NHS SUPPLY CHAIN FRAMEWORK AGREEMENT FOR THE SUPPLY OF GOODS

NHS Supply Chain	Operated by DHL Supply Chain Limited (registered number 00528867) whose registered office is at 251 Midsummer Boulevard, Central Milton Keynes, Milton Keynes, MK9 1EQ, acting as agent for the NHS Business Services Authority whose principal office is at Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne, NE15 8NY;
The Supplier	
Date	
Framework Name	**Single Use Theatre Protective Clothing and Associated Products**
Framework Number	**FAG000016052**

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

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information Governance Provisions
Schedule 4	Definitions and Interpretations
Schedule 5(a)	Specification
Schedule 5(b)	Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Ordering Procedure and Order Form
Schedule 8	Service Levels
Schedule 9	The Labour Standards Assurance System

Signed by the authorised representative of NHS SUPPLY CHAIN as an agent for the NHS Business Services Authority

Name:	.....	Signature:	.....
Position:	.....		

Signed by the authorised representative of THE SUPPLIER

Name:	.....	Signature	……
Position:	……		

Schedule 1

Key Provisions

Standard Key Provisions

1 **Application of the Key Provisions**

1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Framework Agreement.

1.2 The optional Key Provisions at Clauses 8 to 10 of this Schedule 1 shall only apply to this Framework Agreement where they have been checked and information completed as applicable.

1.3 Extra Key Provisions shall only apply to this Framework Agreement where such provisions are set out at the end of this Schedule 1.

2 **Term**

2.1 The Term of this Framework Agreement shall be 2 years from the Commencement Date and may be extended in accordance with Clause 16.2 of Schedule 2 provided that the duration of this Framework Agreement shall be no longer than 4 years in total.

3 **Contract Managers**

3.1 The Contract Managers at the commencement of this Framework Agreement are:

3.1.1 for NHS Supply Chain:

Buyer – Single Use Theatre Protective Clothing and Associated Products

3.1.2 for the Supplier:

Name ..... **Role** .....

4 **Names and addresses for notices**

4.1 Notices served under this Framework Agreement are to be delivered to:

4.1.1 for NHS Supply Chain:

Head of Category– Clinical, NHS Supply Chain, Foxbridge Way, Normanton, West Yorkshire, WF6 1TL

4.1.2 for the Supplier:

Name…… Role……..

Address:……

…….

……

5 **Management levels for dispute resolution**

5.1 The management levels at which a dispute will be dealt with are as follows:

Level	**NHS Supply Chain representative**	**Supplier representative**
1	Buyer	
2	Senior Buyer	
3	Head of Category	

6 **Order of precedence**

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

6.1.1 the provisions on the front page of this NHS Framework Agreement for the Supply of Goods;

6.1.2 Schedule 1: Key Provisions;

6.1.3 Schedule 5(a): Specification;

6.1.4 Schedule 2: General Terms and Conditions;

6.1.5 Schedule 6: Commercial Schedule;

6.1.6 Schedule 7: Ordering Procedure and Order Form

6.1.7 Schedule 8: Service Levels;

6.1.8 Schedule 5(b): Tender Response Document;

6.1.9 Schedule 3: Information Governance Provisions;

6.1.10 Schedule 4: Definitions and Interpretations;

6.1.11 Schedule 9 The Labour Standards Assurance System; and

6.1.12 the order in which all subsequent schedules, if any, appear.

7 **Participating Authorities**

7.1 The following Contracting Authorities are entitled to place Orders:

7.1.1 in relation to a Direct Route of Supply: any NHS Trust; other NHS entities; any private sector entity which is active in the United Kingdom Healthcare Sector; or any government department, government agency or other statutory body; and

7.1.2 in relation to a Non-direct Route of Supply: NHS Supply Chain,

for the avoidance of doubt, any successor bodies of any of the entities described in this definition are included in this definition.

Optional Key Provisions

8 **Quality assurance standards self-certification ☐ (only applicable to the Framework Agreement if this box is checked and the standards are listed)**

8.1 The Supplier warrants that on the request of NHS Supply Chain it shall provide a written and signed self-certification in the form requested by NHS Supply Chain that it complies, and will notify NHS Supply Chain immediately if it no longer complies throughout the Term of the Framework Agreement and all Contracts with all quality assurance standards applicable to the Goods and Services and that it shall evidence such compliance on request.

9 **Different levels and/or types of insurance ☐ (only applicable to the Framework Agreement if this box is checked and the table sets out the requirements)**

9.1 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type of insurance required	Minimum cover
Employers Liability Insurance	**£5 Million**
Public liability insurance	**£5 Million**
Product liability insurance	**£5 Million**

10 **Guarantee ☐ (only applicable to the Framework Agreement if this box is checked)**

10.1 Promptly following the execution of this Framework Agreement, the Supplier shall, if it has not already delivered an executed deed of guarantee to NHS Supply Chain, deliver the executed deed of guarantee to NHS Supply Chain as required by the procurement process followed by NHS Supply Chain. Failure to comply with this Key Provision shall be an irremediable breach of this Framework Agreement.

Schedule 2

General Terms and Conditions

Contents

1 **Supplier's appointment**

1.1 NHS Supply Chain appoints the Supplier as a potential supplier of the Goods and Services and the Supplier shall be eligible to be considered for the award of Orders during the Term.

1.2 In consideration of NHS Supply Chain agreeing to appoint the Supplier to this Framework Agreement in accordance with Clause 1.1 of this Schedule 2 and the mutual exchange of promises and obligations under this Framework Agreement (including but not limited to Schedule 9 (Labour Standards Assurance System)), the Supplier undertakes to supply Goods and Services under Orders placed with the Supplier:

1.2.1 of the exact quality, type and as otherwise specified in the Specification and accepted by NHS Supply Chain in the Tender Response Document;

1.2.2 at the Contract Price calculated in accordance with the Commercial Schedule;

1.2.3 in such quantities, at such times and to such locations as may be specified in an Order.

1.2.4 in accordance with the terms and conditions of Schedule 9 (Labour Standards Assurance System).

1.3 The Supplier agrees that the Call-Off Terms and Conditions for the Supply of Goods shall apply to all supplies of the Goods and any associated Services made by the Supplier to a Participating Authority pursuant to this Framework Agreement. The Supplier agrees that it will not in its dealings with a Participating Authority seek to impose or rely on any other contractual terms which in any way vary or contradict the relevant Contract.

1.4 The Supplier shall comply fully with its obligations set out in this Framework Agreement, the Specification and Tender Response Document, the Call-off Terms and Conditions for the Supply of Goods and any other provisions of Contracts entered into under and in accordance with this Framework Agreement (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply and delivery in relation to use of the Goods and the provision of the Services).

1.5 Without limitation to any of the provisions of Clause 22 of this Schedule 2 and/or the Commercial Schedule:

1.5.1 The Supplier agrees to work with NHS Supply Chain during the Term of this Framework Agreement to achieve continuous and innovative improvements to the quality and value of the Goods and Services, including the way in which the Goods and Services are sourced, supplied, ordered and packaged, to achieve the most efficient and best value Goods and Services

for the mutual benefit of the Supplier, NHS Supply Chain, the Authority and NHS.

1.5.2 The Supplier agrees to work with NHS Supply Chain during the Term of this Framework Agreement to explore ways in which commitment offered by Authorities in relation to specific Contracts can be reflected in more competitive pricing for the Authority.

1.6 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly (which in the case of any incidents which may have an effect on patient safety, shall mean within one (1) Business Day) provide NHS Supply Chain with a copy of any such reports, notices, alerts or other communications.

1.7 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.6 of this Schedule 2, NHS Supply Chain shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully in all matters relating to any such request.

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

2 NHS Supply Chain commitments

2.1 Unless otherwise set out in the Commercial Schedule, the Supplier acknowledges that:

2.1.1 there is no obligation for NHS Supply Chain or for any other Participating Authority to purchase any Goods or Services from the Supplier during the Term;

2.1.2 no undertaking or any form of statement, promise, representation or obligation has been made by NHS Supply Chain and/or any other Participating Authority in respect of the total quantities or value of the Goods and/or Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation;

2.1.3 in entering this Framework Agreement, no form of exclusivity has been granted by NHS Supply Chain and/or any other Participating Authority; and

2.1.4 NHS Supply Chain and/or other Participating Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and services which are the same as or similar to the Goods and Services.

3 Ordering procedure

3.1 Any Participating Authority may enter into Contracts by placing an Order in accordance with the Ordering Procedure.

4 Reasonable assistance

4.1 Upon the written request of any Participating Authority, the Supplier shall provide such Participating Authority with any reasonable and proportionate information that it holds about the Goods and Services it supplies under this Framework Agreement including, without limitation, the compatibility and interoperability of the Goods with other products, to enable the Participating Authority to complete any necessary due diligence before purchasing such Goods and/or Services.

5 Supplier performance

5.1 The Supplier shall perform all Contracts entered into under this Framework Agreement by NHS Supply Chain or any other Participating Authority in accordance with:

5.1.1 the requirements of this Framework Agreement; and

5.1.2 the provisions of the respective Contracts.

6 Business continuity

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

6.1.1 the criticality of this Framework Agreement to the Participating Authorities; and

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

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

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Framework Agreement to Participating Authorities and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to NHS Supply Chain, at NHS Supply Chain's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to NHS Supply Chain a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

6.3 NHS Supply Chain may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by NHS Supply Chain to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by NHS Supply Chain in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by NHS

Supply Chain into such Business Continuity Plan it will explain the reasons for not doing so to NHS Supply Chain.

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

6.5 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to fulfil its obligations in accordance with this Framework Agreement.

7 NHS Supply Chain's obligations

7.1 NHS Supply Chain shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the Supplier complying with its obligations under this Framework Agreement.

7.2 NHS Supply Chain shall comply with NHS Supply Chain's Obligations, if any.

8 Contract management

8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Framework Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Framework Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with NHS Supply Chain's Contract Manager.

8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Framework Agreement and to discuss matters arising generally under this Framework Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Framework Agreement. Review meetings shall take place at the frequency specified in the Specification. Should the Specification not state the frequency, then meetings shall take place at intervals as may otherwise be agreed in writing between the Parties.

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

8.3.1 details of the performance of the Supplier under this Framework Agreement and any Contracts when assessed in accordance with the KPIs, as relevant to the Framework Agreement and any Contracts, since the last such performance report;

8.3.2 details of any complaints by Participating Authorities in relation to the supply of Goods and Services, their nature and the way in which the

Supplier has responded to such complaints since the last review meeting written report;

8.3.3 any information specified in the Specification as being relevant to the operation of this Framework Agreement;

8.3.4 a status report in relation to the implementation of any current Remedial Proposals and Action Plans; and

8.3.5 such other information as reasonably required by NHS Supply Chain.

8.4 Unless otherwise agreed between the Parties, NHS Supply Chain shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform NHS Supply Chain in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to NHS Supply Chain within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 23.3 of this Schedule 2.

