

**COMMERCIAL CONDITIONS OF CONTRACT FOR
SUPPLIES CONTRACTS**

[CONTRACT REFERENCE NUMBER]

[CONTRACT TITLE]

These Supplies Clauses MUST be read in conjunction with the Public Sector Standard Conditions of Contract.

Title	Commercial Conditions of Contract for Supplies Contracts		
Created By	Procurement Policy Branch, CPD		
Date Created	25 January 2019		
Maintained By	Procurement Policy Branch, CPD		
Version Number	Amendments	Date	Document Reference Number
1.0	1 st published version	25/01/19	FI1/19/15011
1.1	PaLS Amended Version	01/04/19	FI1/19/15012
1.2	PaLS Approved Version	21/05/19	SS17bc
1.3	PaLS inclusion of a default level of indemnity and insurance following professional insurance advice	24/10/19	SS17bc
1.4	Change made to ensure corrective numbering sequence 4.5 changed to 4.4	24/02/20	SS17bc
1.5	References to EU legislation removed.	22/11/21	SS17bc
1.6	Revision of Clause 2.3	22/05/2023	SS17bc

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[NOTE TO BUYER: Any clauses in square brackets [] AND highlighted in yellow are optional clauses. Where optional clauses are not used, please delete the clause and put the words “NOT USED” beside the number in both the contents page and at the actual clause.]

1.0 Interpretation

- 1.1 These Commercial Conditions of Contract shall at all times be read in conjunction with the Public Sector Standard Conditions of Contract. If there is any ambiguity or inconsistency in or between the Public Sector Standard Conditions of Contract and the Commercial Conditions of Contract, the Commercial Conditions of Contract shall take precedence.
- 1.2 The definitions set out in the Public Sector Standard Conditions of Contract shall apply to the Contract unless otherwise expressly defined in these Commercial Conditions of Contract. For the avoidance of doubt, any references to clauses stated in these Commercial Conditions of Contract shall be in relation to the clauses which are contained in the Commercial Conditions of Contract unless expressly stated otherwise.
- 1.3 In these Commercial Conditions of Contract, the following words will have the following meanings:¹

“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
“Client Data”	means:- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Client; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Client is the Data Controller.
“Client System”	means the Client’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this Contract which is owned by the Client or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the Services.
“Contractor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged

	in the performance of the Contractor's obligations under this Contract.
“Contractor Software”	means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.
“Contractor System”	means the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client’s System).
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by Contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.”
“Controller” “Processor” “Data Subject” “Personal Data Breach” “Data Protection Officer”	have the meaning given in the UK Data Protection Legislation.
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Processor”	has the meaning given in the GDPR.
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	means: i. the GDPR, the LED and any applicable national implementing Laws amended from time to time; ii. the DPA 2018 to the extent that it relates to processing of personal data and privacy; and iii. all applicable Law about processing of personal data and privacy.
“Data Protection Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘ <i>Processing, Personal Data and Data Subjects.</i> ’
“Data Subject”	has the meaning given in the UK Data Protection Legislation.

“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the UK Data Protection Legislation to access their Personal Data.
“DPA 2018”	means Data Protection Act 2018.
“UK GDPR”	means the UK General Data Protection Regulation.
“Goods”	means any such Goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification.
“ICT Environment”	means the Client System and the Supplier System.
“Joint Controller”	means where two or more Controllers jointly determine the purposes and means of processing.
“Joint Controller Agreement Schedule”	means the Schedule to the Commercial Conditions of Contract entitled ‘Joint Controller Agreement’.
“Key Personnel”	means any persons specified as such in the Award Letter, Tender or Specification (as the case may be), or otherwise notified by the Client to the Contractor in writing.
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
“Personal Data”	means personal data (as defined in the UK Data Protection Legislation) which is Processed by the Contractor or any sub-contractor on behalf of the Client or the Authority pursuant to or in connection with this Contract.
“Process”	has the meaning given to it under the UK Data Protection Legislation and “ Processed ” and “ Processing ” shall be construed accordingly.
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Purchase Order”	means the Client’s order for the supply of Goods which has a unique number, and details the Goods to be supplied by the Contractor to the Client in accordance with the terms of this Contract.

