

NHS TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES (CONTRACT VERSION)

The Authority	Guy's and St Thomas' NHS Foundation Trust, St Thomas' Hospital, Westminster Bridge Rd, London SE1 7EH, United Kingdom
The Supplier	Oxford Nanopore Technologies plc <u>Gosling Building,</u> <u>Edmund Halley Road, Oxford Science Park</u> <u>Oxford OX4 4DQ</u> <u>United Kingdom</u> <u>Company number: 05386273</u>

Date	<i>21st NOVEMBER 2025</i>
Type of Goods and Services	Provision of Sequencing Devices, Flow Cells, Consumables, Software Licence and Warranty

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

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

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

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification – Social Value
Schedule 6	Product and Pricing Table

Schedule 7	Staff Transfer
Error! Reference source not found.	Service Specification - Installation and Commissioning Services
Schedule 8	Dispute Resolution
Schedule 9	Supplier Terms and Conditions
Schedule 11	Change Control

Signed by the authorised representative of THE 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 8 of this Schedule 1 shall apply to this Contract.
- 1.2 The optional Key Provisions at Clauses 9 to 33 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.

2 Term

- 2.1 This Contract shall commence on the Commencement Date and the Term of this Contract shall expire **on 10th November 2028** unless otherwise extended by agreement in writing by both Parties. Terms of the Contract, including pricing, can be reviewed at renewal.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract are:

- 3.1.1 for the Authority:

- [REDACTED]
 - [REDACTED]

- 3.1.2 for the Supplier:

- [REDACTED]
 - [REDACTED]

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

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

- 4.1.1 for the Authority:

- Guys and St Thomas' NHS Foundation Trust**
200 Great Dover Street
London
SE1 4YB

- 4.1.2 for the Supplier:

Oxford Nanopore Technologies plc.
Gosling Building,
Edmund Halley Road, Oxford Science Park
Oxford OX4 4DQ
United Kingdom

legal@nanoporetech.com

5 Management levels for escalation and dispute resolution

5.1 The management levels at which a Dispute may be dealt with as referred to as part of the Dispute Resolution Procedure are as follows:

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

6 Order of precedence

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

- 6.1.1 the provisions on the front page of this NHS Contract for the Supply of Goods and the Provision of Services (Contract Version);
- 6.1.2 Schedule 1: Key Provisions;
- 6.1.3 Schedule 5: Specifications and KPI's
- 6.1.4 Schedule 2: General Terms and Conditions;
- 6.1.5 Schedule 6: Product and Pricing Table;
- 6.1.6 Schedule 3: Information Governance Provisions;
- 6.1.7 Schedule 7: Staff Transfer;
- 6.1.8 Schedule 10: Supplier Product Terms and Conditions
- 6.1.9 Schedule 4: Definitions and Interpretations;
- 6.1.10 the order in which all subsequent schedules, if any, appear; and
- 6.1.11 any other documentation forming part of the Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

- 6.2 For the avoidance of doubt, the Specification shall include, without limitation, the Authority's requirements in the form of its specification and other statements and requirements, the Supplier's responses, proposals and/or method statements to meet those requirements, and any clarifications to the Supplier's responses, proposals and/or method statements as included as part of Schedule 5 and 8. Should there be a conflict between these parts of the Specification and Tender Response Document, the order of priority for construction purposes shall be (1) the Authority's requirements; (2) any clarification to the Supplier's responses, proposals and/or method statements, and (3) the Supplier's responses, proposals and/or method statements.

7 Application of TUPE at the commencement of the provision of Services

- 7.1 The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier and the provisions of Schedule 7 shall apply.

8 Net Zero and Social Value Commitments

Supplier carbon reduction plans and reporting

- 8.1 The Supplier shall put in place, maintain and implement a board approved, publicly available, carbon reduction plan or net zero commitment in accordance with the requirements and timescales set out in the NHS Net Zero Supplier Roadmap as may be updated from time to time.
- 8.2 Subject to Clause 8.3 of this Schedule 1, the Supplier may benchmark and report its progress against the requirements detailed in the NHS Net Zero Supplier Roadmap through the Evergreen Sustainable Supplier Assessment.
- 8.3 The Supplier shall be required, upon receipt of written notice from the Authority or where the Authority publishes such a requirement, to benchmark and report its progress against the requirements detailed in the NHS Net Zero Supplier Roadmap through the Evergreen Sustainable Supplier Assessment.
- 8.4 Within seven (7) days of the Commencement Date, the Supplier shall appoint (and notify to the Authority) a relevant person (being the Supplier's CEO, relevant Supplier board member or senior director) ("**Supplier Net Zero Contract Champion**") who shall be responsible for overseeing the Supplier's compliance with Clauses 8.1, 8.2 and 8.3 of this Schedule 1. Without prejudice to the Authority's other rights and remedies under this Contract, if the Supplier fails to comply with Clauses 8.1, 8.2 and 8.3 of this Schedule 1, the Authority may escalate such failure to the Supplier Net Zero Contract Champion who shall within fourteen (14) days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary or any reasonable additional or alternative steps as may be notified to the Supplier by the Authority) to ensure that such failure is remedied by the earliest date reasonably

possible.

Social value in the delivery of the contract

- 8.5 The Supplier shall deliver its social value contract commitments in accordance with the requirements and timescales set out in the Specification and Tender Response Document forming part of this Contract ("**Social Value Contract Commitments**").

The Supplier shall report its progress on delivering its Social Value Contract Commitments through progress reports, as set out in the Schedule 5

- 8.6 Within seven (7) days of the Commencement Date, the Supplier shall appoint (and notify to the Authority) a relevant person (being either the Supplier's CEO, relevant Supplier board member or senior director) ("**Supplier Social Value Contract Champion**") who shall be responsible for overseeing the Supplier's compliance with Clauses 8.5 and 8.6 of this Schedule 1. Without prejudice to the Authority's other rights and remedies under this Contract, if the Supplier fails to comply with Clauses 8.5 and 8.6 of this Schedule 1, the Authority may escalate such failure to the Supplier Social Value Contract Champion who shall within fourteen (14) days of such escalation confirm in writing to the Authority the steps (with associated timescales) that the Supplier will be taking to remedy such failure. The Supplier shall then remedy such failure by taking such confirmed steps by such timescales (and by taking any other reasonable additional steps that may become necessary or any reasonable additional or alternative steps as may be notified to the Supplier by the Authority) to ensure that such failure is remedied by the earliest date reasonably possible.