8.5 The Supplier shall provide any management information required in accordance with the ORS (including, for the avoidance of doubt, monthly statements) and as NHS Supply Chain may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to NHS Supply Chain in such form as may be specified by the ORS or NHS Supply Chain and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body"**). The Supplier confirms and agrees that NHS Supply Chain may itself provide the Third Party Body with management information relating to the Goods and Services ordered and any payments made under this Framework Agreement or any Contracts and any other information relevant to the operation of this Framework Agreement.

8.6 Upon receipt of management information supplied by the Supplier to NHS Supply Chain and/or the Third Party Body, or by NHS Supply Chain to the Third Party Body, the Parties hereby consent to the Third Party Body and NHS Supply Chain:

8.6.1 storing and analysing the management information and producing statistics; and

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

8.7 If the Third Party Body and/or NHS Supply Chain shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Framework Agreement and such management information is provided direct by NHS Supply Chain to such Contracting Authority, be informed of the confidential nature of

that information by NHS Supply Chain and shall be requested by NHS Supply Chain not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

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

9 Price and payment

Contract Price

9.1 The Contract Price for all Contracts shall be calculated as set out in the Commercial Schedule and the payment provisions for all Contracts shall be as set out in the Call-off Terms and Conditions for the Supply of Goods.

Management Fee

9.2 Where Goods and any incidental Services are ordered and delivered via a Direct Route of Supply the Supplier shall pay to NHS Supply Chain a management fee as a percentage of the total Order value at the rate set out in the Commercial Schedule (the "Management Fee").

9.3 The Supplier shall, in relation to all Orders made pursuant to the Direct Route of Supply, prepare and submit to NHS Supply Chain a Management Fee report ("Management Fee Report"). Unless otherwise agreed, the Supplier shall submit such Management Fee Report to NHS Supply Chain within ten (10) days of the end of each month in which Orders have been raised pursuant to the Direct Route of Supply during the Term of the Framework Agreement.

9.4 The Management Fee Report shall include as a minimum in relation to each Order listed in the report:

9.4.1 the Authority's order number;

9.4.2 the total quantity of Goods and/or Services ordered pursuant to the Order;

9.4.3 the total value of the Order;

9.4.4 the date of the Order;

9.4.5 the MPC or NPC codes listed in the Order; and

9.4.6 the units of purchase and unit price detailed in the Order.

9.5 Following receipt of the Management Fee Report, NHS Supply Chain shall invoice the Supplier for the Management Fee. The Supplier shall pay the Management Fee within thirty (30) days from receipt of such invoice.

9.6 Where the Supplier raises a query with respect to an invoice for the Management Fee, or NHS Supply Chain raises a query with respect to the Management Fee Report, the Supplier and NHS Supply Chain shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the Parties shall refer to dispute resolution in accordance with Clause 23 of this Schedule 2.

Other Payments

9.7 Where any payments are to be made under this Framework Agreement by either Party in addition to any payments to be made by Participating Authorities under any Contracts and the Management Fee to be paid by the Supplier, the details of such payments and the invoicing arrangements shall be set out in the Commercial Schedule.

10 Warranties

10.1 The Supplier warrants and undertakes that:

10.1.1 it will comply with the terms of all Contracts entered into by Participating Authorities under this Framework Agreement;

10.1.2 it will comply with the KPIs set out in Schedule 8;

10.1.3 it will promptly respond to all requests for information regarding the Framework Agreement, the Goods and/or Services and any Contracts at the frequency and in the format that NHS Supply Chain may reasonably require;

10.1.4 all information included within the Supplier's response to the Specification in the Tender Response Document and all accompanying materials is accurate;

10.1.5 it has the right and authority to enter into this Framework Agreement and that it has the capability and capacity to fulfil its obligations under this Framework Agreement;

10.1.6 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Framework Agreement and the documents referred to in this Framework Agreement;

10.1.7 all necessary actions to authorise the execution of and performance of its obligations under this Framework Agreement have been taken before such execution;

10.1.8 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;

10.1.9 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Framework Agreement;

10.1.10 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Framework Agreement; and

10.1.11 it has satisfied itself as to the nature and extent of the risks assumed by it under the Framework Agreement and has gathered all information necessary to perform its obligations under the Framework Agreement and all other obligations assumed by it.

10.2 The Supplier warrants that all information, data and other records and documents required by NHS Supply Chain as set out in the Specification and Tender Response Document shall be submitted to NHS Supply Chain in the format and in accordance with any timescales set out in the Specification and Tender Response Document.

10.3 Unless the parties agree otherwise in writing, the Supplier warrants and undertakes to NHS Supply Chain that it shall comply with any E-Procurement Guidance as it may apply to the Supplier and shall carry out all reasonable acts required of the Supplier to enable NHS Supply Chain to comply with such E-Procurement Guidance.

10.4 The Supplier warrants and undertakes that at the Commencement Date it is not and throughout the term of the Framework Agreement and any Contracts it will not be, involved in any Occasion of Tax Non-compliance.

10.5 The Supplier further warrants and undertakes to NHS Supply Chain that it will inform NHS Supply Chain in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.

10.6 Any warranties provided under this Framework Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual Property

11.1 Unless otherwise agreed in writing between the Parties, the Supplier has no right to use the branding or logo(s) of NHS Supply Chain or NHS in the promotion or marketing of the Supplier's goods and services, nor to reference the approval, support, endorsement, authorisation, certification or similar of NHS Supply Chain or NHS in relation to the Supplier's goods and services.

12 Statutory compliance

12.1 The Supplier shall comply with all Law and Guidance relevant to its obligations under this Framework Agreement and any Contracts.

12.2 Without limitation to Clause 12.1 of this Schedule 2, the Supplier shall be responsible for obtaining any statutory licences, authorisations, consents or permits required in connection with its performance of its obligations under this Framework Agreement and any Contracts.

13 Independence of Participating Authorities

13.1 The Supplier acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under this Framework

Agreement and that NHS Supply Chain is not responsible or accountable for and shall have no liability whatsoever in relation to:

13.1.1 the conduct of Participating Authorities other than NHS Supply Chain in relation to the operation of this Framework Agreement; or

13.1.2 the performance or non-performance of any Participating Authorities other than NHS Supply Chain under any Contracts between the Supplier and such other Participating Authorities entered into under this Framework Agreement.

14 **Limitation of liability**

14.1 Nothing in this Framework Agreement shall exclude or restrict the liability of either Party:

14.1.1 for death or personal injury resulting from its negligence;

14.1.2 for fraud or fraudulent misrepresentation;

14.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law; or

14.1.4 to make any payments agreed in accordance with Clause 9 of this Schedule 2.

14.2 Subject to Clauses 14.1, 14.3 and 14.5 of this Schedule 2, the total liability of each Party to the other under or in connection with this Framework Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five hundred thousand pounds (£500,000).

14.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Framework Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.

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

14.5 The liability of the Supplier and any Participating Authorities under any Contracts entered into pursuant to this Framework Agreement shall be as set out in the Call-off Terms and Conditions for the Supply of Goods forming part of such Contracts.

15 **Insurance**

15.1 Subject to Clauses 15.2 and 15.3 of this Schedule 2 and unless otherwise confirmed in writing by NHS Supply Chain, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice with the minimum cover

per claim being the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with NHS Supply Chain in writing.

15.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by NHS Supply Chain, if specified in the Key Provisions.

15.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 15.1 and 15.2 of this Schedule 2 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by NHS Supply Chain in writing prior to the Commencement Date.

15.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Framework Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Framework Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.

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

15.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to NHS Supply Chain that insurance arrangements taken out by the Supplier pursuant to Clause 15 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

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

16 **Term and termination**

16.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Framework Agreement or the general law, shall continue until the end of the Term.

16.2 NHS Supply Chain shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Framework Agreement would otherwise have expired, provided that the duration of this Framework Agreement shall be no longer than the total term specified in the Key Provisions.

16.3 In the case of a breach of any of the terms of this Framework Agreement by either Party that is capable of remedy (including any failure to pay any sums due under this Framework Agreement), the non-breaching Party shall, without prejudice to its other rights and remedies under this Framework Agreement, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Framework Agreement in accordance with Clause 16.4.1(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

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

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

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

shall be deemed, for the purposes of Clause 16.4.1(ii) of this Schedule 2, a material breach of this Framework Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

16.4 Either Party may terminate this Framework Agreement forthwith by notice in writing to the other Party if such other Party:

16.4.1 commits a material breach of any of the terms of this Framework Agreement which is:

(i) not capable of remedy; or

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

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

16.5 NHS Supply Chain may terminate this Framework Agreement forthwith by notice in writing to the Supplier if:

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

16.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of NHS Supply Chain and NHS Supply Chain shall be entitled to withhold such consent if, in the reasonable opinion of NHS Supply Chain, the proposed change of control will have a material impact on the performance of this Framework Agreement or the reputation of NHS Supply Chain;

16.5.3 the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Framework Agreement in breach of Clause 29 of this Schedule 2;

16.5.4 pursuant to and in accordance with the Key Provisions and Clauses 16.6, 24.8; 26.2; 26.4 and 30.2 of this Schedule 2; or

16.5.5 =the Supplier is in breach of Clause 10.4 of this Schedule 2.

16.6 If NHS Supply Chain, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Framework Agreement and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by NHS Supply Chain as part of any procurement process or other due diligence leading to the award of this Framework Agreement to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:

16.6.1 NHS Supply Chain may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Framework Agreement on such reasonable and proportionate terms as NHS Supply Chain may require within a reasonable time period as specified in such notice;

16.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 16.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by NHS Supply Chain shall be deemed a breach of this

Framework Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

16.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 23.3 of this Schedule 2) shall entitle, but shall not compel, NHS Supply Chain to terminate this Framework Agreement in accordance with Clause 16.4.1(i) of this Schedule 2.

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

17 Consequences of expiry or earlier termination of this Framework Agreement

17.1 Upon expiry or earlier termination of this Framework Agreement, NHS Supply Chain and the Supplier agree that all Contracts entered into under this Framework Agreement will continue in full force and effect unless otherwise terminated under the terms and conditions of such Contracts.

17.2 The Supplier agrees that where this Framework Agreement has been terminated properly in accordance with Clause 16 of this Schedule 2 it shall not be entitled to make a claim against NHS Supply Chain in relation to costs incurred in the provision of the Goods and/or Services which do not form part of the Contract Price paid or payable by an Authority.

17.3 The Supplier shall cooperate fully with NHS Supply Chain or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Framework Agreement. This cooperation shall extend to providing access to all information relevant to the operation of this Framework Agreement, as reasonably required by NHS Supply Chain to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

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

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

18 Suspension of Supplier’s appointment

18.1 Without prejudice to NHS Supply Chain's rights to terminate this Framework Agreement, if a right for NHS Supply Chain to terminate this Framework Agreement arises (irrespective of whether the circumstances leading to such right are capable of remedy) in accordance with Clause 16 of this Schedule 2, NHS Supply Chain may suspend the Supplier's appointment to receive new Orders under this Framework Agreement by giving notice in writing to the Supplier and all Participating Authorities.