“Services”	means all the services to be performed by and all other obligations of the Contractor to be performed under the Contract including the supply and delivery of Goods to the Client as may be further expanded upon in the Specification.
“Software”	means the Contractor’s Software or the Third Party Software.
Service Software	Means the software required to allow for the modification or maintenance of the equipment as directed by the OEM.
Software Updates and Upgrades	Means such software intended to rectify known or suspected operation anomalies, improve safety, enhance the operator or user’s experience of add/modify such functionality intended to improve ability to perform maintenance or diagnose faults.
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
“Third Party Software”	means software which is proprietary to any third party (other than an Affiliate of the Contractor) which in any case will be or is proposed to be used by the Contractor for the purposes of providing the Services.
“UK Data Protection Legislation”	means: i) the UK GDPR; ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; iii) Part 3 of the DPA 2018, iv) all applicable Law about the processing of personal data and privacy.

2.0 Contract Period

2.1 The Contract shall take effect on the Commencement Date and shall continue until the end of the Contract Period.

[NOTE TO BUYER: Choose option A or B and use numbering 2.2 only.]

[Option A]

[2.2. The Client may, at any time prior to the Initial Contract Period Expiry Date, give notice in writing to the Contractor to invite the Contractor to agree to extend the Contract for any period(s) up to and including [XX] Month(s) commencing from the Initial Contract Period Expiry Date

[OR]

[Option B]

[2.2 There shall be no extensions to the Initial Contract Period.]

- 2.3 In the event that (a) prior to the end of the Contract Period, the Client commences a procurement exercise for the provision of the Services and (b) that:-
- i. the said procurement is not completed in full or in part prior to the end of the Contract Period due to delay or abandonment; or
 - ii. no contract (s) can be awarded prior to the end of the Contract Period as only irregular or unacceptable tenders were received in response to the said procurement; or
 - iii. no contract (s) can be awarded prior to the end of the Contract Period as no suitable tenders were received in response to the said procurement; or
 - iv. no contract (s) can be awarded prior to the end of the Contract Period as the said procurement is the subject of a legal challenge preventing the award of the contract(s),

the Client reserves the right to extend the Contract for a further period or periods, together totalling no more than 18 months, to facilitate a further procurement competition, or to make alternative arrangements for the provision of the Supplies/Service. Any such extension pursuant to this clause shall be subject to the same terms and conditions of Contract and the same price arrangements as applied immediately prior to the end of the Contract Period. The value of any extension(s) will be based on historic and/or projected usage over the period of the extension.

3.0 [Extension of the Contract Period²

3.1 If it is agreed by both Parties that the Contract is to be extended under clause 2.2 and/or clause 2.3, the provisions of the Contract will apply for the duration of any such extended period].

4.0 Contract Price

- 4.1 In consideration of the performance of the Contractor's obligations under the Contract, the Client shall pay the Contract Price in accordance with this clause, clause 5.0 and Pricing Schedule SS19a during the Contract Period.
- 4.2 For the avoidance of doubt, the Contract Price shall include the cost of packaging, insurance, delivery, unloading, stacking and carriage of the Goods. No extra charges will be effective unless agreed in writing by both Parties and signed by the Client.
- 4.3 All amounts stated must be in Sterling (GBP) and are exclusive of VAT and/or any other applicable taxes or levy, which will be charged in addition at the rate in force at the date as shown on the invoice.
- 4.4 Fixed Price Periods, Price Amendments and Cost Efficiencies
- i. Where a fixed price period is utilised, the Contract Price will be fixed for a minimum of [XX months Buyer to insert] from the Commencement Date, [if not applicable Buyer to insert – NOT USED against this sub-clause]

[² Drafting note: this clause 3 should be removed if there are no extensions of Contract.]