Optional Key Provisions

- 9 NOT USED Implementation phase
- 10 NOT USED Supply of Goods Commencement Date/Services Commencement Date
- 11 NOT USED Induction training for Services
- 12 Quality assurance standards (only applicable to the Contract if this box is checked and the standards are listed)
- 12.1 The following quality assurance standards shall apply, as appropriate, to the manufacture, supply and/or installation of the Goods and/or the provision of the Services:

Quality Management System - ISO 9001:2015

Information Security Management System - ISO 27001:2022

- 13 NOT USED Different levels and/or types of insurance
- 14 NOT USED Further Authority obligations
- 15 NOT USED Assignment of Intellectual Property Rights in deliverables, materials and outputs of the Services
- 16 Inclusion of a Change Control Process (only applicable to the Contract if this box is checked and the Schedule inserted)
 - 16.1 Any changes to this Contract, including to the Goods and/or Services, may only be agreed in accordance with the Change Control Process set out in Schedule 12
- 17 NOT USED Authority step-in rights
- 18 NOT USED Grant of lease or licence
- 19 NOT USED Guarantee
- 20 NOT USED Data Protection Protocol
- 21 Purchase Orders (only applicable to the Contract if this box is checked)
 - 21.1 The Authority shall issue a Purchase Order to the Supplier in respect of any Goods and/or Services to be supplied to the Authority under this Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Contract prior to the receipt of a Purchase Order covering the relevant Goods and/or Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods and/or Services covered by a valid Purchase Order.
- 22 NOT USED - Monthly payment profile
- 23 Termination for convenience (only applicable to the Contract if this box is checked and Clause 23.1 of this Schedule 1 is completed)
 - 23.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier at any time on **three (3) months** written notice, any amounts committed to under this contract will be due upon termination or expiration of this Agreement, except where the Authority can demonstrate that the termination is due to the Office of Life Sciences funding being withdrawn.
- 24 NOT USED Pre-Acquisition Questionnaire
- 25 Time of the essence (only applicable to the Contract if this box is checked)
 - 25.1 Time is of the essence as to any delivery dates in respect of the Goods under this Contract and if the Supplier fails to meet any such delivery date this shall be deemed to be a breach incapable of remedy for the purposes of Clause 15.4.1 of Schedule 2.

- 26 NOT USED Specific time periods for inspection NOT USED
- 27 NOT USED Specific time periods for rights and remedies under Clause 3.6 of Schedule 2
- 28 NOT USED Installation and Commissioning Services
- 29 NOT USED Maintenance Services
- 30 NOT USED Expert Determination
- 31 NOT USED COVID-19 related enhanced business continuity provisions
- 32 NOT USED Assessment of Supplier performance against KPIs

Schedule 2
General Terms and Conditions

Contents

1. Supply of Goods and the provision of Services
2. Delivery of the Goods and passing of risk in and ownership of the Goods
3. Inspection, rejection, return and recall of the Goods
4. Operation of the Services
5. Staff and Lifescience Industry Accredited Credentialing Register
6. Business continuity
7. The Authority's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or early termination of this Contract
17. Staff information and the application of TUPE at the end of the Contract
18. Packaging, identification, end of use and coding requirements
19. Modern slavery and environmental, social and labour laws
20. Electronic product and services information
21. Change management
22. Dispute resolution
23. Force majeure

24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and Sub-contracting
29. Prohibited Acts
30. General

NHS Supply of Goods and the provision of Services

- 1.1 The Supplier shall supply the Goods ordered by the Authority and provide the Services under this Contract:
- 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 1.1.2 in accordance with all other provisions of this Contract;
 - 1.1.3 using reasonable skill and care;
 - 1.1.4 in accordance with any quality assurance standards as set out in the Key Provisions and/or the Specification and Tender Response Document;
 - 1.1.5 in accordance with the Law and with Guidance;
 - 1.1.6 in accordance with Good Industry Practice;
 - 1.1.7 in accordance with the Policies; and
 - 1.1.8 in a professional and courteous manner.
- In complying with its obligations under this Contract, the Supplier shall, and shall procure that all Staff shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 1.2 The Supplier shall comply with the Implementation Requirements (if any) in accordance with any timescales as may be set out in the Specification and Tender Response Document. Without limitation to the foregoing provisions of this Clause 1.2 of this Schedule 2, the Supplier shall, if specified in the Key Provisions, carry out all implementation activities fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence:
- 1.3.1 supply of the Goods on the Supply of Goods Commencement Date; and
 - 1.3.2 delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification (to include, without limitation, the KPIs and all obligations in relation to the quality, performance characteristics, supply, delivery, installation, commissioning, maintenance and training in relation to the Goods and their use).
- 1.5 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Contract (to include, without limitation, the provisions of the Authority's requirements set out in the Specification and the Supplier's response to such requirements) and any applicable manufacturers' specifications.
- 1.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:
- 1.6.1 required to supply the Goods are in place prior to the delivery of any Goods to the Authority; and
 - 1.6.2 required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.

- 1.7 If there are any incidents that in any way relate to or involve the use of the Goods by the Authority, or the use of the Services by the Authority, the Supplier shall cooperate fully with the Authority in relation to the Authority's application of the Policies on reporting and responding to all incidents, including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the Authority may have in this context in relation to the Goods or Services.
- 1.8 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 or the Services, the Supplier shall reasonably promptly provide the Authority with a copy of any such reports, notices, alerts or other communications.
- 1.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 1.8 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.

2 Delivery of the Goods and passing of risk and ownership in the Goods

- 2.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification and Tender Response Document, a Consignment Request, or a Purchase Order or as otherwise agreed with the Authority in writing. The carrier will deliver the Goods to the location(s) set out in the Order (the "Delivery Location(s)"). The Authority will place one Purchase Order for all items in the Product and Pricing Table and will call -off Goods as needed on behalf of participating Trusts. Each participating Trust will agree to and sign the **NANOPORE PRODUCT LICENCE TERMS** before Supplier makes the first shipment to such participating Trust. All participating Trusts are within the United Kingdom.
- 2.2 Delivery shall be completed in accordance with the DAP Incoterms 2020, to the Delivery Location(s).
- 2.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Specification or as otherwise agreed with the Authority in writing. Where such information requirements as to the content of delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the Authority's order number, the name and address of the Authority, a description and quantity of the Goods,
- 2.4 Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the Authority has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the Authority in accordance with this Clause 2.4 of this Schedule 2, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates.
- 2.5 Unless otherwise set out in the Specification or agreed with the Authority in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 2.5 of this Schedule 2, unless otherwise stated in the Specification and Tender Response Document or agreed with the Authority in writing, the Supplier shall be responsible for obtaining all export and import licences

for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required.

- 2.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the Authority and accordingly the Supplier shall be liable to the Authority for the acts and omissions of all third party carriers engaged to deliver the Goods to the Authority.
- 2.7 Risk in the Goods shall pass to the Authority when they are delivered as specified in this Contract. Ownership in Devices and Consumables passes to the Authority upon delivery in accordance with the Delivered at Place (DAP) Incoterms 2020. The software embedded within the devices is licensed under and for the term of the Q-Line Support Package.
- 2.8 Flow Cells are leased, not sold, and made available hereunder for use by the Authority in conjunction with the Devices.