18.2 If NHS Supply Chain provides notice to the Supplier in accordance with Clause 18.1 of this Schedule 2, the Supplier's appointment shall be suspended for the period set

out in the notice or such other period notified to the Supplier by NHS Supply Chain in writing from time to time provided that such suspension shall be lifted if:

18.2.1 the circumstances leading to NHS Supply Chain's right to terminate this Framework Agreement have been remedied;

18.2.2 NHS Supply Chain has satisfied itself that the risk and/or impact of the circumstances giving rise to NHS Supply Chain's right to terminate this Framework Agreement no longer requires such suspension; or

18.2.3 NHS Supply Chain exercises its rights to terminate this Framework Agreement in accordance with Clause 16 of this Schedule 2.

19 Complaints process

19.1 The Supplier shall notify NHS Supply Chain of any formal written complaints made by other Participating Authorities relating to the Supplier's noncompliance with any of its obligations under any Contract within two (2) Business Days of the Supplier becoming aware of such complaints.

19.2 Without prejudice to any rights and remedies that the Participating Authority may have under the relevant Contract and/or NHS Supply Chain may have under this Framework Agreement, the Supplier shall use its reasonable endeavours to resolve such complaint within ten (10) Business Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

19.3 Within two (2) Business Days of a written request by NHS Supply Chain, the Supplier shall provide further reasonable details of the complaint to NHS Supply Chain, including details of the steps being taken to progress its resolution and, following its resolution, details of how and when the complaint was resolved.

20 Sustainable development

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

20.1.1 comply with all Policies and/or procedures and requirements set out in the Specification in relation to any stated environmental and social requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;

20.1.2 comply with the conditions and all other terms and provisions set out in Schedule 9 (Labour Standards Assurance System) of this Framework Agreement;

20.1.3 maintain relevant policy statements documenting the Supplier's significant social and environmental aspects as relevant to the Goods and Services

being supplied and as proportionate to the nature and scale of the Supplier's business operations; and

20.1.4 maintain plans and procedures that support the commitments made as part of the Supplier's significant social and environmental policies, as referred to in Clause 20.1.2 of this Schedule 2.

20.2 The Supplier shall meet reasonable requests by NHS Supply Chain for information evidencing the Supplier's compliance with the provisions of Clause 20 of this Schedule 2.

21 Electronic product information

21.1 Where requested by NHS Supply Chain, the Supplier shall provide NHS Supply Chain with the Product Information in such manner and upon such media as agreed between the Supplier and NHS Supply Chain from time to time for the sole use by NHS Supply Chain.

21.2 The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to NHS Supply Chain and that the Product Information shall not contain any data or statement which gives rise to any liability on the part of NHS Supply Chain following publication of the same in accordance with Clause 21 of this Schedule 2.

21.3 If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify NHS Supply Chain in writing of any modification or addition to or any inaccuracy or omission in the Product Information.

21.4 The Supplier grants NHS Supply Chain a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and any Intellectual Property Rights in the Product Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available in NHS Supply Chain's product catalogue in relation to any catalogues produced during the Term. Subject to Clause 21.5 of this Schedule 2, no right to illustrate or advertise the Product Information is granted to the Supplier by the Authority, as a consequence of the licence conferred by this Clause 21.4 of this Schedule 2.

21.5 NHS Supply Chain may reproduce for its sole use the Product Information provided by the Supplier in NHS Supply Chain's product catalogue from time to time which may be made available on any healthcare communications networks in electronic format and/or made available on NHS Supply Chain's external website and/or made available on other digital media from time to time.

21.6 For the avoidance of doubt the Supplier shall have no right to compel NHS Supply Chain to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 21.6 of this Schedule 2 or otherwise under the terms of this Framework Agreement.

21.7 NHS Supply Chain may approach the Supplier during the Term to offer the Supplier the opportunity to take part in specific promotions or to purchase additional advertising space in relation to the Goods and/or Services, the Framework Agreement and any Contract and the Parties shall agree an appropriate price for any

such advertising. If any such opportunity is cancelled by NHS Supply Chain it shall refund the purchase price to the Supplier but for the avoidance of doubt, NHS Supply Chain shall not be liable for any incidental costs incurred by the Supplier, including costs associated with the development of an advert.

21.8 The Supplier agrees to indemnify and keep indemnified NHS Supply Chain against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings arising out of or in connection with NHS Supply Chain's use of the Product Information, provided always that NHS Supply Chain has not materially misused the Product Information.

22 **Change management**

22.1 The Supplier acknowledges to NHS Supply Chain that the requirements for the Goods and Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by NHS Supply Chain from time to time. Any change to the Goods and Services or other variation to this Framework Agreement shall only be binding once it has been agreed in writing and signed by an authorised representative of both Parties.

23 **Dispute resolution**

23.1 During any dispute, including a dispute as to the validity of this Framework Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Framework Agreement to the extent that such obligations are not the subject of the dispute (unless NHS Supply Chain requests in writing that the Supplier does not do so).

23.2 In the case of a dispute arising out of or in connection with this Framework Agreement the Supplier and NHS Supply Chain shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 23.3 of this Schedule 2 before commencing court proceedings.

23.3 If any dispute arises out of the Framework Agreement either Party may serve a notice on the other Party to commence formal resolution of the dispute. Level 1 of the management levels of the dispute as set out in Clause 5 of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.

23.4 If the procedure set out in Clause 23.3 of this Schedule 2 above fails to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution ("**CEDR**"); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.

23.5 To initiate mediation a Party shall:

23.5.1 give notice in writing ("**Mediation Notice**") to the other Party requesting mediation of the dispute; and

23.5.2 send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.

23.6 Neither Party may issue a Mediation Notice until the process set out in Clause 23.3 of this Schedule 2 has been exhausted.

23.7 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. NHS Supply Chain and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

23.8 Nothing in this Framework Agreement shall prevent:

23.8.1 NHS Supply Chain taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with supply of the Goods and/or Services; or

23.8.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.

23.9 Clause 23 of this Schedule 2 shall survive the expiry of or earlier termination of this Framework Agreement for any reason.

24 **Force majeure**

24.1 Subject to Clause 24.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Framework Agreement nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.

24.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 24 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Framework Agreement if:

24.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

24.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and

24.2.3 the Supplier has complied with the procedural requirements set out in Clause 24 of this Schedule 2.

24.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Framework Agreement and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

24.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Framework Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.

24.5 If either Party is prevented or delayed in the performance of its obligations under this Framework Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

24.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.

24.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.

24.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, NHS Supply Chain may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Framework Agreement on service of written notice on the Supplier.

24.9 Following such termination in accordance with Clause 24.8 of this Schedule 2 and subject to Clause 24.10 of this Schedule 2, neither Party shall have any liability to the other.

24.10 Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 24.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Framework Agreement.

25 **Records retention and right of audit**

25.1 Subject to any statutory requirement and Clause 25.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Framework Agreement.

25.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Framework Agreement.

25.3 NHS Supply Chain shall have the right to audit the Supplier's compliance with this Framework Agreement. The Supplier shall permit or procure permission for NHS

Supply Chain or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Framework Agreement.

25.4 Should the Supplier subcontract any of its obligations under this Framework Agreement, NHS Supply Chain shall have the right to audit and inspect such third party. The Supplier shall procure permission for NHS Supply Chain or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Framework Agreement that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany NHS Supply Chain or its authorised representative if requested.

25.5 The Supplier shall grant to NHS Supply Chain or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Framework Agreement for the purposes of:

25.5.1 the examination and certification of NHS Supply Chain's accounts; or

25.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which NHS Supply Chain has used its resources.

25.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 25 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3)(d) and 6(5) of the National Audit Act 1983.

25.7 The Supplier shall provide reasonable cooperation to NHS Supply Chain, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Framework Agreement.

25.8 The Supplier shall provide all reasonable information as may be reasonably requested by NHS Supply Chain to evidence the Supplier's compliance with the requirements of this Framework Agreement.

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

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

26.2 NHS Supply Chain reserves the right to terminate this Framework Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of NHS Supply Chain, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the

Supplier and the duties owed to NHS Supply Chain under the provisions of this Framework Agreement. The actions of NHS Supply Chain pursuant to this Clause 26.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to NHS Supply Chain.

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

26.4 If the Supplier or its Staff commits Fraud NHS Supply Chain may terminate this Framework Agreement and recover from the Supplier the amount of any direct loss suffered by NHS Supply Chain resulting from the termination.

27 Equality and human rights

27.1 The Supplier shall:

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

27.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with NHS Supply Chain in light of NHS Supply Chain's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as NHS Supply Chain considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and

27.1.3 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 27 of this Schedule 2.

27.2 The Supplier shall meet reasonable requests by NHS Supply Chain for information evidencing the Supplier's compliance with the provisions of Clause 27 of this Schedule 2.

28 Notice

28.1 Any notice required to be given by either Party under this Framework Agreement shall be in writing quoting the date of the Framework Agreement and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

28.2 A notice shall be treated as having been received:

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

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

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

29 **Assignment, novation and subcontracting**

29.1 Subject to Clause 29.2 of this Schedule 2, the Supplier shall not assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Framework Agreement without the prior consent in writing of NHS Supply Chain, such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Framework Agreement, every act or omission of the subcontractor shall for the purposes of this Framework Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to NHS Supply Chain as if such act or omission had been committed or omitted by the Supplier itself.

29.2 The Supplier may assign, subcontract or novate this Framework Agreement to a member of its Group, provided always that such Group member shall have been assessed by NHS Supply Chain and passed to the satisfaction of NHS Supply Chain all grounds for exclusion and shortlisting criteria to be awarded onto this Framework Agreement.

29.3 Any authority given by NHS Supply Chain for the Supplier to subcontract any of its obligations under this Framework Agreement shall not impose any duty on NHS Supply Chain to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Framework Agreement.

29.4 NHS Supply Chain shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Goods and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from NHS Supply Chain. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.

29.5 NHS Supply Chain may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal. If NHS Supply Chain novates this Framework

Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of NHS Supply Chain shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Framework Agreement or any part of this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

30 **Prohibited Acts**

30.1 The Supplier warrants and represents that:

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

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

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

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

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

30.2.1 NHS Supply Chain shall be entitled:

(i) to terminate this Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;

(ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

(iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

30.2.2 any termination under Clause 30.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to NHS Supply Chain; and

30.2.3 notwithstanding Clause 23 of this Schedule 2, any dispute relating to:

(i) the interpretation of Clause 30 of this Schedule 2; or

(ii) the amount or value of any gift, consideration or commission,

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

31 General

31.1 Each of the Parties is independent of the other and nothing contained in this Framework Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Framework Agreement.

31.2 Failure or delay by either Party to exercise an option or right conferred by this Framework Agreement shall not of itself constitute a waiver of such option or right.