- ii. Any application(s) for a price decrease amendment during the Contract Period must be submitted to the Authority. Application forms are available from the Authority and must be forwarded at least [x] weeks prior to the requested effective date.
- iii. Any application(s) for a price increase amendment during the Contract Period may only be considered after the fixed price period, if applicable, providing such application is submitted to the Authority. Application forms are available from the Authority and must be forwarded at least [x] weeks prior to the requested effective date. Applications must have accompanying documentary evidence in support of the request. Any request for a price increase amendment received by the Authority which is not fully completed and without supporting documentary evidence will be returned to the Contractor without consideration by the Authority/Client
- iv. Requests for a price increase amendment can only be submitted utilising the most recent [Buyer should enter the Index to be utilised e.g. CPI] at the time of request. However the Authority reserves the right to accept a higher increase, should the documentary evidence supplied by the Contractor demonstrate that the increase requested is justifiable. The Authority's decision in regards to this will be final. A maximum of [X Buyer to insert] request[s] for a price increase may be submitted for consideration during any rolling [XX Buyer to insert] month period following the fixed price period.
- v. Provided any such requests falls within the terms and conditions set out in this clause, it will be considered by the Authority, but will only be binding once it has been unconditionally accepted in writing by a duly authorised signatory on behalf of the Authority.
- vi. If a price amendment outcome changes the Contract, so as it is no longer value for money, the Authority reserves the right to benchmark with the other Tenderers, and may terminate or not proceed with the extension of the Contract if better value for money can be achieved.
- vii. The Contract Price will not be varied unless any variation has been confirmed in writing by the Authority.
- viii. The Contractor will be required to endeavour to create efficiencies wherever possible over the Contract Period to potentially reduce supplies costs. Any efficiency should be discussed and agreed with the Client prior to implementing.

5.0 Payment

- 5.1 The Client will pay the Contractor the Contract Price for the Services no later than 30 days after the receipt of a valid invoice in accordance with Pricing Schedule SS19a.
- 5.2 The Client reserves the right to withhold or delay payment in relation to any invoice which is not submitted in accordance with the Specification and Pricing Schedule SS19a. The Client shall as soon as is reasonably practicable notify the Contractor accordingly of such a withholding or delay of payment in writing.
- 5.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice. The characteristics of a valid invoice are detailed in Schedule 2.

- 5.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 5.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this clause 5.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 5.6 The Contractor shall make any payments due to the Client (whether overpayments made by the Contractor or otherwise) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

6.0 Recovery of Sums Due

- 6.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Contract), that sum may be deducted unilaterally by the Client from any sum then due, or which at any later time may become due, to the Contractor under this Contract.
- 6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 6.3 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.0 The Goods

- 7.1 In consideration of the amounts due under the Contract, the Contractor will provide the Services to the Client during the Contract Period in accordance with the Contract which shall include the Contractor complying with any obligations set out in the Specification.
- 7.2 The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 15.0.
- 7.3 The Contractor shall notify the Client as soon as is practicable if it develops new or improved products during the Contract Period in connection with the Services. Provided that written consent of both Parties is obtained, the new or improved products may be used in substitution for the Goods under the Contract and in such circumstances, an additional fee (if applicable) shall be agreed between the Parties prior to the substitution of the new or improved products.

- 7.4 If any Goods provided to the Client were procured or obtained by the Contractor from third parties, then any guarantees, warranties, benefits or indemnities which the Contract holds from such third parties in respect of those Goods will be held on trust for the Client.
- 7.5 In the event any subsequent contract is terminated in accordance with the provisions of the terms and conditions, the Client reserves the right to offer the second ranked supplier in this tender, the opportunity to enter into a contract, provided the original terms (including price) offered by that supplier remain unchanged from those originally offered by that supplier during the course of this tender. Should this not be the case and/or the second ranked supplier declines, the Client reserves the right to approach the next ranked supplier in turn on the same basis. This will continue until all ranked suppliers have been exhausted or if the Client determines, at its sole discretion, to retender. This right will exist throughout the initial contract period.
- 7.6 In the event of the goods being recalled, initiated by the manufacturer of the goods, the Secretary of State for Health or Medicines and Healthcare products Regulatory Organisation (or any such similar regulatory body), the Contractor shall, without delay and at its own expense, arrange for the collection of such goods and credit the Client for any goods delivered but unused by the Client including part used packs.
- 7.7 The Contractor shall perform its obligations under the Contract:
- i. with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - ii. in accordance with Good Industry Practice; and
 - iii. in compliance with all applicable Laws.
- 7.8 In the event of a stock-out or shortage the Contractor is required to give advance warning to the Authority and to the Client placing the order, stating the nature and expected duration of problem. In the event of such a shortage arising the Contractor will be responsible for sourcing alternative goods.
- 7.8.1 The Authority and relevant Client must be notified of the sourcing of the alternative goods and approve it prior to delivery. Any additional costs must be borne by the Contractor and will include administration charges as detailed in Clause 8 Delivery.
- 7.8.2 In an event where the Contractor fails to source suitable and/or acceptable goods, the Authority and Client are entitled to source and purchase goods of the same or similar description from an alternative supplier to make good such default. Any costs incurred by the Client will be recovered from the Contractor based on the amount by which the cost of purchasing alternative goods exceeds the amount that would have been payable to the Contractor in respect of the goods replaced by such purchase.
- 7.8.3 The use of a third party distributor will not be accepted as a reason for failure to comply with any of the requirements set out in the Contract documents.