3 Inspection, rejection, return and recall of the Goods

- 3.1 Without prejudice to the provisions of Clause 3.6 of this Schedule 2 and subject to Clause 3.7 of this Schedule 2, the Authority or participating Trust shall visually inspect the Goods promptly following delivery (or such other period as may be set out in the Key Provisions, if any) to confirm whether they have arrived without damage, or shortage and may return the Goods or a portion thereof if damaged on delivery and may seek correction of any shortage or mistake in composition of the Goods, by contacting Supplier's Customer Solutions group using contact details as stated on the Order within two (2) business days after the day on which the Goods were delivered to the Delivery Location ("Review Period"). If the Authority does not contact Supplier within the Review Period, the Goods will be deemed as accepted by the Authority, subject to the "Quality Control".
- 3.2 In addition to Section 3.1, the Authority shall, immediately prior to using any Flow Cell and in any event within the Warranty Period for the Flow Cell, run a quality control check ("Quality Control") on the Flow Cell in accordance with the Specifications. Supplier shall provide training to Authority or the other participants in the programme, as required, in relation to the quality control check at no additional cost to Authority. The Authority may make a claim under the Warranty provided for any Flow Cell that does not pass such quality control check provided that (i) the applicable Device is connected to the internet at the time the quality control is performed such that instrument and run report data is available to Supplier; and (ii) the Authority informs Supplier's Customer Solutions group of such failure within two (2) business days of the date of completion of such quality control check. If the Authority does not contact the Supplier within two (2) business day period, the Supplier will deem the Goods accepted by the Authority.
- 3.3 Without prejudice to the provisions of Clause 3.5 of this Schedule 2, upon the rejection of any Goods in accordance with Clauses 3.2 and/or 3.6 of this Schedule 2, the Supplier shall at the Authority's written request:
 - 3.3.1 collect the Rejected Goods at the Supplier's risk and expense within (10) Business Days of issue of written notice from the Authority or participating Trust rejecting the Goods; and

- 3.3.2 without extra charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the Authority or participating Trust subject to the Authority not cancelling its purchase obligations in accordance with Clause 3.5 of this Schedule 2.
- 3.4 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 3.3 of this Schedule 2; or (b) immediately following the expiry of ten (10) Business Days from the Authority or participating Trust issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the Authority or participating Trust issuing written notification rejecting the Goods, the Authority or participating Trust may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 3.5 Without prejudice to any other provisions of this Contract or any other warranties or guarantees applicable to the Goods supplied and subject to Clause 3.7 of this Schedule 2, if at any time following the date of the delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirements of this Contract ("**Defective Goods**"), the Supplier shall, at the Authority's discretion:
- 3.5.1 upon written request and without charge, reasonably promptly after Supplier diagnoses the fault, or such other time agreed by the Parties in writing acting reasonably) remedy by repairing or replacing the Defective Goods. ; or
- 3.5.2 upon written notice of rejection from the Authority, treat such Defective Goods as Rejected Goods in accordance with Clauses 3.2 to 3.5 of this Schedule 2.
- 3.5.3
- 3.6 The Supplier shall be relieved of its liabilities under Clauses 3.2 to 3.5 (inclusive) and/or Clause 3.6 of this Schedule 2 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Contract due, in each case, to any acts or omissions of the Authority.
- 3.7 The Authority's rights and remedies under Clause 3.6 of this Schedule 2 shall cease within a reasonable period of time from the date on which the Authority or participating Trust discovers or might reasonably be expected to discover that the Goods are Defective Goods or within such other period as may be set out in the Key Provisions, if any. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the Authority they met any shelf life requirements set out in the Specification and Tender Response Document.
- 3.8 Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("**Requirement to Recall**") in respect of the Goods, the Supplier shall:
- 3.8.1 promptly (taking into consideration the potential impact of the continued use of the Goods on patients, service users and the Authority as well as compliance by the Supplier with any regulatory requirements) notify the Authority in writing of the recall together with the circumstances giving rise to the recall;

- 3.8.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 3.6 of this Schedule 2;
- 3.8.3 consult with the Authority as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the Authority of the recall; and
- 3.8.4 indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such Requirement to Recall.

4 **Operation of the Services**

- 4.1 The Services shall be provided at such Authority or participating Trust premises and at such locations within those premises, as may be set out in the Specification or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 4.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority or participating Trust shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 4.3 Subject to Clause 4.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 4.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 4.3 of this Schedule 2.
- 4.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 4.2 and Clause 4.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 4.5 Where it is provided for by a specific mechanism set out in the Specification, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 4.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 4.6 Unless otherwise set out in the Specification or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
 - 4.6.1 shall be provided at the Authority's or participating Trust's sole discretion;
 - 4.6.2 must be returned to the Authority or participating Trust within any agreed timescales for such return or otherwise upon the request of the Authority; and

- 4.6.3 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

Staff and Lifescience Industry Accredited Credentialing Regulations

- 5 The Goods and Software are intended for the Specific Use only. The Authority acknowledges and agrees that (a) the Goods and Software have not been approved, cleared or licensed by the United States Food and Drug Administration or MHRA, or other regulatory entity, whether foreign or domestic, for any specific intended use; (b) the Goods and Software are not for use in diagnostic, therapeutic or clinical procedures where validation or registration of the Goods and Software with regulatory authorities is required; (c) the Goods and Software should be used in strict accordance with applicable instructions and Documentation and (d) the Authority must ensure it has any regulatory approvals necessary for its intended use of the Goods and Software. The Authority further agrees to comply with all applicable Laws when using, maintaining, and disposing of the Goods and Software. Staff and Lifescience Industry Accredited Credentialing Register
- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to supply the Goods and/or provide the Services during Staff holidays or absence.
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
 - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
 - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff;
 - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of

- Health and Social Care or any relevant regulatory body or any industry body in relation to such Staff; and
- 5.5.6 comply with the Authority's staff vetting procedures and other staff protocols, as may be relevant to this Contract and which are notified to the Supplier by the Authority in writing.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons and/or have access to or come into contact with persons receiving health care services:
- 5.7.1 are questioned concerning their Convictions; and
- 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2;
- 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
- 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
- 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
- 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry

out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person.

- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. The Supplier shall comply with removal and shall provide a replacement if Supplier can offer a replacement with similar skills, expertise and Training. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
- 5.14 Unless otherwise confirmed by the Authority in writing, the Supplier shall ensure full compliance (to include with any implementation timelines) with any Guidance issued by the Department of Health and Social Care and/or any requirements and/or Policies issued by the Authority (to include as may be set out as part of any procurement documents leading to the award of this Contract) in relation to the adoption of, and compliance with, any scheme or schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register). Once compliance with any notified implementation timelines has been achieved by the Supplier, the Supplier shall, during the Term, maintain the required level of compliance in accordance with any such Guidance, requirements and Policies.

6 **Business continuity**

- 6.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority's business continuity plan where relevant to the supply of the Goods and the provision of the Services. The Supplier shall also ensure that its Business Continuity Plan complies on an ongoing basis with any specific business continuity requirements, as may be set out in the Specification .
- 6.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 6.2.1 the criticality of this Contract to the Authority; and
 - 6.2.2 the size and scope of the Supplier's business operations,

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

- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.4 The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods and provide the Services in accordance with this Contract.

7 The Authority's obligations

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

8 Contract management

- 8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority

and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.

- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification . Should the Specification not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification) the Supplier shall provide a written contract management report to the Authority regarding the supply of the Goods, the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
 - 8.3.2 details of any complaints by the Authority regarding the supply of Goods or provision of Services and any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
 - 8.3.3 the information specified in the Specification a;
 - 8.3.4 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
 - 8.3.5 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification , the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the Dispute Resolution Procedure.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time and/or such information as the Authority may request from time to time as required to enable its compliance with assessment, notification and publication obligations under the Procurement Act 2023 within seven (7) Business Days of the date of the request. The Supplier shall supply the requested information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such information to another Contracting Authority, whose role it is to analyse such information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("Third Party Body"). The Supplier confirms and agrees that the Authority may itself provide the Third Party

Body with management information relating to the Goods and Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

- 8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
- 8.6.1 storing and analysing the management information and producing statistics; and
 - 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 the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
- 8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.
- 8.9 The Supplier acknowledges and agrees that the Authority may use the management information provided and/or any information produced to assess the Supplier's performance against KPIs and publish performance information regarding the Supplier where the Authority is required to do so by the Procurement Act 2023.

9 **Price and payment**

- 9.1 The Contract Price shall be calculated as set out in the Commercial Schedule.
- 9.2 Unless otherwise stated in the Commercial Schedule the Contract Price:
- 9.2.1 shall remain fixed during the Term; and
 - 9.2.2 in respect of the Goods, is the entire price payable by the Authority to the Supplier in respect of the provision of the Goods and includes, without limitation:
 - (i) packaging, packing materials and any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the Authority in any media. Shipping costs are covered by the Authority except the Supplier shall pay shipping costs for the return of Flow Cells, returns of damaged or defective products, additional shipping costs where a shortage of products is delivered, and additional shipping costs for replacement products.;
 - (ii) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Contract, and any licence rights granted to the Authority in accordance with **Clause 11** of this **Schedule 2**; and

- 9.2.3 in respect of the Services:
- (i) shall be payable within 30 days of invoice date.; and
 - (ii) is the entire price payable by the Authority to the Supplier in respect of the Services.
- 9.3 The Authority agrees to pay to Supplier the total Fee for all Goods listed in the Goods and Pricing Table, any applicable bank fees associated with funds transmittal and other charges under the Order in full according to the payment terms set forth in the Order (such payment terms not to require payment with less than 30 days notice), or, if payment terms are not specified therein, within thirty (30) days of receipt of the Invoice. The Supplier shall issue a refund or credit note to the Authority for any Goods ordered but not delivered for any reason, subject to the Authority having already surpassed the minimum committed value of this Agreement. Each invoice shall contain the name of the invoicing party, a description of the goods, services or works supplied, the sum requested and a unique identification number, together with all such additional information as the Authority may inform the Supplier from time to time.
- 9.4 Each invoice must be addressed to such individual as the Authority may inform the Supplier from time to time and issued, transmitted and received by the Authority in a structured electronic format that allows for its automatic and electronic processing in a form that:
- 9.4.1 complies with the standard for electronic invoicing approved and issued by the British Standards Institution as set out in BS EN 16931-1:2017 (Electronic invoicing – Part 1: Semantic data model of the core elements of an electronic invoice); and
 - 9.4.2 uses a syntax which is listed as a syntax that complies with that standard in PD CEN/TS 16931-2:2017 (Electronic invoicing – Part 2: List of syntaxes that comply with EN 16931-1) as approved and issued by the British Standards Institution.
- 9.5 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 9.6 Where the Contract Price is or may become subject to any pricing requirements of any voluntary and/or statutory pricing regulation schemes, the Parties shall comply with such pricing requirements as required by Law from time to time and specifically as required by the statutory pricing regulation scheme (and any future regulation) or to the extent applicable to the Supplier from time to time as an industry member of a voluntary scheme, including any reductions in price by reason of the application of such schemes.
- 9.7 The Authority shall pay any sum due to be paid in respect of a valid and undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 before the end of the period of thirty (30) days beginning with:

- 9.7.1 the day on which an invoice is received by the Authority in respect of the sum; or
- 9.7.2 if later, the day on which the payment falls due in accordance with the invoice.

However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets. On receiving an invoice from the Supplier in respect of any sum payable under this Contract, the Authority shall notify the Supplier without undue delay if it considers the invoice is invalid or it disputes the invoice.

- 9.8 Where the Authority raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, the Authority shall not be in breach of any of any of its payment obligations under this Contract in relation to any queried or disputed invoice sums unless the process referred to in this Clause 9.9 of this Schedule 2 has been followed and it has been determined that the queried or disputed invoice amount is properly due to the Supplier and the Authority has then failed to pay such sum within a reasonable period following such determination.
- 9.9 The Supplier shall pay to the Authority any service credits and/or other sums and/or deductions (to include, without limitation, deductions relating to a reduction in the Contract Price) that may become due in accordance with the provisions of the Specification and Tender Response Document. For the avoidance of doubt, the Authority may invoice the Supplier for such sums or deductions at any time in the event that they have not automatically been credited to the Authority in accordance with the provisions of the Specification and Tender Response Document. Such invoice shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.10 The Authority reserves the right to set-off:
 - 9.10.1 any monies due to the Supplier from the Authority as against any monies due to the Authority from the Supplier under this Contract; and
 - 9.10.2 any monies due to the Authority from the Supplier as against any monies due to the Supplier from the Authority under this Contract.
- 9.11 Where the Authority is entitled to receive any sums (including, without limitation, any costs, charges or expenses) from the Supplier under this Contract, the Authority may invoice the Supplier for such sums. Such invoices shall be paid by the Supplier within 30 days of the date of such invoice.
- 9.12 If a Party fails to pay any undisputed sum properly due to the other Party under this Contract, the Party due such sum shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10 **Warranties**

- 10.1 The Supplier warrants and undertakes that:
 - 10.1.1 the Goods shall be suitable for the purposes as referred to in the Specification and Tender Response Document, be of satisfactory quality, fit

- for their intended purpose and shall comply with the standards and requirements set out in this Contract;
- 10.1.2 it shall ensure that prior to actual delivery to the Authority the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 10.1.3 without prejudice to the generality of the warranty at Clause 10.1.2 of this Schedule 2, it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with any Law, Guidance and/or Good Industry Practice relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 10.1.4 it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Contract;
- 10.1.5 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Contract;
- 10.1.6 it will ensure sufficient stock levels to comply with its obligations under this Contract;
- 10.1.7 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 10.1.8 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the Authority;
- 10.1.9 where there is any instruction information that accompany the Goods, it shall provide a sufficient number of copies to the Authority and provide updated copies should the instruction information change at any time during the Term;
- 10.1.10 all Goods delivered to the Authority shall comply with any shelf life requirements set out in the Supplier's product description on the Supplier's website which can be found here <https://nanoporetech.com/resource-centre/q-line-brochure>
- 10.1.11
- 10.1.12 it shall not make any significant changes to the Goods without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed;
- 10.1.13 any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law, Guidance and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.14 it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;