31.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Framework Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

31.4 Any provision of this Framework Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Framework Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

31.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Framework Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Framework Agreement or unless such representation, undertaking or warranty was made fraudulently.

31.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Framework Agreement including all costs, legal fees and other expenses so incurred.

31.7 The rights and remedies provided in this Framework Agreement are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 31.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.

31.8 No persons other than the parties to this Framework Agreement and any Participating Authorities shall have the right to enforce the terms of this Framework

Agreement which confer a benefit on such person or be entitled to object to or be required to consent to any amendment to the provisions of this Framework Agreement.

31.9 This Framework Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to explicitly in this Framework Agreement or any variation to this Framework Agreement, contain the entire understanding between the Supplier and NHS Supply Chain relating to the operation of this Framework Agreement to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Framework Agreement. Nothing in this Framework Agreement seeks to exclude either Party's liability for Fraud.

31.10 This Framework Agreement, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

31.11 Subject to Clause 23 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter.

31.12 All written and oral communications and all written material referred to under this Framework Agreement shall be in English.

Schedule 3

Information Governance Provisions

1 **Confidentiality**

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

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

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

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

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

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

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

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

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

1.3 NHS Supply Chain may disclose the Supplier's Confidential Information:

1.3.1 on a confidential basis to, any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

1.3.2 on a confidential basis, to any consultant, contractor or other person engaged by NHS Supply Chain and/or the Contracting Authority receiving such information;

1.3.3 to any relevant party for the purpose of the examination and certification of NHS Supply Chain's accounts;

1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which NHS Supply Chain has used its resources;

1.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or

1.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Framework Agreement;

and for the purpose of this Framework Agreement, references to disclosure "on a confidential basis" shall mean NHS Supply Chain making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3.

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

1.5 Nothing in this Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing the Confidential Information to its Group companies, provided that the Recipient procures that such Group companies comply with this Clause 1 of this Schedule 3 as if each reference to the Recipient in this Clause 1 of this Schedule 3 is a reference to any such Group company receiving the Confidential Information.

1.6 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of NHS Supply Chain (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Framework Agreement and/or that it has been appointed as a Supplier to NHS Supply Chain and/or make any other announcements about this Framework Agreement.

1.7 Clause 1 of this Schedule 3 shall remain in force:

1.7.1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and

1.7.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Framework Agreement unless otherwise agreed in writing by the Parties.

2 **Data protection**

2.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.

2.2 Where the Supplier is Processing Personal Data under or in connection with this Framework Agreement, the Supplier must, in particular, but without limitation:

2.2.1 only Process such Personal Data as is necessary to perform its obligations under this Framework Agreement, and only in accordance with any instructions given by NHS Supply Chain under this Framework Agreement;

2.2.2 put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of Clause 2 of this Schedule 3, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;

2.2.3 take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 2 of this Schedule 3; and

2.2.4 not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of NHS Supply Chain.

2.3 The Supplier and NHS Supply Chain shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to NHS Supply Chain under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).

2.4 For the avoidance of doubt, the Supplier must not process Sensitive Personal Data under or in connection with this Framework Agreement unless it has complied fully with:

2.4.1 the requirements in Clauses 2.1 to 2.4 of this Schedule 3 (inclusive); and

2.4.2 the requirements of and its obligations under the Data Protection Act 1998 and The Data Protection (Processing of Sensitive Personal Data) Order 2000 (as amended from time to time) or any successor legislation.

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

2.6 The Supplier shall indemnify and keep NHS Supply Chain indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data and/or Sensitive Personal Data in connection with this Framework Agreement.

3 **Freedom of Information and Transparency**

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

3.2 The Supplier shall assist and cooperate with NHS Supply Chain to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

3.2.1 that this Framework Agreement and any recorded information held by the Supplier on NHS Supply Chain's behalf for the purposes of this Framework Agreement are subject to the obligations and commitments of NHS Supply Chain under the FOIA, Codes of Practice and Environmental Regulations;

3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for NHS Supply Chain;

3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with NHS Supply Chain as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to NHS Supply Chain;

3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by NHS Supply Chain) and will promptly (and in any event within two (2) Business Days) transfer the request to NHS Supply Chain;

3.2.5 that NHS Supply Chain, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Framework Agreement; and

3.2.6 to assist NHS Supply Chain in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by NHS Supply Chain within five (5) Business Days of that request and without charge.

3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Framework Agreement is not Confidential Information.

3.4 Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

3.5 In preparing a copy of this Framework Agreement for publication under Clause 3.4 of this Schedule 3, NHS Supply Chain may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at NHS Supply Chain's absolute discretion.

3.6 The Supplier shall assist and cooperate with NHS Supply Chain to enable NHS Supply Chain to publish this Framework Agreement.

3.7 Where any information is held by any subcontractor of the Supplier in connection with this Framework Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such subcontractor were the Supplier.

4 **Information Security**

4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:

4.1.1 notify NHS Supply Chain forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with NHS Supply Chain's information governance Policies; and

4.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by NHS Supply Chain and shall provide full information as may be reasonably requested by NHS Supply Chain in relation to such audits, investigations and assessments.

Schedule 4

Definitions and Interpretations

1 **Definitions**

1.1 In this Framework Agreement the following words shall have the following meanings unless the context requires otherwise, other than in relation to the Call-off Terms and Conditions for the Supply of Goods at Appendix 4b of this Framework Agreement. The definitions and Interpretations that apply to the Call-off Terms and Conditions for the Supply of Goods are as set out at Appendix 4b of this Framework Agreement.

"Action Plan"	shall have the meaning given to it in Clause 6 of Schedule 8;
"Authority"	means the authority named on the Order Form;
"Blue Diamond"	means a route of Supply whereby NHS Supply Chain (as the Authority) places an Order with the Supplier on behalf of an NHS Supply Chain customer, which is delivered by the Supplier to NHS Supply Chain for forward delivery onto the customer;
"Business Continuity Event"	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Framework Agreement including an influenza pandemic and any Force Majeure Event;
"Business Continuity Plan"	means the Supplier's business continuity plan which includes its plans for continuity of the supply of the Goods and Services during a Business Continuity Event;
"Business Day"	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
"Call-off Terms and Conditions for the Supply of Goods"	means the call-off terms and conditions as set out at Appendix 4b of this Framework Agreement forming part of the Contracts placed under this Framework Agreement;
"Codes of Practice"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"Commencement Date"	means the 01 August 2016;
"Commercial Schedule"	means the document set out at Schedule 6;
"Confidential Information"	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Framework Agreement including any procurement process which is:

	(a) Personal Data or Sensitive Personal Data including without limitation which relates to any patient or other service user or his or her treatment or clinical or care history; (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or (c) Policies and such other documents which the Supplier may obtain or have access to through NHS Supply Chain's intranet;
"Contract"	means any Contract entered into under this Framework Agreement with the Supplier by any Participating Authority as further defined in the Call-off Terms and Conditions for the Supply of Goods;
"Contracting Authority"	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015, other than NHS Supply Chain;
"Contract Manager"	means for NHS Supply Chain and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
"Contract Price"	means the price exclusive of VAT that is payable to the Supplier by a Participating Authority under any Contract for the full and proper performance by the Supplier of its obligations under such Contracts (as calculated in accordance with the provisions of the Commercial Schedule) and as confirmed in the relevant Order Form relating to the particular Contract;
"Data Protection Legislation"	means the Data Protection Act 1998 and any other Law relating to the protection of personal and sensitive personal data and the privacy of individuals, including where applicable guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Direct Route of Supply"	means a route of supply whereby the Authority (which is a Participating Authority who is not NHS Supply Chain) places an Order with the Supplier, which is delivered and invoiced directly to that Authority;
"Dispute Resolution Procedure"	means the process for resolving disputes as set out in Clause 23 of Schedule 2;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals

	and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"Electronic Trading System(s)"	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as NHS Supply Chain may specify from time to time;
"E-direct"	means Goods and Services ordered by NHS Supply Chain as the Authority on behalf of an NHS Supply Chain customer which are delivered directly to the customer and invoiced to NHS Supply Chain;
"Environmental Regulations"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"E-Procurement Guidance"	means the NHS E-Procurement Strategy available via: http://www.gov.uk/government/collections/nhs-procurement together with any further Guidance issued by the Department of Health in connection with it;
"Equality Legislation"	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
"Ex Works"	means Goods and Services ordered from the Supplier based on the Contract Price, excluding delivery and other associated delivery costs, it being the responsibility of the Authority to arrange for collection of such Goods and Services from the Supplier;
"FOIA"	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
"Force Majeure Event"	means any event beyond the reasonable control of the Party in question to include, without limitation: (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this

	Framework Agreement; (b) acts of terrorism; (c) flood, storm or other natural disasters; (d) fire; (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; (g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; (h) industrial action which affects the ability of the Supplier to supply the Goods and/or Services, but which is not confined to the workforce of the Supplier or the workforce of any subcontractor of the Supplier; and (i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;
"Framework Agreement"	means the form of framework agreement at the front of this document and all schedules attached to the form of framework agreement;
"Fraud"	means any offence under any law in respect of fraud in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"General Anti-Abuse Rule"	means (j) the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid

	national insurance contributions;
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods and/or services similar to the Goods and/or Services under the same or similar circumstances as those applicable to this Framework Agreement, including in accordance with any codes of practice published by relevant trade associations;
"Goods"	means all goods, materials or items that the Supplier is required to supply to Participating Authorities under Contracts placed under this Framework Agreement and/or made available for purchase under the Framework Agreement in accordance with Clause 22 of Schedule 2 and/or the Commercial Schedule, details of such Goods, materials or other items being set out in the Specification and Tender Response Document and any Order;
"Group"	means in relation to a Party, that Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party and holding company and subsidiary company shall have the meaning given in Section 1159 of the Companies Act 2006;
"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods and Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by NHS Supply Chain and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Intellectual Property Rights"	means all patents, copyright, design rights, registered designs, trade marks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trade marks and registered designs;
"Key Provisions"	means the key provisions set out in Schedule 1;
"KPI"	means the key performance indicators as set out in Schedule 8;
"Law"	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;

	(b) any applicable European Union directive, regulation, decision or law; (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (e) requirements set by any regulatory body; and (f) any applicable code of practice, in each case as applicable in England and Wales;
"Management Fee"	has the meaning given under Clause 9.2 of Schedule 2;
"Management Fee Report"	has the meaning given under Clause 9.2 of Schedule 2;
"Mediation Notice"	has the meaning given under Clause 23.5.1 of Schedule 2;
"Monthly Service Level"	has the meaning given under Clause 3 of Schedule 8;
"NHS"	means the National Health Service;
"NHS Supply Chain's Obligations"	means NHS Supply Chain's further obligations, if any, referred to in the Specification and Tender Response Document;
"Non-direct Route of Supply"	means all routes of supply through which NHS Supply Chain (as the Authority) places an Order with the Supplier for Goods and/or Services and the Supplier invoices NHS Supply Chain for the sum of the relevant Order, whether or not such Goods and/or Services are delivered to NHS Supply Chain or another authority and whether or not such Goods and/or Services are collected Ex Works. Non-direct routes of supply include E-Direct, Blue Diamond and Stock (and any other non-direct routes which NHS Supply Chain may notify to the Supplier from time to time);
"Occasion of Tax Non-Compliance"	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