8.0 Delivery

- 8.1 The Goods shall be delivered to the Premises in accordance with the Specification.

- 8.2 Where any access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and any sub-contractors will at all times comply with the reasonable requirements of the Client's security arrangements.
- 8.3 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises and the Client has signed for delivery. Where the Goods are collected by the Client, the point of delivery shall be when the Goods are loaded on the Client's vehicle ("Delivery").
- 8.4 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.
- 8.5 The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Client any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.
- 8.6 The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 8.7 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of this Contract without further liability to the Client.
- 8.8 The Client envisages that it may require additional services and/or goods to be provided by the Contractor during the Contract Period. While the precise scope and extent of such additional services cannot be agreed at this time, the intention is for any such additional services to be included within the scope of this Contract in accordance with the Variation Procedure set out in Clause 11 of the Public Sector Standard Conditions of Contract, the precise scope and extent of such additional services being agreed between the Parties. Without limiting the generality of the above, as at the Commencement Date, the Client envisages that it may require those additional services identified within the Scoping and Specification SS20a. For the avoidance of doubt, the terms of the Contract shall apply to any such additional services.

9.0 Inspection of Delivery Location(s)

- 9.1 The Contractor is deemed to have inspected the [applicable delivery location(s) (excluding patients'/Clients' private residences) – Buyer to amend as appropriate] before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

10.0 Late Delivery of Goods

- 10.1 Time of delivery shall be of the essence and if the Contractor fails to complete Delivery within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Client.
- 10.2 Repeated failure by the Contractor to complete Delivery in any part within the time agreed shall entitle the Client to terminate this Contract and/or purchase other goods of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other goods (including any associated administration costs) exceeds the amount that would have been payable to the Contractor in respect of the Goods replaced by such purchase.

11.0 Quality and Guarantee of the Goods to be supplied

- 11.1 The Contractor will supply the Goods to the Client in accordance with the Specification.
- 11.2 The Contractor warrants that the Goods supplied under this Contract will:
- 11.2.1 where applicable be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after the date of delivery;
- 11.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- 11.2.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor;
- 11.2.4 be free from design defects; and
- 11.2.5 be fit for any purpose held out by the Contractor or made known to the Contractor by the Client expressly or by implication, and in this respect the Client relies on the Contractor's skill and judgement. The Contractor acknowledges and agrees that the Approval by the Client of any designs provided by the Contractor will not relieve the Contractor of any of its obligations under this sub-clause.
- 11.3 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.
- 11.4 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 12 months thereafter or as otherwise specified in the Specification, against faulty materials or workmanship. If the Client shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.

12.0 Guarantee of Title

12.1 The Contractor warrants that:

- i. it has full clear and unencumbered title to all the Goods;
- ii. it has full capacity and authority to enter into this Contract; and
- iii. at the date of delivery of any of the Goods it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Client. From that date the Client will acquire a valid and unencumbered title to the Goods.

13.0 Packaging

13.1 The Goods shall be packed and marked in a proper manner and in accordance with the Specification and any further instructions of the Client and any statutory requirements and any requirements of the carriers tasked by the Contractor with delivering the Goods.

13.2 All packaging materials shall be consistent with the Client's environmental policy and considered non-returnable.

14.0 Cancellation of Orders

14.1 The Client will have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been delivered to the Client. The cancellation will be notified in writing to the Contractor (the "Cancellation Notice"). Without prejudice to the generality of the foregoing, the Client will pay the Contract Price (or where applicable, that part of the Contract Price) for Goods which have been delivered to the Client or at the date of the Cancellation Notice are in transit and the costs of materials which the Contractor has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the Contractor of those materials for a refund.

15.0 Rejection of Goods

15.1 The Client may by written notice to the Contractor reject any of the Goods which fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:

- i. have such Goods promptly, and in any event within five Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- ii. treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

15.2 Any Goods rejected or returned by the Client as described in clause 15.1 shall be returned to the Contractor at the Contractor's risk and expense.

