** on two (2) or more occasions in any six (6) month period relating to the Amber alerts;

NHS Supply Chain or the Participating Authority in the case of direct orders, may serve a performance notice on the Supplier. The Supplier shall present to NHS Supply Chain or the Participating Authority in the case of direct orders, within thirty (30) days of receipt of such performance notice an action plan to improve the Supplier’s Monthly Service Level (“Action Plan”). The Parties shall, within ten (10) Business Days of NHS Supply Chain or the Participating Authority in the case of direct orders, receiving the Action Plan meet to discuss and agree the Action Plan. NHS Supply Chain or the Participating Authority may make reasonable amendments to the Action Plan to improve the Supplier’s performance. The Action Plan must include a timetable for improvement of the Supplier’s performance to, as a minimum, the level required in relation to the relevant KPI. Such timetable shall be agreed by the Parties but shall in any event be no longer than six (6) months.

4. In the event that the Supplier:

**4.1.** fails to produce an Action Plan in accordance with Clause 3 of this Appendix 12; or

- 4.2. fails to improve its Monthly Service Level to the minimum level required of this Appendix H within the timetable set out in the Action Plan.

the Supplier shall be considered to have committed a material breach capable of remedy for the purpose of the NHS Terms and Conditions.

5. If the Supplier disputes NHS Supply Chain's or the Participating Authority's in the case of direct orders, Monthly Service Level as applicable to the Supplier, the Supplier shall provide evidence to NHS Supply Chain or the Participating Authority in the case of direct orders, that the Monthly Service Level is incorrect within seven (7) days of disputing such Monthly Service Level and the Parties shall meet to discuss any necessary amendment to the Monthly Service Level. If the Parties cannot agree the Monthly Service Level the matter shall be referred to the dispute resolution procedure set out in the DPS Terms and Conditions within Appendix 1.
6. Compliance failure as indicated in KPI 5 and 6, will result in automatic suspension from the DPS. The Supplier will remain suspended until the outstanding compliance is rectified.
7. For the avoidance of doubt, nothing in this Appendix H shall limit in any way either Party's rights and remedies, including the right to claim damages and or termination rights which may arise, under this DPS or any Contract.



**Appendix I**  
**Call Off Contract Agreement**

**COMMERCIAL IN CONFIDENCE**

**Medical Technology Innovation DPS**  
**Call Off Contract Agreement**

**For: (.....)**

**Notice Reference: \*\*\*\*\***

**NHS Supply Chain DPS Ref: DPS.....**

**Order Form**

**Between:**

**[SUPPLIER NAME]**

**("The Supplier")**

**and**

**[TRUST NAME]**

**("Participating Authority")**

## Order Form

This Order Form is issued in accordance with Medical Technology Innovation DPS Agreement, Contract Reference: xxxxxx (Dynamic Purchasing System)

Complete information between [xxxx xxxxxx] and remove guidance in Italics. Remove all yellow highlights

The Call-Off Contract defined in Schedule x of the DPS Invitation to Tender, is made up of the following components and contained in:

(a) this completed - Order Form;

(b) the call-off terms and conditions set out at Appendix A, Call-off Terms and Conditions for the Supply of Goods and Provision of Services under the DPS; and Appendices B through F where ticked and relevant to this agreement. Appendix G – Supplier KPI's under this agreement

(c) the applicable parts of the Supplier Specification and DPS Response Document set out at Schedule x of the DPS, as may be supplemented by information set out and/or referred to in this Order Form;

(d) the applicable parts of the Commercial Schedule set out by the supplier of the via the DPS, as may be supplemented by information set out and/or referred to in this Order Form; and

(e) any relevant provisions applicable to the call-off contract as set out in the DPS by SCCL or the supplier.

Participating Authority	[Name & Address]	
Supplier	[Name & Address]	
	[Company registration number] as shown on the Framework Agreement	
Call-Off Contract Ref	[Live Agreements Tracker Reference] where multiple sub lots, add sub lot description next to reference.	
Terms and Conditions document that applies	Medical Technology Innovation DPS: Call-off Terms and Conditions for the Supply of Goods and Provision of Services	Must also be sent to both parties as an attachment to an email as it is not readable when this Order Form is converted to PDF
Call-Off Contract Term– including commencement date and any implementation phase applicable	[XX] Months	The total period of the call-off contract should not exceed 48 months without senior management approval.
Call-Off Contract description	Enter the details and any other conditions which have been agreed including loan equipment etc	
Call-Off Contract period Start Date	[dd/mm/yyyy]	