	(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
"Order Form"	means an order form on which Orders are to be placed, containing the details set out in Schedule 7;
"Ordering Procedure"	means the procedure enabling Participating Authorities to call-off Goods and Services and enter into Contracts under this Framework Agreement, as set out in Schedule 7;
"Orders"	means orders for Goods and Services placed under this Framework Agreement by Participating Authorities;
"Participating Authority"	means a Contracting Authority entitled to place Orders under this Framework Agreement including NHS Supply Chain and any other Contracting Authority as set out in the Key Provisions;
"Party"	means NHS Supply Chain or the Supplier as appropriate and Parties means both NHS Supply Chain and the Supplier;
"Personal Data"	means personal data as defined in the Data Protection Act 1998;
"Policies"	means the policies, rules and procedures of NHS Supply Chain as notified to the Supplier from time to time;
"Process"	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Framework Agreement, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly;
"Product Information"	means information (including images) concerning the Goods and Services as may be reasonably requested by NHS Supply Chain and supplied by the Supplier to NHS Supply Chain in accordance with Clause 21 of Schedule 2 for inclusion in NHS Supply Chain's product catalogue from time to time;
"Prohibited Acts"	has the meaning given under 30.1.1 of Schedule 2;
"Remedial Proposal"	has the meaning given under Clause 16.3 of Schedule 2;
"Sensitive Personal Data"	means sensitive personal data as defined in the Data Protection Act 1998;
"Services"	means any services which are ancillary to or associated with the

	Goods, which are purchased by Participating Authorities under Contracts placed under this Framework Agreement and/or made available for purchase under the Framework Agreement in accordance with Clause 22 of Schedule 2 and/or the Commercial Schedule, details of such Services being set out in the Specification and Tender Response Document and any Order;
"Specification"	means the document set out in Schedule 5(a) as amended and/or updated in accordance with this Framework Agreement;
"Staff"	means all persons employed or engaged by the Supplier to perform its obligations under this Framework Agreement including any subcontractors and person employed or engaged by such subcontractors;
"Stock"	means Goods purchased by NHS Supply Chain (as an Authority) which are delivered and invoiced to NHS Supply Chain to be held as stock until such time as NHS Supply Chain customers place an order for such goods with NHS Supply Chain;
"Supplier"	means the supplier named on the form of Framework Agreement on the first page;
"Tender Response Document"	means the document set out in Schedule 5(b) as accepted by NHS Supply Chain;
"Term"	means the term as set out in the Key Provisions;
"Third Party Body"	has the meaning given under Clause 8.5 of Schedule 2; and
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

1.2 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.

1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.

1.4 References in this Framework Agreement to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Framework Agreement.

1.5 References in this Framework Agreement to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.

1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 31.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Framework Agreement.

1.7 The headings are for convenience only and shall not affect the interpretation of this Framework Agreement.

1.8 Words denoting the singular shall include the plural and vice versa.

1.9 Where a term of this Framework Agreement provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.10 Where there is a conflict between the Supplier’s responses to NHS Supply Chain’s requirements set out in the Specification in the Tender Response Document and any other part of this Framework Agreement, such other part of this Framework Agreement shall prevail.

1.11 Where a document is required under this Framework Agreement, the Parties may agree in writing that this shall be in electronic format only.

1.12 Any guidance notes in grey text do not form part of this Framework Agreement.

Schedule 5(a)

FRAMEWORK AGREEMENT SPECIFICATION
SINGLE USE THEATRE PROTECTIVE CLOTHING

1. Introduction

1.1. The Framework Agreement is for the supply of single use theatre protective clothing including: patient and equipment drapes, gowns and outerwear, caps, shoes and aprons, facemasks and eye protection.

1.2. The Framework is divided into the following Lot(s):

Lot Number	Lot Title
1	Gowns
2	Patient and equipment drapes
3	Face masks and eye protection
4	Protective clothing

1.3. Full technical specifications of the products awarded to this Framework Agreement must be made available to NHS Supply Chain on request during the lifetime of this Agreement.

- NHS Supply Chain must be notified immediately about any proposed changes to the technical specifications throughout the lifetime of the Framework Agreement.
- If changes to the technical specification of any offered product mean that the product no longer meets the minimum requirements outlined in this document, NHS Supply Chain reserves the right to exclude the product from the Framework Agreement.
- NHS Supply Chain reserves the right to request evidence of compliance with the specifications outlined in this document throughout the lifetime of this Framework Agreement.

1.4. The specifications make reference to a number of standards and legislation. The list of standards/legislation/directives is not intended to be exhaustive and any relevant standard/legislation/directive (even if not stated) must be complied with.

1.5. Products must comply with the stated standards/legislation/directives (as amended, extended or re-enacted from time to time) and/or the relevant section within the standard/legislation/directive and/or the relevant standard within the stated suite of standards.

1.6. Evidence of compliance to the standards/legislation/directives must be available to NHS Supply Chain on request during the lifetime of this Agreement; in the event that sufficient evidence is not supplied NHS Supply Chain reserve the right to suspend product until such evidence is available.

2. Criteria applicable across all Lots

2.1. Standards/Directives/Legislative requirements

STANDARD / CERTIFICATION
All products must have their CE marking clearly evident on the product and/or packaging and must conform to the relevant directive: **Medical Devices Directive 93/42/EEC (as amended)** **Personal Protective Equipment Directive 89/686/EEC**

2.2. In accordance with the Control of Substances Hazardous to Health Regulations 2002 (as amended) safety data sheets for all products that fall under this Regulation must be provided to NHS Supply Chain.

2.3. Any product that contains phthalates must be indicated on the packaging in accordance with Directive 2007/47/EC (amending Directives 90/385/EEC and 93/42/EEC).

2.4. All products and packaging should be latex free where possible. Any products or packaging containing latex must be clearly labelled as such to inform the user.

2.5. All products must be supplied with a minimum 3 years shelf life from the date of manufacture.

2.6. Where applicable all products must be supplied with instructions for use printed in English.

3. Lot 1 – Gowns

3.1. This Lot is for sterile theatre gowns used to cover the wearer whilst in an operating theatre in such a way as to prevent exposure to potentially contaminated fluids, including those which may contain pathogens as well as helping to prevent the wearer from contaminating the clean surgical site.

3.2. Products in this Lot include but are not limited to:

- Standard Performance Gown;
- Zone Reinforced Standard Performance Gown;
- Zone Impervious High Performance Gown;
- Fully Impervious High Performance Gown;

3.3. Standards/Directives/Legislative requirements

STANDARD / CERTIFICATION
BS EN 13795:2011+A1:2013 or equivalent standard Surgical drapes, gowns and clean air suits, used as medical devices for patients, clinical staff and equipment. General requirements for manufacturers, processors and products, test methods, performance requirements and performance levels.

3.4. All products in this Lot must comply with the following:

- Must be supplied sterile.
- Must be single use.
- Must be latex free.
- Must be individually packaged.
- Must be low linting.

3.5. Standard performance gowns must also comply with the following or any equivalent standard:

- The **standard performance** level of BS EN 13795:2011+A1:2013.

3.6. Zone reinforced standard performance gowns must also comply with the following or any equivalent standard:

- The **standard performance** level of BS EN 13795:2011+A1:2013.
- Must have zone reinforcement of the sleeves and chest area.

3.7. Zone impervious high performance gowns must also comply with the following or any equivalent standard:

- The whole gown must meet the **standard performance** level of BS EN 13795:2011+A1:2013.
- Must have impervious zones on the sleeves and chest area.
    - Impervious zones must meet the **high performance** level of BS EN 13795:2011+A1:2013.

3.8. Fully impervious high performance gowns must also comply with the following or any equivalent standard:

- The **high performance** level of BS EN 13795:2011+A1:2013 across the whole gown.

4. Lot 2 – Patient and equipment drapes

4.1. This Lot is for patient and equipment drapes intended to provide a sterile covering during surgical procedures. The draping of a patient and surgical equipment is intended to create a sterile field around the surgical site and also help prevent the transmission of fluids from the patient's body to this sterile field. Drapes can also

provide a barrier to the passage of fluids from the surgical site to the patient and may also serve the purpose of limiting fluids from running away onto the floor during the procedure. In addition drapes provide a sterile surface on which sterile instruments and equipment may be placed for ease of use during the surgical procedure.

- For the purpose of this tender a patient drape is defined as; a medical device which covers the patient creating a sterile field around the surgical site and which acts as a barrier to prevent fluid strike through onto the patient.
- For the purpose of this tender an equipment drape is defined as; a medical devices which is used to cover non-sterile equipment for use in the sterile field.

4.2. Products in this Lot include but are not limited to:

- Patient drapes/Patient drape packs;
- Equipment drapes;
- Associated products and accessories.

4.3. Standards/Directives/Legislative requirements

STANDARD / CERTIFICATION
BS EN 13795:2011+A1:2013 or any equivalent standard Surgical drapes, gowns and clean air suits, used as medical devices for patients, clinical staff and equipment. General requirements for manufacturers, processors and products, test methods, performance requirements and performance levels.

4.4. Patient drapes/patient drape packs must comply with the following:

- Must be fire resistant.
- Must be antistatic.
- Must be supplied sterile.
- Must be single use.
- Must be latex free.
- Must be individually packaged.
- Must be low linting.

5. Lot 3 – Face masks and eye protection

5.1. This Lot is for face masks and eye protection, including:

- Eye-Shields;
- Surgical facemasks:
  - With Visor
  - Type II;
  - Type IIR;
- Respirator Masks:
  - FFP2 – unvalved;
  - FFP2 – valved;
  - FFP3 – unvalved;
  - FFP3 – valved.

5.2. Standards/Directives/Legislative requirements

STANDARD / CERTIFICATION
Visors and Eye Shields must conform to: • **BS EN 166:2002 or any equivalent standard** Personal eye protection. Specifications **Surgical facemasks must conform to:** • **BS EN 14683:2014 or any equivalent standard** Medical face masks. Requirements and test methods **Respirator masks must conform to:** • **BS EN 14683:2014 or any equivalent standard** Medical face masks. Requirements and test methods • **BS EN 149:2001+A1:2009 or any equivalent standard** Respiratory protective devices. Filtering half masks to protect against particles. Requirements, testing, marking

5.3. A face shield or visor is a device worn on the head for covering the whole of the face and providing a barrier to liquid splashes. All face shields/visors must comply with the following:

- Must be optically clear.
- Must be resistant to fogging.
- Must be latex free.