- 10.1.15 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
- 10.1.16 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 10.1.17 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law, Guidance and Good Industry Practice and shall at all times comply with such quality controls and processes;
- 10.1.18 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and/or Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 10.1.19 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law, Guidance and/or Good Industry Practice, the Supplier shall comply fully with such notification and/or approval requirements;
- 10.1.20 receipt of the Goods and/or Services by or on behalf of the Authority and use of the Goods and/or deliverables or of any other item or information supplied or made available to the Authority will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 10.1.21 it will comply with all Law, Guidance, Good Industry Practice, Policies and the Supplier Code of Conduct in so far as is relevant to the supply of the Goods and/or the provision of the Services;
- 10.1.22 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.23 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.24 without limitation to the generality of Clause 10.1.20 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.25 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Goods and/or the performance of the Services and take such steps as are

- reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.26 any equipment it uses in the provision of the Services shall comply with all relevant Law, Guidance and Good Industry Practice, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Supplier's risk and responsibility at all times;
- 10.1.27 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.28 it shall comply with its Net Zero and Social Value Commitments;
- 10.1.29 it shall provide to the Authority any information that the Authority may request as evidence of the Supplier's compliance with Clause 10.1.27 of this Schedule 2;
- 10.1.30 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the Goods, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Authority from time to time (acting reasonably);
- 10.1.31 all information included within the Supplier's responses to any documents issued by the Authority as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Commercial Schedule) and all accompanying materials is accurate;
- 10.1.32 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.33 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.34 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.35 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;
- 10.1.36 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.37 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.38 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 10.2 Where the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of the Goods under this Contract relates to medical devices and/or medicinal products (both as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and

Guidance and with Good Industry Practice relating to such activities in relation to such medical devices and/or medicinal products. In particular, but without limitation, the Supplier warrants that:

- 10.2.1 at the point such Goods are supplied to the Authority, all such Goods which are medical devices shall have valid CE marking or UKCA marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery, or installation of such Goods shall have been complied with. Without limitation to the foregoing provisions of Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of such valid CE marking or UKCA marking, and evidence of any other authorisations, registrations, approvals or documentation required; at the point such Goods are supplied to the Authority, all such Goods which are medicinal products shall have a valid marketing authorisation as required by Law, Guidance and Good Industry Practice in order to supply the Goods to the Authority and that all relevant authorisation, labelling, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply or delivery of such Goods shall have been complied with. Without limitation to the foregoing provisions of Clause 10.2 of this Schedule 2, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of the grant of any required valid marketing authorisation, and evidence of any other authorisations, labelling, registrations, approvals or documentation required; and
- 10.2.2 it shall maintain, and no later than any due date when it would otherwise expire, obtain a renewal of, any authorisation, registration or approval (including without limitation CE marking, UKCA marking and/or marketing authorisation) required in relation to the Goods in accordance with Law and Guidance until such time as the Goods expire or the Authority notifies the Supplier in writing that it has used or disposed of all units of the Goods supplied under this Contract.
- 10.3 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 10.4 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.5 Without prejudice to the generality of Clause 10.5 of this Schedule 2, the Supplier acknowledges that a failure by the Supplier to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that it shall submit accurate invoices and other information on time to the Authority.
- 10.6 The Supplier warrants and undertakes to the Authority that it shall comply with any eProcurement Guidance as it may apply to the Supplier and shall carry out all

reasonable acts required of the Supplier to enable the Authority to comply with such eProcurement Guidance.

- 10.7 The Supplier warrants and undertakes to the Authority that, as at the Commencement Date, it has notified the Authority in writing of any circumstances giving rise to the application of an Exclusion Ground in respect of the Supplier, any Associated Person, any Connected Person and any supplier to whom the Supplier intends to sub-contract the performance of all or part of the Contract. If, at any point during the Term, circumstances giving rise to an Exclusion Ground occur in respect of the Supplier, any Associated Person, any Connected Person or any supplier to whom the Supplier has sub-contracted the performance of all or part of the Contract, the Supplier shall:
- 10.7.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- 10.7.2 promptly provide to the Authority the following information:
- (i) a short description of the circumstances;
 - (ii) the name, contact postal address and email address of the person who is the subject of the circumstances;
 - (iii) in the case of a conviction or other circumstances where there is a recorded decision of a public authority which is the authoritative basis for the conviction or other circumstances, a link to the web page where the decision can be accessed or a copy of the decision;
 - (iv) any evidence that the person who is the subject of the circumstances:
 - (A) took the circumstances seriously, for example by paying any fine or compensation;
 - (B) took steps to prevent the circumstances occurring again, for example by changing staff or management, or putting procedures or training in place; and
 - (C) committed to taking further preventative steps, where appropriate;
 - (v) if the circumstances giving rise to the Exclusion Ground have ended, the date when they ended; and
 - (vi) such other information that the Authority may reasonably require.
- 10.8 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
- 10.9 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 **Intellectual property**

- 11.1 The Supplier hereby grants, under Oxford Group's Intellectual Property Rights, to Authority, a limited, personal, revocable, non-exclusive, non-transferable, non-sublicensable license to access, use, process Instrument Data to analyse biological samples to generate Biological Data using the Software and any services provided via the EPI2ME cloud-based environment in connection with the use of Goods and Software solely for the Specific Use (the "Data Licence"). The Authority agrees to only use EPI2ME or any third-party software approved by Supplier to make available any Biological Data to its clients whilst the Device is analysing such clients' sample(s). Supplier shall not and shall not permit any third-party commercial entity or any third party commercial software to, disclose or transmit Instrument Data, or attempt to do any of the foregoing. The Authority shall grant and hereby grants, the Supplier and its affiliates a worldwide, irrevocable, non-exclusive and fully paid-up license to all Rights to any Feedback. "Feedback" means all suggestions, comments, feedback regarding, modifications or improvements to, enhancements or derivative works of any Oxford Proprietary Information, including any content the Authority may add to the Supplier's Resources and Support website at <https://nanoporetech.com/community>.
- 11.2 the Authority shall not upload, transmit, store or modify data that contains the information of any Person, including without limitation, data consisting of human genomic information, whether or not Instrument Data, unless the Authority has pseudonymized such data and obtained informed prior written consent of the subject and does not make available to Supplier information that permits such Pseudonymized Data to be re-identified. Except with respect to contact information of the Authority and its relevant personnel, the Authority shall not make available to Supplier personal data, protected health information or personal information as defined by applicable law.
- 11.3 The Supplier, its affiliates or its licensors, as applicable, are the sole and exclusive owners of (or have licenses to) the Intellectual Property Rights in the Oxford Proprietary Information and in all media, printouts, papers, support materials, or hard copies containing or bearing such Intellectual Property Rights and reserves all rights not expressly granted herein. Except where prohibited under applicable law, the Authority agrees not to contest the Supplier's or its affiliates' ownership or rights in any copyright or other applicable Intellectual Property Right in the Goods or Software.
- 11.4 The Authority will retain and acquire rights in (without any assignment from Oxford) the Biological Data resulting from the Authority's use of the Goods and Software.
- 11.5 Each Party agrees not to disclose to third parties and to use its best efforts to keep confidential. Confidential Information belonging or relating to the other Party that it receives from the other Party or any of its affiliates. Each Party agrees not to use the other Party's Confidential Information other than for the purposes contemplated by this Agreement. Customer shall permit only authorized users who possess rightfully obtained License(s) and/or access keys to use the Software.
- 11.6 Development of Components and Applications by the Authority: The Flow Cells will be delivered with pre-loaded nanopores, membranes (that hold the nanopores) and electrochemistry on top of a modified chip surface. None of these components either individually or collectively are allowed to be modified, derivatised, replaced or removed. The Sequencing Kits will include other components: enzymes and adaptors that enable sample preparation methods, molecular 'tethers' that enable improved analyte to nanopore binding through interactions with the membranes, enzymes that allow for controlled transport of analytes through nanopores, buffered solutions for improved ionic conductance, solutions for washing the Flow Cells between samples