	<i>Enter the day which is the first date of the initial Call-Off Contract Period.</i>
Call-Off Contract period End Date	<i>[dd/mm/yyyy] Enter the day which is the last date of the initial Call-Off Contract Period.</i>
(Optional) Maximum Call-Off Contract Extension	<i>[XX] days Enter the maximum number of days that the Call-Off Contract period can be extended by (not to exceed 25% of the initial Call-Off Contract term). The total period of the call-off contract should not exceed 48 months without senior management approval.</i>
Latest Extension Period End Date	<i>[dd/mm/yyyy] Enter the day which is the last date of the maximum Extension Period.</i>
Notice period (prior to the initial Call-Off Contract period) to trigger Call-Off Contract Extension	<i>[XX] months Set out the notice period (usually three months) before the end of the initial Call-Off Contract Period before which you will trigger a Call-Off Contract Extension if required or advise the customer to move to the most suitable Framework Agreement for the product.</i>
Payment terms	Monthly in arrears
Delivery Details	The Participating Authority [Trust Name] requires a free standard delivery lead time of 48 hours from date/time of order to date of delivery to Trust. Lead time applies only to working days and orders must be placed no later than 3pm on the day of order. Orders placed on a weekend or public holiday will be processed on the first working day following the weekend or public holiday. Deliveries will only be made on working days. Emergency orders will attract additional charges as reflected in the supplier catalogue.
Implementation Plan	<i>If applicable – supply plan</i>
KPI terms agreed	<i>As per the DPS – Appendix G</i>  <i>Remove if alternatives or changes made. If this document is to be used, must also be sent to both parties as an attachment to an email as it is not readable when this Order Form is converted to PDF. See also T's &amp; C's above.</i>

GDPR requirements	[Yes] [No] [Applicable if Supplier is processing personal data or loan equipment is involved. If yes, we require a copy of the Data Protection Protocol at contract level and we require an MIA certificate and proof of registration on the NHS Information Governance Tool Kit.]
Licence Provisions Y/N	[Yes] [No] If applicable – set out provisions / agreement terms
Supplemental provisions	If applicable – set out provisions / agreement terms

## 1. Principle contacts details

For the Participating Authority:

Name	[Insert name]
Title	[Insert details]
Contact details	[Insert address, e-mail address & telephone number]

For the Supplier:

Name	[Insert name]
Title	[Insert details]
Contact details	[Insert address, e-mail address & telephone number]

## 2. Notices

Any notices served on the Participating Authority under this Call-Off Contract are to be delivered to:

Name	[Insert name]
Address	[Insert address]
Role	[Insert details]

Any notices served on the Supplier under this Call-Off Contract are to be delivered to:

Name	[Insert name]
Address	[Insert address]
Role	[Insert details]

### 3. MHRA Requirements

MHRA require there to be a named Responsible Person for Medical Devices

Name	[Insert name]
Contact details	[Insert address, e-mail address & telephone number]
Role	[Insert details]
Qualification	[Insert details]

**“Field Safety Notices” (FSN), “Safety Action Bulletins” (SAB) and “Medical Device Alerts” (MDA) relating to products provided under this framework must be reported within 3 days of detection / identification of a concern. Details to be issued to:**

Name	[Insert name of Participating Authority Responsible Person]
Contact details	[Insert address, e-mail address & telephone number]

### 4. Account Manager (Supplier)

The Supplier shall provide a nominated contact / co-ordinator who will act as a focal point for all communication between the Participating Authority and themselves. In their absence a deputy shall be identified.

Name	[Insert name]
Contact details	[Insert address, e-mail address & telephone number]
Role	[Insert details]
Deputy	[Insert name, e-mail address & telephone number]

**5. Call-Off Contract Purchase Orders and Payment**

The NHS Supply Chain transactional route shall be used to issue purchase orders and pay invoices

Or

The Participating Authority shall issue purchase orders

Invoices should be sent to	[Enter postal address here & e-mail address & any other instructions]
Contact details	[Insert name, e-mail address & telephone number]

**6. Delivery Details and Restrictions**

*Enter details of delivery points pertinent to this agreement (could include stores and theatres)*

Site Name	Contact details	Restrictions or site-specific instructions
	[Insert address & telephone number]	

**7. Site Specific Policies, Protocols & Instructions**

*Enter details pertinent to this agreement (could include Code of Practice for Company Representatives, access to Hospital Clinical areas, Introduction of Clinical Products or Diagnostic and Therapeutic Equipment, Loan equipment)*

Site Name	Contact details	Policy, Protocol or Instructions
	contact person & contact details]	

**8. Contract Management**

Contract review meetings shall be held [6 monthly, annually, on request]. The focus of the meeting will be local opportunities, new products, issues, training, debt management.

**9. Background to the Call-Off Contract**

- A. The Supplier is a provider under the Medical Technology Innovation DPS and undertook to provide such Services under the terms set out in DPS number Contracts Finder Ref - xxxxxxxxx (the “Dynamic Purchasing System”).

- B. The Participating Authority served an Order Form for Services to the Supplier on the Order Date stated in the Order Form.
- C. The parties intend that this Call-Off Contract will not itself oblige the Participating Authority to buy or the Supplier to supply the Services. Specific instructions and requirements will have contractual effect on the execution of a purchase order.

**10. Formation of Call-Off Contract**

- A. The Call-Off Contract outlines the deliverables of the agreement.
- B. By signing and returning this Order Form, the Supplier agrees to enter into a Call-Off Contract with the Participating Authority.
- C. The Parties agree that they have read the Order Form, Call-off Terms and Conditions for the Supply of Goods and Provision of Services, and the Schedules, and by signing below agree to be bound by this Call-Off Contract.
- D. In accordance with the procedure set out in Schedule x of the Medical Technology Innovation DPS, this Call-Off Contract will be formed when the Participating Authority acknowledges the receipt of the signed copy of the Order Form from the Supplier (the “call-off effective date”).

**SIGNED:**

	<b>The Supplier</b>	<b>Participating Authority</b>
Name		
Title		
Signature		
Date		