5.4. Eye Shields are devices for protecting the eyes against exposure to liquid droplets. All safety glasses must comply with the following:

- Must be optically clear.
- Must be resistant to fogging.
- Must be latex free.

5.5. Surgical facemasks are medical devices covering the mouth, nose and chin, providing a barrier to minimise the direct transmission of infective agents between staff and patients.

5.6. All surgical facemasks must comply with the following:

- Must be latex free.
- Must be single use.
- Must have integral straps/ties long enough to go around an adult head whilst wearing a surgical cap.
- Straps/ties must be adjustable for fit by the user.
- The upper strap/tie should sit at the crown of the head.
- The lower strap/tie should be positioned to allow it to be positioned behind the neck to hold the sides of the mask against the face of the user to prevent any gaping.

- The nose band must deform when pressed to mould over the nose and cheeks and must maintain its shape over time.
- The nose band must not kink or break when adjusted.

5.7. In addition to the requirements in 5.6 Type II surgical facemasks must:

- Be classified as Type II as per **BS EN 14683:2014 or any equivalent standard**
- The mask must be marked as Type II.

5.8. In addition to the requirements in 5.6 Type IIR surgical facemasks must:

- Be classified as Type IIR as per **BS EN 14683:2014 or any equivalent standard**
- The mask must be marked as Type IIR.
- Must have a splash resistance pressure equal to or greater than 120mm Hg.

5.9. In addition to the requirements in 5.6 Type IIR ASTM1862 high performance surgical facemasks must:

- Be classified as Type IIR as per **BS EN 14683:2014 or any equivalent standard**
- The mask must be marked as Type IIR.
- Must have a splash resistance pressure equal to or greater than 120mm Hg.

5.10. Respirator masks are medical devices to cover the nose, mouth and chin and are required both with and without inhalation/exhalation valves. The mask consists entirely or substantially of filter material. It must be designed to provide adequate sealing on the face of the wearer against the ambient atmosphere, when the skin is dry or moist and when the head is moved. Respirator masks must be classified according to their filtering efficiency and their maximum total inward leakage.

5.11. All respirator masks must comply with the following:

- Must be latex free.
- Must be single use.
- Must be of moulded, duckbill, flat folded or cone style.
- Must have integral straps/ties long enough to go around an adult head whilst wearing a surgical cap.
- Straps/ties must be adjustable for fit by the user.
- The upper strap/tie should sit at the crown of the head.
- The lower strap/tie should be positioned to allow it to be positioned behind the neck to hold the sides of the mask against the face of the user to prevent any gaping.
- The nose band must deform when pressed to mould over the nose and cheeks and must maintain its shape over time.
- The nose band must not kink or break when adjusted.

5.12. In addition to the requirements of 5.11 unvalved FFP2 masks must:

- Meet the performance requirement of class FFP2 as per **BS EN 149:2001+A1:2009 or any equivalent standard**
- The mask must be marked as FFP2.
- Not be valved.

5.13. In addition to the requirements of 5.11 valved FFP2 masks must:

- Meet the performance requirement of class FFP2 as per **BS EN 149:2001+A1:2009 or any equivalent standard**
- The mask must be marked as FFP2.
- Be valved.

5.14. In addition to the requirements of 5.11 unvalved FFP3 masks must:

- Meet the performance requirement of class FFP3 as per **BS EN 149:2001+A1:2009 or any equivalent standard**
- The mask must be marked as FFP3.
- Not be valved.

5.15. In addition to the requirements of 5.11 valved FFP3 masks must:

- Meet the performance requirement of class FFP3 as per **BS EN 149:2001+A1:2009 or any equivalent standard**
- The mask must be marked as FFP3.
- Be valved.

6. Lot 4 – Protective clothing

6.1. This Lot is for protective clothing including:

- Theatre Headwear:
  - Theatre caps;
- Scrub suits/shirts/trousers;
- Overshoes and over-boots;
- Coveralls/protective suits.

6.2. Standards/Directives/Legislative requirements

STANDARD / CERTIFICATION
All Coveralls/protective suits must conform to: • **BS EN 14126:2003 or any equivalent standard** Protective clothing. Performance requirements and tests methods for protective clothing against infective agents. In accordance with the requirements of **BS EN 14126:2003 or any equivalent standard** protective clothing must be subjected to 5 test methods specified in the standard.

All category III type 1a, 1b, 1c and 2B coveralls/protective suits must conform to:

- **BS EN 943-1:2002 or any equivalent standard**
  Protective clothing against liquid and gaseous chemicals, aerosols and solid particles. Performance requirements for ventilated and non-ventilated "gas-tight" (Type 1) and "non-gas-tight" (Type 2) chemical protective suits.
- **BS EN 943-2:2002 or any equivalent standard**
  Protective clothing against liquid and gaseous chemicals, aerosols and solid particles. Performance requirements for “gas-tight” (Type 1) chemical protective suits for emergency teams (ET).

All category III type 3B and 4B coveralls/protective suits must conform to:

- **BS EN 14605:2005+A1:2009 or any equivalent standard**
  Protective clothing against liquid chemicals. Performance requirements for clothing with liquid-tight (Type 3) or spray-tight (Type 4) connections, including items providing protection to parts of the body only (Types PB [3] and PB [4]).

All category III type 5B coveralls/protective suits must conform to:

- **BS EN ISO 13982-1:2004+A1:2010 or any equivalent standard**
  Protective clothing for use against solid particulates. Performance requirements for chemical protective clothing providing protection to the full body against airborne solid particulates (type 5 clothing).

6.3. Theatre headwear is worn to cover the head and hair, providing a barrier to minimise the direct transmission of contaminants into the surgical site. The headwear must have a mechanism for ensuring it stays in place during normal movement. Theatre headwear must be latex free, single use and low-linting; as a minimum it must be available in the following styles:

- Bouffant style theatre caps – with an elastic hem to secure to the head.
- Elasticated back theatre caps – with an elastic fastening at the back to secure to the head.
- Tie fastening back theatre caps - with ties at the back to secure to the head.
- Theatre Hoods – Ties – with ties that cross at the front and tie at the back to secure to the head.
- Theatre Hoods – Pull On - the hood must pull over the head to cover the head and neck area with a cut out for the face.

6.4. Overshoes and Overboots must be designed to cover footwear, providing a barrier to minimise the direct transmission of contaminants into a designated clean area. Overshoes and overboots must comply with the following:

- Must be liquid resistant.
- Must be anti-static.
- Must be single use.

- Must be latex free.
- Must be low linting.
- Overshoes must cover the whole shoe and have an integrated elasticated section to keep them secure in use.
- Overboots must have an elastic top to secure to the leg and provide coverage of the whole of the shoe and ankle.
- Can be provided as either standard covers or anti-slip.

6.5. Coveralls/protective suits must be designed to cover the whole body except for the hands, feet and face area, providing a barrier to air borne and fluid borne contaminants and pathogens. In accordance with the requirements of EN14126:2003 or any equivalent standard protective clothing should be certified as Category III and subjected to 5 test methods specified in the standard. The corresponding protective clothing "Type" must then suffixed with the"-B" (e.g.Type3-B) and the Biohazard symbol must be displayed on the packaging.

6.6. All coveralls/protective suits must comply with the following:
- Must seal effectively around the ankles, wrists and face.
- Must be latex free.
- Must be antistatic.
- Must be single use.
- Must be individually packaged.

6.7. In addition to the requirements of 6.6 category III type 1a, 1b, 1c and 2B suits must:
- Be gas-tight and resistant to penetration by air borne and fluid borne pathogens.
- Meet the requirements of **BS EN 943-1:2002** and **BS EN 943-2:2002 or any equivalent standards**

6.8. In addition to the requirements of 6.6 category III type 3B suits must:
- Be liquid-tight and resistant to penetration by air borne and fluid borne pathogens.
- Meet the requirements of **BS EN 14605:2005+A1:2009 or any equivalent standard**

6.9. In addition to the requirements of 6.6 category III type 4B suits must:
- Be spray-tight and resistant to penetration by air borne and fluid borne pathogens.
- Meet the requirements of **BS EN 14605:2005+A1:2009 or any equivalent standard**

6.10. In addition to the requirements of 6.6 category III type 5B suits must:
- Be dust-tight.

Meet the requirements of **BS EN ISO 13982-1:2004+A1:2010 or any equivalent standard**

5(b) Tender Response Document

Non-Financial Response

		Supplier Name	
Section	**Question**	**Lot 01 - Gowns - Answer**	**Lot 02 - Patient & Equipment Drapes - Answer**
Business Continuity Plan	Do you have a business continuity plan?		
	In the event that you need to invoke your Business Continuity Plan because of loss of output from your distribution centre covering supply within the UK, what is the longest leadtime for any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	In the event that you need to invoke your Business Continuity Plan because of loss of output from your head office covering supply within the UK, what is the longest leadtime for any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	In the event that you need to invoke your Business Continuity Plan because of your manufacturing plant failing, what is the longest leadtime to resume supply of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
Inventory Assessment	Please confirm how many weeks stockholding of final product to support your tendered lines you have on average at your distribution facility / 3rd party distributor.		
Marketing	Will you make reference to this Framework Agreement in any marketing material including NHSSC NPC codes?		
Product Research & Development	Are you able to offer free trials for new products being introduced to the market?		
	Do you incorporate clinicians feedback into the development of your products?		
Sales Service & Quality	Do you have dedicated clinical support staff that can support the customer onsite, and offer advice on the correct usage of your products?		

	How many UK based Sales Representatives (FTE equivalents) do you have to support the Framework Agreement within the NHS Supply Chains `NHS Trust` customer base?		
	In the event customers require clinical support via your helpdesk service, please confirm your availability?		
	In the event that you experience a quality failure in a batch of product , what is the longest leadtime to resupply any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	In the event that you need to invoke your Business Continuity Plan because of loss of output from your head office covering supply within the UK, what is the longest leadtime for any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	Please confirm that if you are successful you will have a National Account Manager (or equivalent) available to liaise with the Trading Buyer and NHS Supply Chains customers on a daily basis.		
	Will you communicate any product shortages on a regular basis prior to the event/shortage occurring to NHS Supply Chain providing stock availability dates? Please attach your process improvement plan for dealing with such instances in the Supplier Header documents of the Intenda system.		
Training & Value Add Education Programmes	Do you offer a traning programme on your products?		
	Do you provide hard copy literature or online downloads for product support and training?		
	Do you provide Training certificates within your standard training package to the Trust?		