and other components as provided by Oxford from time to time. Devices require use of Software that enables control of the Device and/or data. The Authority may not analyse, modify, or reverse engineer these components, but may develop and use alternative versions (“Nanopore Chemistries”). In addition, the Authority is encouraged to develop and use: (a) new application protocols, (b) sample preparation methods, (c) data analysis tools, such as, software written to APIs (application programming interfaces) published by the Supplier (but not the Software itself) and/or (d) new uses of the Goods or Software (“Nanopore Extensions”). The Authority’s right to create, distribute and use Nanopore Extensions and Nanopore Chemistries is conditioned on Customer’s compliance with the Nanopore Extension Requirements. “Nanopore Extension Requirements” means: (a) all titles and trademarks, copyright, patent marking and restricted rights notices are reproduced on any materials embodying Nanopore Extensions or Nanopore Chemistries; (b) any materials embodying or describing Nanopore Extensions or Nanopore Chemistries must carry prominent notices stating that Customer created or modified it, and giving a relevant date of creation or modification; (c) use of the Nanopore Extension and/or Nanopore Chemistry by third parties or by Customer in the provision of third party services is limited to non-commercial gain and may not be conditioned on payment of a license fee (or other consideration) for use of same, unless otherwise agreed between the Parties in writing in a separate intellectual property agreement; (d) the Nanopore Extension or Nanopore Chemistry may not be disclosed to or used by any Competitors and Customer may not authorise any of the Supplier’s Competitors to use the Nanopore Extension or Nanopore Chemistry; (e) any Nanopore Extension or Nanopore Chemistry is made available under terms and conditions that provide that the Nanopore Extension and/or Nanopore Chemistry is provided “AS IS” and subject to the Nanopore Extension Requirements; and (f) use of any Nanopore Extension or Nanopore Chemistry is limited to the Specific Use and only in conjunction with Goods and Software, unless otherwise agreed between the Parties in writing in a separate intellectual property agreement. Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

- 11.7 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document or elsewhere in this Contract, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence (with the right to sub-license to any supplier or other third party contracted by, engaged by and/or collaborating with the Authority) to use, modify, adapt or enhance such items in the course of the Authority’s normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document and/or elsewhere in this Contract, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

12 **Indemnity**

- 12.1 Supplier shall defend, indemnify and hold harmless Authority against damages finally awarded in any legal action brought by a third party against the Authority alleging that the Goods or the Software, when used for the Specific Use, in accordance with this Agreement, the Documentation and the Specifications, infringe the Intellectual Property Rights of a third party which are valid and enforceable under the laws of the

U.S., U.K. or any Member State of the European Union. The Supplier has no obligation to defend, indemnify or hold harmless the Authority for any such infringement claim to the extent such infringement arises from: (a) the use of the Goods or the Software in breach of this Agreement, including other than the Specific Use, Supplier Specifications or Documentation (b) the use of the Goods or the Software in combination with any products, primers, materials, work flows, reagents, consumables, software, or services not explicitly approved by Supplier, (c) Authority's modification of the Goods or the Software or (d) Authority's failure to use of a non-infringing work around made available by Supplier for no additional cost. As a condition to this indemnity, the Authority must (i) notify Supplier in writing as soon as the Authority becomes aware of any claim, (ii) not admit any liability or take any other action in connection with the claim that could affect a defence, (iii) allow Supplier, at its sole option, to solely control the defence or settlement of the claim and (iv) give the Supplier reasonable information, cooperation, and assistance. This indemnity is the Supplier's only liability to the Authority, and Supplier's only remedy, for any infringement of Intellectual Property Rights by or in connection with any of the Goods or Software.

- 12.2 Avoidance of Infringement. If the Supplier believes that the Goods, Software or any part thereof have become or may become the subject of an infringement claim, the Supplier shall have the right, in its sole discretion, to (a) procure for the Authority the right to continue using the Goods or the Software, (b) modify or replace the Goods or the Software with a substantially equivalent non-infringing substitute or (c) require the return of the Goods and terminate the rights, license and any other permissions provided to Customer with respect to the Goods or the Software and refund the Authority the depreciated value of the returned Goods or the Software at the time of such return; provided, however, that no refund will be given for used-up or expired Consumables.
- 12.3 Authority's Responsibility. The Authority agrees to assume full responsibility for its compliance with this Agreement and all liabilities, costs, expenses, damages and actual losses suffered or incurred by the Authority, its Affiliates, and their employees, officers and directors ("Customer Group") in connection with: (a) any breach by the Customer Group of this Agreement; (b) any failure by the Customer Group to use any materials or services made available hereunder in accordance with the Supplier's written instructions; (c) Customer Group's use of any materials made available hereunder except to the extent a loss arises from Supplier's breach of this Agreement; or (d) any introduction by the Customer Group of hazardous substances into or onto any materials made available hereunder.

13 **Limitation of liability**

- 13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:
- 13.1.1 for death or personal injury resulting from its negligence;
 - 13.1.2 for fraud or fraudulent misrepresentation; or
 - 13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law. Nothing in this Contract shall exclude or limit the

a Party's liability to the other for breach of confidentiality or Intellectual Property Infringement.

- 13.2 Subject to Clauses, 13.1 of this Schedule 2, the total liability of each Party to the other Party for any damage arising under or in connection with this Agreement shall be limited to the amount of Fees paid by the Authority to the Supplier under the applicable Order over the 12 months immediately preceding the event giving rise to liability. However, these provisions do not limit the Supplier's liability for obligations under Clause 12 and breach of confidentiality (subject to a total limit of not more than



14 **Insurance**

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

the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of three (3) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 **Term and termination**

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

- 15.2 The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions. The Supplier shall have the right to review and adjust the pricing of the products at the end of the Term for any extended Term.

- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and, subject to Clause 9.7 of this Schedule 2, any breach of any payment obligations under this Contract), the non-breaching Party may, without prejudice to its other rights and remedies under this Contract, issue a Breach Notice and shall allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4.2 of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of twenty (20) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
- 15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.2 of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

Upon termination of this Agreement, the rights and licenses granted to the Authority under this Agreement, including any right to use Devices, shall immediately terminate. All fees for previously agreed Orders shall be due and payable. Termination, expiration or nonrenewal of Support Plan terminates the License and right of use of the applicable Goods. If requested by Supplier upon the expiration or termination of the License, or this Agreement pursuant to Section 6.2, the Authority shall immediately cease using and return the Goods, uninstall, if applicable, the Software, and return, or, at Supplier's request, destroy, all tangible embodiments of the Goods or Software and any other of Supplier's Confidential Information in Authority's possession or control, together with all related materials, copies or derivative versions thereof in any form. The expiration or termination of this Agreement shall have no impact on either Party's rights under this Agreement. Purchase Orders are not cancellable unless the Authority can demonstrate government funding related to the purchase of the Goods and Services has been withdrawn.