15.3 The Client's right of rejection shall continue irrespective of whether the Client has in Law accepted the Goods. Taking delivery, inspection, use or payment by the Client of the Goods or part of them shall not constitute acceptance, waiver or Approval and shall be without prejudice to any right of remedy that the Client may have against the Contractor, provided that the right of rejection shall cease within a reasonable time from the date on which the Client discovers or might reasonably be expected to discover the latent defect or other relevant breach of Contract.

16.0 Property

16.1 Property and risk of the Goods will, without prejudice to any of the rights or remedies of the Client, pass to the Client on completion of delivery unless otherwise agreed. Delivery of the Goods will be completed once the Goods have been unloaded from the transporting vehicle at the Premises and the Client has signed for the delivery.

17.0 Indemnity

17.1 Neither Party excludes or limits liability to the other Party for:

- i. Death or personal injury caused by its negligence; or
- ii. Fraud; or
- iii. Fraudulent misrepresentation; or
- iv. Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

17.2 Subject to clause 17.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance, non-performance or delay in performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

17.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

17.4 Subject always to clause 17.1, the liability of either Party for Defaults shall be subject to a financial limit of ten million pounds (£10,000,000GBP)

[If total contract value exceeds £25m then consider specialist insurance advice]

17.5 Subject always to clause 17.1, in no event shall either Party be liable to the other for any:

- i. loss of profits, business, revenue or goodwill; and/or

- ii. indirect or consequential loss or damage.
- 17.6 The provisions of clause 17.5 will not limit the Client's right to recover for;
- i. additional operational, administrative costs and/or expenses resulting from the direct Default of the Contractor;
 - ii. wasted expenditure or charges rendered unnecessary and incurred by the Client arising from a Default by the Contractor;
 - iii. additional cost of procuring replacement services for the remainder of the term of the Contract;
 - v. additional costs to maintain the Services arising from a Default by the Contractor;
 - vi. anticipated savings; and
 - vii. any costs and losses arising from delay in performance.
- 17.7 The Contractor shall effect and maintain with a reputable company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 17.8 The Contractor shall ensure against its liability under 17.4. The aggregate liability of either Party for all Defaults resulting in direct loss of or damage/injury to the property, staff or patients of the other under or in connection with this Contract shall be a minimum of:
- i. Ten million pounds (£10,000,000GBP) for Employer's Liability Insurance and
 - ii. Ten million pounds (£10,000,000GBP) for Public Liability Insurance and
 - iii. Ten million pounds (£10,000,000GBP) for Products Liability Insurance
- [Buyer to enter limit required for each form of insurance equivalent to limit used in 17.4]**
- in respect of any one claim, or series of claims arising out of any one event, the number of claims for which cover is provided being unlimited in the period of the Contract
- 17.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 17.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of any insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 17.4.

18.0 Intellectual Property Indemnity

18.1 The Contractor will indemnify, and keep indemnified, the Client in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Contractor or Staff.

19.0 Break

19.1 The Client shall have the right to terminate the Contract in all or part at any time by giving [one/three - Buyer to amend as required] months' written notice to the Contractor.

19.2 In addition to clause 40.7 of the Public Sector Standard Conditions of Contract, termination of this Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 5.0 (Payment), 6.0 (Recovery of Sums Due), 17.0 (Indemnity), 18.0 (Intellectual Property Indemnity).

19.3 For the purposes of this contract, the Public Sector Standard Conditions of Contract for Supplies, Services and ICT Contracts Clause no 40.6 shall not apply.

20.0 Changes in Distribution Arrangements

20.1 Further to clause 8.0 (Delivery), Contractors must give at least 4 weeks' notice of changes in distribution arrangements to the Client for consideration prior to acceptance by the Client.

21.0 Monitoring of Contract Performance

21.1 The Contractor shall comply with the monitoring arrangements set out in Schedule 3 (Contract Management/Monitoring) to these Commercial Conditions of Contract including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.

22.0 Social Considerations

22.1 The Contractor shall comply with the obligations set out in Schedule 4 (Social Considerations) to these Commercial Conditions of Contract in connection with social considerations.

23.0 Security

23.1 The Contractor shall comply with the obligations set out in Schedule 5 (Security Schedule) to these Commercial Conditions of Contract in connection with any security requirements.

24.0 [Safety, Quality and Efficacy of Medicinal Products]

24.1 The sale, supply, importation, manufacture or assembly of such of the Goods as are medicinal products within the meaning of the Medicines Act 1968 shall comply with the provisions of the Medicines Acts 1968 and 1971 and the regulations made thereunder.]