Section	Question	Lot 03 - Face Masks & Eye Protection - Answer	Lot 04 - Protective Clothing - Answer
Business Continuity Plan	"In the event that you need to invoke your Business Continuity Plan because of loss of output from your distribution centre covering supply within the UK, what is the longest leadtime for any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?"		
	Do you have a business continuity plan?		
	In the event that you need to invoke your Business Continuity Plan because of loss of output from your head office covering supply within the UK, what is the longest leadtime for any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	In the event that you need to invoke your Business Continuity Plan because of your manufacturing plant failing, what is the longest leadtime to resume supply of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
Inventory Assessment	Please confirm how many weeks stockholding of final product to support your tendered lines you have on average at your distribution facility / 3rd party distributor.		
Marketing	Will you make reference to this Framework Agreement in any marketing material including NHSSC NPC codes?		
Product Research and Development	Are you able to offer free trials for new products being introduced to the market?		
	Do you incorporate clinicians feedback into the development of your products?		
Sales, Service & Quality	Do you have dedicated clinical support staff that can support the customer onsite, and offer advice on the correct usage of your products?		
	How many UK based Sales Representatives (FTE equivalents) do you have to support the Framework Agreement within the NHS Supply Chains `NHS Trust` customer base?		
	In the event customers require clinical support via your helpdesk service, please confirm your availability?		

	In the event of a period of unusally large demand such as a pandemic, please state whether you have capacity within your organisation to replenish stock on an urgent basis and retain supply until such time as demand has reduced. Please provide supporting detail in Supplier Header Documents in the intenda system		
	In the event that you experience a quality failure in a batch of product , what is the longest leadtime to resupply any of the products that you would be supplying to NHS Supply Chain as part of this Framework Agreement?		
	Please confirm that if you are successful you will have a National Account Manager (or equivalent) available to liaise with the Trading Buyer and NHS Supply Chains customers on a daily basis.		
	Will you communicate any product shortages on a regular basis prior to the event/shortage occuring to NHS Supply Chain providing stock availability dates? Please attach your process improvement plan for dealing with such instances in the Supplier Header documents of the Intenda system		
Training and Education Value Add Programmes	Do you offer a training programme on your products?		
	Do you provide hard copy literature or online downloads for product support and training?		
	Do you provide Training certificates within your standard training package to the Trust?		

Awarded Lines

Awarded Additional Lines

Discounts & Saving Initiatives

Schedule 6

Commercial Schedule

1. Price

1.1. **The Contract Price is either (i) attached at Schedule 5 or (ii) where there is a re-opening of competition, the price determined in accordance with that competition process.**

1.2. Where a management fee is payable it will be charged at a rate of 2%

1.3. Unless amended in accordance with this Schedule 6 or agreed otherwise as part of the re-opening of competition process, the Contract Price shall remain fixed during the Term of this Framework Agreement or the term of the Contract (as applicable). For the avoidance of doubt the Supplier shall not be entitled to unilaterally adjust the Contract Price.

1.4. During the Term of the Framework Agreement each Party may approach the other to discuss special offers, discounts, value added offerings and commitment or bulk buy deals. Neither Party shall be obliged to accept any offer made by the other.

1.5. Pursuant to paragraph 1.4, should the Supplier (or any supplier) and a Participating Authority (or group of Participating Authorities) agree pricing based on a commitment by a Participating Authority to purchase a specified volume or value of Goods during an agreed period of time, the Supplier (or any supplier) shall pay a rebate directly to the Participating Authority

1.6. The Supplier agrees to work with NHS Supply Chain during the Term of the Framework Agreement to identify cost saving opportunities, including the way in which Goods are sourced, supplied, ordered and packaged, which can be reflected in a more competitive Contract Price.

1.7. If the Supplier requests an increase to the Contract Price it must provide justification to NHS Supply Chain for such increase and NHS Supply Chain may in its absolute discretion consent to such increase.

1,7 Once a price variation has been agreed by both Parties pursuant to this Schedule 6 the new Contract Price shall take effect thirty (30) days after the date of agreement.

2 . Additional and Associated Goods and Services

2.1 Without limitation to the provisions of Schedule 2, the Supplier acknowledges to NHS Supply Chain that over the Term, additional goods and services may be made available for purchase under the Framework Agreement. Such additional goods and services may also include the provision of associated goods, materials or items associated with those additional goods and services (which together shall be “the Additional and Associated Goods and Services”).

2.2 Additional and Associated Goods and Services to NHS Supply Chain will be made available for purchase under the Framework Agreement at the sole discretion of NHS

Supply Chain. In order to determine whether the Additional and Associated Goods and Services will be made available for purchase under the Framework Agreement NHS Supply Chain shall consider a number of different factors, including (but not limited to) whether the proposed Additional Solutions and Associated Goods are deemed to be within scope of the procurement exercise under which the Framework Agreement was awarded.

2.3. The Supplier acknowledges and agrees that, to the extent relevant, any Additional and Associated Goods and Services must comply with the standards set out in the Specification and the Tender Response Document.

2.4 Without prejudice to any of the other provisions set out in Schedule 2, NHS Supply Chain reserves the right to undertake in consultation with the Supplier a review of the Goods and Services which are supplied under the Framework Agreement. Following such review, NHS Supply Chain may change supply routes for any of the Goods and Services and/or remove certain Goods and Services and/or Additional and Associated Goods and Services from the Framework Agreement.

Schedule 7

Ordering Procedure and Order Form

1.1. NHS Supply Chain may elect to purchase Goods and/or Services from such supplier(s) on the Framework Agreement as it may at its discretion choose, on the terms and at the Contract Price as calculated in accordance with Schedule 6.

1.2. As set out at paragraph 1.1 above, NHS Supply Chain may place an Order for Goods and/or Services on the supplier(s) based on the terms of this Framework Agreement, including the Call-off Terms and Conditions for the Supply of Goods, at any time during the Term. Such Order(s) shall form a Contract between the supplier(s) and NHS Supply Chain which shall comprise the following documents:

1.2.1. the Call-off Terms and Conditions for the Supply of Goods;

1.2.2. a completed Order Form (as detailed further at paragraph 4 below);

1.2.3. the applicable parts of the Specification and Tender Response Document set out at Schedule 5 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Order Form; and

1.2.4. any relevant provisions applicable to the Contract as set out in the Framework Agreement.

1.3. Alternatively, where the Tender Response Document in relation to the Framework Agreement has insufficient detail to be able to price up bespoke requirements and award a Contract without further information, NHS Supply Chain may invite either: (i) one capable supplier; or (ii) some capable suppliers; or (iii) all capable suppliers (which in each case may not include the supplier) to submit an offer in relation to (a) a specific requirement of a Participating Authority, a group of Participating Authorities, an NHS region or a specific requirement of the NHS. NHS Supply Chain reserves the right to reopen competition using any of (1) an eAuction; (2) pricing exercise; and (3) competitive dialogue or other methodologies advised to suppliers (including in relation to such requirements as consignment stock pricing).

1.4. Where more than one supplier is invited to submit an offer, the offers shall be evaluated using such criteria as a Participating Authority shall determine (including (i) price only; (ii) quality only; or (iii) a combination of quality and price) and in each case, the terms of the resulting Contract (including the Contract Price and Specification of the relevant Goods) may differ from those set out in the Framework Agreement and Call-Off Terms and Conditions.

1.5. As set out at paragraphs 2.1 - 2.2 above, NHS Supply Chain may at the request of one or more Participating Authorities re-open competition between the supplier(s) referred to at paragraph 2.1 above based on the award criteria referred to at paragraph 2.2 above. Once a competition has been concluded Orders may be placed by NHS Supply Chain under the Call-off Terms and Conditions for the Supply of Goods (as amended in accordance with the competition).

1.6. A Contract concluded following a re-opening of competition is made up of the following components:

1.6.1. the bespoke requirements referred to in paragraph 2.1 above;

1.6.2. the Call-off Terms and Conditions for the Supply of Goods (as amended in accordance with the competition);

1.6.3. a completed Order Form (as detailed further at paragraph 4 below);

1.6.4. the applicable parts of the Specification and Tender Response Document set out at Schedule 5 of this Framework Agreement, as may be supplemented by information used to conduct the competition; and

1.6.5. any relevant provisions applicable to the Contract as set out in the Framework Agreement.

1.7. As a result of any of the above processes, NHS Supply Chain reserves the right to delist products from the Framework Agreement in line with the award of the process.

1.8. For the avoidance of doubt, any competition pursuant to this Framework Agreement shall be carried out by NHS Supply Chain only on behalf of one or more Participating Authorities. No Participating Authority (other than NHS Supply Chain) shall be entitled to carry out a competition under this Framework Agreement without the express consent of NHS Supply Chain.

2. General

3.1 In relation to either or both of paragraphs 1 and 2 above, NHS Supply Chain may request pricing on the basis of a commitment by a Participating Authority to purchase a specified volume or value of Goods during an agreed period of time, for which NHS Supply Chain may pay the supplier in advance.

3.2 Should the Supplier (or any supplier) and a Participating Authority (or group of Participating Authorities) agree pricing based on a commitment by a Participating Authority to purchase a specified volume or value of Goods during an agreed period of time, the Supplier (or any supplier) shall pay a rebate directly to the Participating Authority.

3.3 Further detail regarding the methods by which a Participating Authority may purchase under this Framework Agreement are set out in the Invitation to Tender.

3. Order Form

The Order Form may include the following details:

- the name of the Participating Authority and Supplier entering into to the Contract;
- reference to the Framework Agreement and application of the Call-off Terms and Conditions;
- date of the Order;
- confirmation of the Goods and any Services being ordered;
- the term of the particular Contract;
- the name and contact details for the Contract Manager for each Party, as relevant to the specific Order;
- the addresses of both Parties for notices to be given under the Contract;
- confirmation of the Contract Price for that Order, as calculated in accordance with the Commercial Schedule set out in the Framework Agreement;
- any delivery timescales, delivery dates, and delivery instructions (to include delivery location (including any requisition point) and delivery times) to the extent these are not set out in the Specification or ORS;
- details of the KPI's relevant to the Order;
- the NHS and NHS Supply Chain customer order reference numbers;
- the NHS Supply Chain customer's local reference and any special delivery/handling instructions;
- route of supply; and
- other supplementary details relevant to the particular Order.

Schedule 8

Service Levels

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

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

2. Any KPI discrepancy attributable to an act or omission of NHS Supply Chain (or another Participating Authority) shall not be used to calculate the Supplier's sub-standard performance level.

3. A service level shall be generated for each of the KPIs in relation all Orders placed on the Supplier within each calendar month during the Term of the Framework Agreement and a monthly average service level for each KPI shall be calculated ("**Monthly Service Level**").

4. The Supplier's performance shall be measured:

   4.1. in relation to Orders placed pursuant to a Non-direct Route of Supply by NHS Supply Chain; and

   4.2. in relation to Orders placed pursuant to a Direct Route of Supply by the Authority and the Supplier.

5. In relation to Orders placed pursuant to a Direct Route of Supply the Supplier shall submit monthly reports to NHS Supply Chain outlining its performance in relation to the KPIs for the preceding month. Such report shall be submitted to NHS Supply Chain not

later than the 14th day of the month following the month to which the report relates. NHS Supply Chain may verify the information provided by the Supplier with the Authority and reserves the right to amend the Supplier's monthly service level report in accordance with the findings of such verification exercise.