- 15.4 Either Party may terminate this Contract by issuing a Termination Notice to the other Party if such other Party commits a material breach of any of the terms of this Contract which is:
- 15.4.1 not capable of remedy; or
 - 15.4.2 in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal.
 - 15.4.3 pursuant to and in accordance with any termination rights set out in the Data Protection Protocol, as applicable to this Contract.
- 15.5 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 15.5.1 the Authority considers that the Contract has been awarded or modified in material breach (as defined in section 78(12) of the Procurement Act 2023) of the Procurement Act 2023 or regulations made under the Procurement Act 2023;
 - 15.5.2 since the Commencement Date, the Supplier, any Connected Person and/or any Associated Person has become an excluded supplier or excludable supplier, as defined in section 57 of the Procurement Act 2023, including but not limited to where:
 - (i) a discretionary exclusion ground set out in Schedule 7 of the Procurement Act 2023 applies to the Supplier, Connected Person and/or Associated Person that did not apply before the Commencement Date or applied before the Commencement Date by reference to different circumstances; and
 - (ii) the Authority discovers that the Supplier, Connected Person and/or Associated Person was an excludable supplier prior to the Commencement Date;
 - 15.5.3 any supplier, other than an Associated Person, to which the Supplier is sub-contracting all or part of the performance of the Contract is an excluded or excludable supplier, as defined in section 57 of the Procurement Act 2023, and the conditions set out in section 78(3) of the Procurement Act 2023 are met; or

- 15.5.4 there has been a failure by the Supplier and/or one of its Sub-contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social or labour Law is a failure by one of the Supplier's Sub-contractors, the Authority may request the replacement of such Sub-contractor and the Supplier shall comply with such request as an alternative to the Authority terminating this Contract under this Clause 15.5.3 of Schedule 2.
- 15.6 Before terminating the Contract in accordance with Clauses 15.5.1 to 15.5.3, the Authority will:
- 15.6.1 provide the Supplier with notice of its intention to terminate, such notice to set out which termination ground applies and why the Authority has decided to terminate the Contract; and
- 15.6.2 give the Supplier a reasonable opportunity to make representations regarding whether a termination ground applies and the Authority's decision to terminate the Contract.
- 15.7 Before terminating the Contract in accordance with Clauses 15.7.2 and 15.7.3 on the basis that a supplier to whom the Supplier is sub-contracting is an excluded or excludable supplier, the Authority will provide the Supplier with reasonable opportunity to cease sub-contracting to the excluded or excludable supplier and, if necessary, find an alternative supplier to which to sub-contract.

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

- 16.1 Subject to the provision set out in Clause 16.6 of this Schedule 2, upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for:
- 16.1.1 the Goods which have been supplied by the Supplier and not rejected by the Authority in accordance with this Contract prior to the expiry or earlier termination of this Contract; and
- 16.1.2 the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.1.3 Only in the event the Contract has expired or been terminated due to a breach by the Authority, the minimum value of The Goods listed in the Pricing Table
- 16.2 Immediately following expiry or earlier termination of this Contract and/or in accordance with any timescales as set out in the agreed exit plan:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan;
- 16.2.2 all data, excluding Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to this Contract; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date; and

- 16.2.3 any Personal Data Processed by the Supplier on behalf of the Authority shall be returned to the Authority or destroyed in accordance with the relevant provisions of the Data Protection Protocol.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred or destroyed pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 24.1 of this Schedule 2.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
- 16.6 If the Authority terminates the Contract in accordance with Clause 15.4.1 of this Schedule 2, the Authority shall be entitled to a refund of any sums paid under this Contract provided the Authority informs the Supplier in writing of its intention to claim such refund no later than thirty (30) days of the effective date of such termination. Should the Authority seek a refund in respect of Goods already delivered, the Authority shall return such Goods to the Supplier at the Supplier's written request and at the Supplier's cost and expense.
- 16.7 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.8 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 **Staff information and the application of TUPE at the end of the Contract**

- 17.1 The Parties do not expect TUPE to apply at the termination or expiry of the Contract. In the event TUPE is applicable, the Parties agree to comply with all applicable law, guidance and regulations. Packaging, identification, end of use and coding requirements
- 17.2 The Supplier shall comply with all obligations imposed on it by Law and Guidance relevant to the Goods in relation to packaging, identification, and obligations following end of use by the Authority.
- 17.3 Unless otherwise specified in the Specification or otherwise agreed with the Authority in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for deliveries of the same or similar goods in the same quantities within the United Kingdom.
- 17.4 The Supplier shall comply with any labelling requirements in respect of the Goods: (a) specified in the Specification; (b) agreed with the Authority in writing; and/or (c) required to comply with Law or Guidance.

- 17.5 The Supplier shall ensure that all Goods that are required by Law or Guidance to bear any safety information, environmental information, any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality at the point such Goods are delivered shall comply with such requirements at the point of delivery.
- 17.6 Unless otherwise confirmed and/or agreed by the Authority in writing and subject to Clause 17.7 of this Schedule 2, the Supplier shall ensure full compliance with any Guidance issued by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards (to include, without limitation, any supplier compliance timeline and other policy requirements published by the Department of Health and Social Care in relation to the adoption of GS1 and PEPPOL standards for master data provision and exchange, barcode labelling, and purchase-to-pay transacting).
- 17.7 Once compliance with any published timelines has been achieved by the Supplier pursuant to Clause 17.6 of this Schedule 2, the Supplier shall, during the Term, maintain the required level of compliance relating to the Goods in accordance with any such requirements and Guidance referred to as part of this Contract.
- 17.8 Once product information relating to Goods is placed by the Supplier into a GS1 certified data pool, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

18 **Modern slavery and environmental, social, and labour laws**

- 18.1 The Supplier shall comply in all material respects with applicable environmental, social and labour Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 18.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental, social and labour requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
- 18.1.2 maintain relevant policy statements documenting the Supplier's significant labour, social and environmental aspects as relevant to the Goods and Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and
- 18.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant labour, social and environmental policies, as referred to at Clause 18.1.2 of this Schedule 2.

Modern slavery

- 18.2 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with:
- 18.2.1 the Modern Slavery Act 2015 ("**Slavery Act**"); and
- 18.2.2 the Authority's anti-slavery policy as provided to the Supplier by the Authority from time to time ("**Anti-Slavery Policy**").