25.0 **[Waste Electrical and Electronic Equipment Regulations (“WEEE Regulations”)]**

25.1 All electrical and electronic equipment must be supplied in accordance with and conform to the requirements of the WEEE Regulations.

25.2 Prices submitted must include the cost of disposal on a “like for like” basis of any waste electrical and electronic equipment identified by the Authority as part of this Contract. Furthermore the Contractor must comply with the requirements of the regulations in including appropriate date to market marking and within their prices the cost of disposal of the equipment supplied as part of this Contract.

25.3 The Contract must discharge any current and future obligations in full under the WEEE Regulations with regard to registration, safe disposal and provision of information to appropriate bodies.

25.4 Further information can be obtained from the website: <http://www.bis.gov.uk>. The Producer compliance scheme and non-household user obligations for all non-household waste started on 1 July 2007.]

26.0 **[Intellectual Property Rights]**

26.1 All IPRs arising in or relating to the Services provided under this Contract, including but not limited to, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (“**the IP Materials**”):

- i. furnished to or made available to the Contractor by or on behalf of the Client shall remain vested in the Client and its licensors; and
- ii. generated by the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall vest and remain vested in the Client and the Contractor hereby assigns the Intellectual Property Rights referred to in this clause 26.1 (ii) to the Client.

26.2 The Contractor hereby assigns all IPRs, as legal and beneficial owner, which may subsist in the IP Materials prepared in accordance with clause 26.1(ii). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPRs produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

26.3 The Contractor shall ensure that the third party owner of any IPRs that are or which may be used to perform this Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the IPRs in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.]

27.0 **Data Protection**

- 27.1 The Parties acknowledge that for the purposes of UK Data Protection Legislation, the Client is the Controller and the Contractor is the Processor unless otherwise specified in the Data Protection Schedule. The only processing that the Contractor is authorised to do is listed in the Data Protection Schedule by the Client and may not be determined by the Contractor.
- 27.2 The Contractor shall notify the Client immediately if it considers that any of the Client's instructions infringe UK Data Protection Legislation.
- 27.3 The Contractor shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 27.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with the Data Protection Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
 - (c) ensure that:
 - i. the Staff do not process Personal Data except in accordance with this Contract (and in particular the Data Protection Schedule);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK or EEA unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- i. the Client or the Contractor has provided appropriate safeguards in relation to the transfer in accordance with UK Data Protection Legislation as determined by the Client;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor complies with its obligations under UK Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) At the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

27.5 Subject to clause 27.6, the Contractor shall notify the Client immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under UK Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

27.6 The Contractor's obligation to notify under clause 27.5 shall include the provision of further information to the Client in phases, as details become available.

27.7 Taking into account the nature of the processing, the Contractor shall provide the Client with full assistance in relation to either Party's obligations under UK Data Protection Legislation and any complaint, communication or request made under clause 27.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:

- (a) the Client with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in UK Data Protection Legislation;

- (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Client following any Data Loss Event;
 - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 27.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 Staff, unless:
- (a) the Client determines that the processing is not occasional;
 - (b) the Client determines the processing includes special categories of data as referred to in UK Data Protection Legislation or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 27.9 The Contractor shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 27.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 27.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Client in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Client;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 27.0 such that they apply to the Sub-processor; and
 - (d) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 27.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 27.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 27.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 27.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Joint Controller Agreement Schedule in replacement of Clauses 27.1 - 27.14 for the Personal Data under Joint Control.

[NOTE TO BUYER: Any clauses in square brackets [] AND highlighted in yellow are optional clauses. Where optional clauses are not used, please delete the clause and put the words "NOT USED" beside the number in both the contents page and at the actual clause.]

SCHEDULE 1 - SPECIFICATION SCHEDULE

Refer to Scoping and Specification SS20a

[POTENTIAL ADDITIONAL SERVICES]

Refer to Scoping and Specification SS20a

SCHEDULE 2 - PRICING SCHEDULE

Refer to Pricing Schedule SS19a

SCHEDULE 3 - CONTRACT MANAGEMENT/MONITORING SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 4 - SOCIAL CONSIDERATIONS SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 5 - SECURITY SCHEDULE

Refer to Scoping and Specification SS20a

SCHEDULE 6 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Refer to Scoping and Specification SS20a

SCHEDULE 7 - JOINT CONTROLLER AGREEMENT

Refer to Scoping and Specification SS20a