6. Should the Monthly Service Level of the Supplier fall below the relevant KPI:

   6.1. on two (2) or more occasions in any six (6) month period in relation to On time and/or Quantity; and

   6.2. on three (3) or more occasions in any six (6) month period in relation to Quality and/or Administration,

   NHS Supply Chain may serve a performance notice on the Supplier. The Supplier shall present to NHS Supply Chain within thirty (30) days of receipt of such performance notice an action plan to improve the Supplier's Monthly Service Level ("**Action Plan**"). The Parties shall, within ten (10) Business Days of NHS Supply Chain receiving the Action Plan meet to discuss and agree the Action Plan. NHS Supply Chain may make reasonable amendments to the Action Plan to improve the Supplier's performance. The Action Plan must include a timetable for improvement of the Supplier's performance to, as a minimum, the level required by Clause 1 of this Schedule 8 in relation to the relevant KPI. Such timetable shall be agreed by the Parties but shall in any event be no longer than six (6) months.

7. In the event that the Supplier:

   7.1. fails to produce an Action Plan in accordance with Clause 6 of this Schedule 8; or

   7.2. fails to improve its Monthly Service Level to the minimum level required by Clause 1 of this Schedule 8 within the timetable set out in the Action Plan in accordance with Clause 6 of this Schedule 8,

   the Supplier shall be considered to have committed a material breach capable of remedy for the purpose of Clause 16.3 of Schedule 2.

8. Notwithstanding Clauses 6 and 7 of this Schedule 8, where the Monthly Service Level in relation to Quantity, Quality or On time of Goods delivered against the relevant Order(s) falls below the relevant KPI, NHS Supply Chain shall (without prejudice to its rights to claim for any other categories of loss arising from such failure to meet the relevant KPI) be entitled to raise a debit note to the Supplier for a sum equal to the loss NHS Supply Chain has incurred or suffered in relation to lost margin and the cost, if any, of purchasing alternative goods and/or services (and any related administrative costs) as a result of the shortfall in ready to use delivery quantity against the relevant Orders. The Parties agree this is a true and fair assessment of loss suffered through lost margin and the cost of purchasing alternative goods and/or services (and any related administrative costs). Where NHS Supply Chain does not elect to raise a debit note in the manor detailed in this paragraph, then it shall remain entitled to claim damages.

9. If the Supplier disputes NHS Supply Chain's Monthly Service Level as applicable to the Supplier, the Supplier shall provide evidence to NHS Supply Chain that the Monthly Service Level is incorrect within seven (7) days of disputing such Monthly Service Level and the Parties shall meet to discuss any necessary amendment to the Monthly Service

Level. If the Parties cannot agree the Monthly Service Level the matter shall be referred to the dispute resolution procedure set out in Clause 23 of Schedule 2.

10. For the avoidance of doubt, nothing in this Schedule 8 shall limit in any way either Party's rights and remedies, including the right to claim damages and or termination rights which may arise, under this Framework Agreement or any Contract.

Schedule 9

Labour Standards Assurance System

1. The following definitions shall apply to this Schedule 9:

"Audit Report"	any report in the exact format set out in Appendix 1 (which for the avoidance of doubt is named the "Appendix 4E LSAS Matrix Review Final") of this Schedule 9 (including the First Audit Report) completed by the Auditor following the Ethical Audit which demonstrates the relevant LSAS level which the Supplier has achieved;
"Auditor"	an audit body which must have (i) a proven track record in auditing management systems relating to "Supply Chain Social Responsibility" (ii) specific competencies in either ISO9000 or ISO14001 and be accredited against SA8000 by SAAS and (iii) meet the GSCP requirements for Auditing Competence (including but not limited to the requirements for competence of personnel) which will complete the Ethical Audit and which is appointed by the Supplier;
"Ethical Audit"	an audit carried out by an Auditor against the LSAS to determine which level of the LSAS the Supplier has achieved;
"Ethical Audit Guidelines"	the guidelines set out in Appendix 1 to this Schedule 9;
"First Audit Report"	an Audit Report that must be submitted to NHS Supply Chain within three (3) months of the Commencement Date;
"International Labour Organisation"	*the specialised agency of the United Nations whose constitution was formed by way of Part XIII of the Treaty of Versailles 1919 (and which has since been varied and/or supplemented) whose aims are set out in the preamble to such constitution;*
"LSAS"	the levels of the labour standards assurance system as set out in Appendix 1 of this Schedule 9;
"LSAS Level 2 Audit Report"	an Audit Report that evidences that the Supplier has achieved Level 2 of the LSAS no later than twelve (12) months following the Commencement Date;
"SAAS"	means the global accreditation agency known as "Social Accountability Accreditation Services";

2. **Level 1 of the LSAS**

2.1. The Supplier agrees and acknowledges that it shall meet, and provide evidence to NHS Supply Chain by way of an Audit Report that it has met, the conditions set out in this Clause 2:

2.2. the Supplier must submit a First Audit Report to NHS Supply Chain which demonstrates to the absolute satisfaction of NHS Supply Chain that the Supplier has achieved Level 1 (or above) of the LSAS;

2.3. where the Supplier has achieved Level 1 of the LSAS for another NHS Supply Chain framework agreement the Supplier may submit evidence of such achievement to satisfy Clause 2.2 of this Schedule 9 provided that within the first twelve (12) months of the Framework Agreement the Supplier must ensure that the Goods (and any Services) are incorporated into the Supplier's current and existing LSAS strategy to ensure alignment and integration of audit across such framework agreements;

2.4. without prejudice to clause 2.1 (above), if the Supplier's First Audit Report demonstrates that the Supplier has failed to achieve Level 1 of the LSAS then such First Audit Report must also detail the actions required to be taken by the Supplier in order to reach Level 1 of the LSAS (the "**Remedial Action Plan Summary Level 1**"). The Supplier shall have three (3) months from the date of the First Audit Report in which to complete the actions identified in the Remedial Action Plan Summary Level 1 and shall submit a revised Audit Report which demonstrates to the absolute satisfaction of NHS Supply Chain the actions taken by the Supplier to achieve LSAS Level 1 and confirmation that the Supplier has achieved LSAS Level 1 within six (6) months of the Commencement Date; and

2.5. if the Supplier fails to submit the First Audit Report or otherwise fails to comply with the conditions set out in this Clause 2 of this Schedule 9. NHS Supply Chain shall be entitled to terminate this Framework Agreement immediately upon giving written notice to the Supplier.

3. Level 2 of the LSAS

3.1. The Supplier agrees that it must achieve Level 2 of the LSAS and evidence such achievement to NHS Supply Chain by way of a LSAS Level 2 Audit Report .

3.2. Without prejudice to Clause 3.1, if the Supplier's LSAS Level 2 Audit Report demonstrates that the Supplier has failed to achieve Level 2 of the LSAS then the Audit Report must detail the actions required to be taken by the Supplier in order to reach Level 2 of the LSAS (the "**Remedial Action Plan Summary Level 2**"). The Supplier shall have six (6) months in which to complete the actions identified in the Remedial Action Plan Summary Level 2 and shall submit a revised LSAS Level 2 Audit Report which demonstrates to the absolute satisfaction of NHS Supply Chain the actions taken by the Supplier to achieve LSAS Level 2 and confirmation that the Supplier has achieved LSAS Level 2 within eighteen (18) months of the Commencement Date.

3.3. To demonstrate its ongoing compliance with Level 2, the Supplier must submit to NHS Supply Chain on the dates thirty (30) and forty two (42) months from the Commencement Date an Audit Report demonstrating compliance to Level 2 (or above) of the LSAS**.**

3.4. If the Supplier fails to comply with the requirements of this Clause 3, NHS Supply Chain shall be entitled to terminate this Framework Agreement immediately upon giving written notice to the Supplier.

4. Continuous Improvement

4.1. In addition to its obligations set out in Clauses 2 and 3 (above)On each anniversary of the Commencement Date during the Term, the Supplier must submit to NHS Supply Chain an annual audit that must:

4.2. track, progress and monitor continuous improvement in its management of labour standards in its organisation and supply chain in the preceding year and the steps it shall take in the following year (or part year) to track, progress and monitor such continuous improvement.

4.3. To support continuous improvement, each supplier (which may or may not include the Supplier) that has reached Level 2 shall use reasonable endeavours to ensure that they can demonstrate to NHS Supply Chain's absolute satisfaction that they have a robust system for managing their labour standards in accordance with international labour standards set by the International Labour Organisation. The parties agree that a supplier (including the Supplier) would demonstrate compliance with this Clause 4.3 in the event that it achieved Level 3 (or above) of the LSAS.

5. General

5.1. NHS Supply Chain may from time to time request, and the Supplier shall promptly obtain and provide to NHS Supply Chain, further evidence from the Auditor to demonstrate how the LSAS level identified in any Audit Report submitted to NHS Supply Chain under the Framework Agreement has been determined. Such evidence may include details of how the Auditor has applied the Ethical Audit Guidelines in determining the LSAS level achieved. NHS Supply Chain reserves the right to review and verify the evidence provided and to take such steps as are outlined in this Schedule 9 should NHS Supply Chain deem that the Supplier has failed to achieve the relevant LSAS level. Such steps may include terminating the Framework Agreement immediately upon giving written notice to the Supplier.

5.2. The Supplier grants to NHS Supply Chain and warrants that it has the capacity to grant to NHS Supply Chain a royalty free, non-exclusive, perpetual licence to copy, reproduce and publish in whatever format all Audit Reports and Remedial Action Plan Summaries submitted to NHS Supply Chain in accordance with this Schedule 9. The Supplier shall indemnify NHS Supply Chain for all costs, expenses, damages and losses (including any interest, fines, legal and other professional fees and expenses) awarded against or incurred or paid by NHS Supply Chain as a result of or in connection with any claim made against NHS Supply Chain for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in

connection with NHS Supply Chain's use of the Audit Report(s) and the Remedial Action Plan Summaries.

5.3. NHS Supply Chain reserves the right to publish details of the Supplier's LSAS standards (including the details of any Audit Reports and Remedial Action Plan Summaries submitted during the Term of the Framework Agreement in electronic or any other format).

5.4. NHS Supply Chain reserves the right to use the results of any Audit Report submitted during the Term of the Framework Agreement in any marketing literature or initiatives deployed (at the absolute discretion of NHS Supply Chain). Such marketing literature or initiatives may include but not be limited to the development of a marketing or assurance symbol to indicate the LSAS level that the Supplier has achieved. In addition, such assurance symbols may be used for various purposes such as the development and publication of notices in the NHS Supply Chain Catalogue or otherwise to publicise examples where Suppliers have achieved Level 3 (or above) of the LSAS.

5.5. The Supplier acknowledges and agrees that it shall be responsible for all costs associated with compliance with the provisions of this Schedule 9.

Appendix 1 to Schedule 9

[*D.N. Labour Standards Assurance System (Appendix 4e, to be inserted here)*]