- 18.3 The Supplier shall:
- 18.3.1 implement due diligence procedures for its Sub-contractors and other participants in its supply chains in accordance with Good Industry Practice with the aim of avoiding slavery or trafficking in its supply chains;
 - 18.3.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 18.3.3 upon request from the Authority, prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
 - 18.3.4 maintain a complete set of records to trace the supply chain of all goods and services purchased and/or supplied by the Supplier in connection with all contracts or framework agreements with the Authority;
 - 18.3.5 implement a system of training for its employees to ensure compliance with the Slavery Act; and
 - 18.3.6 ensure that any Sub-contracts contain anti-slavery provisions consistent with the Supplier's obligations under Clause 18 of this Schedule 2.
- 18.4 The Supplier undertakes on an ongoing basis that:
- 18.4.1 it conducts its business in a manner consistent with all applicable Laws including the Slavery Act and all analogous legislation in place in any part of the world in which its supply chain operates;
 - 18.4.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
 - 18.4.3 neither the Supplier nor any of its Sub-contractors, nor any other persons associated with it (including any Staff):
 - (i) has been convicted of any offence involving slavery or trafficking; or
 - (ii) has been, or is currently, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence committed regarding slavery or trafficking,not already notified to the Authority in writing in accordance with Clause 19.5 of this Schedule 2.
- 18.5 The Supplier shall notify the Authority as soon as it becomes aware of:
- 18.5.1 any breach, or potential breach, of the Anti-Slavery Policy; or
 - 18.5.2 any actual or suspected slavery or trafficking in its supply chain.
- 18.6 If the Supplier notifies the Authority pursuant to Clause 18.5 of this Schedule 2, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, premises, facilities, records and/or any other relevant documentation in accordance with this Contract.

- 18.7 If the Supplier is in breach of Clause 18.3 or the undertaking at Clause 18.4 of this Clause 18.5 of this Schedule 2 in addition to its other rights and remedies provided under this Contract, the Authority may:
- 18.7.1 by written notice require the Supplier to remove from performance of any contract or framework agreement with the Authority (including this Contract) any Sub-contractor, Staff or other persons associated with it whose acts or omissions have caused the breach; or
- 18.7.2 terminate this Contract by issuing a Termination Notice to the Supplier.

Further corporate social responsibility requirements

- 18.8 The Supplier shall comply with any further corporate social responsibility requirements set out in the Specification and Tender Response Document.

Provision of further information

- 18.9 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 18 of this Schedule 2. For the avoidance of doubt, the Authority may audit the Supplier's compliance with Clause 18 of this Schedule 2 in accordance with Clause 24 of this Schedule 2.

19 Electronic product and services information

- 19.1 Where requested by the Authority, the Supplier shall provide the Authority the Product Information and the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 19.2 The Supplier warrants that the Product Information and the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Product Information and the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 19 of this Schedule 2.
- 19.3 If the Product Information and/or the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Product Information and/or the Services Information.
- 19.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Product Information and the Services Information and any Intellectual Property Rights in the Product Information and the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Goods and Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 19.5 of this Schedule 2, no obligation to illustrate or advertise the Product Information or the Services Information is imposed on the Authority, as a consequence of the licence conferred by this Clause 19.4 of this Schedule 2.
- 19.5 The Authority may reproduce for its sole use the Product Information and the Services Information provided by the Supplier in the Authority's product and/or services catalogues from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
- 19.6 Before any publication of the Product Information and the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's product and/or services catalogues to the

Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Product Information and/or the Services Information in any product and/or services catalogues as a result of the approval given by it pursuant to this Clause 19.6 of this Schedule 2 or otherwise under the terms of this Contract.

- 19.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

20 **Change management**

- 20.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.

- 20.2 Subject to Clause 20.3 of this Schedule 2, any change to the Goods and/or Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

- 20.3 Any change to the Data Protection Protocol shall be made in accordance with the relevant provisions of that protocol.

- 20.4 The Supplier shall neither be relieved of its obligations to supply the Goods or provide the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:

20.4.1 a General Change in Law; or

20.4.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

21 **Dispute resolution**

- 21.1 During any Dispute, including a Dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so). Notwithstanding this Clause 21.1, if the event giving rise to the Dispute or the Dispute itself materially affects the Supplier's ability to perform its obligations under this Contract, the Supplier may, upon giving written notice to the Authority, suspend performance of the affected services

- 21.2 In the case of a Dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and follow the procedure set out in Clause 21.3 of this Schedule 2 as the first stage in the Dispute Resolution Procedure.

- 21.3 If any Dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the Dispute. The Parties shall first seek to resolve the Dispute by escalation in accordance with the management levels as set out in Clause 5 of the Key Provisions. Respective representatives at each level, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level during which they will use their reasonable endeavours to resolve the Dispute before

escalating the matter to the next level until all levels have been exhausted. Level 1 will commence on the date of service of the Dispute Notice. The final level of the escalation process shall be deemed exhausted on the expiry of five (5) Business Days following escalation to that level unless otherwise agreed by the Parties in writing.

- 21.4 If the procedure set out in Clause 21.3 of this Schedule 2 above has been exhausted and fails to resolve such Dispute, as part of the Dispute Resolution Procedure, the Parties will attempt to settle it by mediation. The Parties shall, acting reasonably, attempt to agree upon a mediator. In the event that the Parties fail to agree a mediator within five (5) Business Days following the exhaustion of all levels of the escalation procedure at Clause 21.3 of this Schedule 2, the mediator shall be nominated and confirmed by the Centre for Effective Dispute Resolution, London.
- 21.5 The mediation shall commence within twenty eight (28) days of the confirmation of the mediator in accordance with Clause 21.4 of this Schedule 2 or at such other time as may be agreed by the Parties in writing. Neither Party will terminate such mediation process until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. After this time, either Party may terminate the mediation process by notification to the other Party (such notification may be verbal provided that it is followed up by written confirmation). The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine, or in the absence of such determination such costs will be shared equally.
- 21.6 Nothing in this Contract shall prevent:
- 21.6.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the supply of the Goods and/or the provision of the Services;
- 21.6.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure; or
- 21.6.3 the Authority publishing information regarding Disputes in compliance with its obligations under the Procurement Act 2023.
- 21.7 Clause 21 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

22 **Force majeure**

- 22.1 Subject to Clause 22.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 22.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 22 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 22.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;

- 22.2.2 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
- 22.2.3 the Supplier has complied with the procedural requirements set out in Clause 22 of this Schedule 2.
- 22.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 22.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 22.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 22.6 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.
- 22.7 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.
- 22.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time, if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract by issuing a Termination Notice to the Supplier.
- 22.9 Following such termination in accordance with Clause 22.8 of this Schedule 2 and subject to Clause 22.10 of this Schedule 2, neither Party shall have any liability to the other.
- 22.10 Any rights and liabilities of either Party which have accrued prior to such termination in accordance with Clause 22.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.
- 23 **Records retention and right of audit**
- 23.1 Subject to any statutory requirement and Clause 23.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 24 **Conflicts of interest and the prevention of fraud**
- 24.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of

this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 24.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 24.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 24.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 24.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

25 **Equality and human rights**

25.1 The Supplier shall:

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

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

25.1.3 the Supplier shall impose on all its Sub-contractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 25 of this Schedule 2.

25.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 25 of this Schedule 2.

26 **Notice**

26.1 Subject to Clause 22.5 of Schedule 2, any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.

26.2 A notice shall be treated as having been received:

- 26.2.1 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
- 26.2.2 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
- 26.2.3 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.

27 **Assignment, novation and Sub-contracting**

- 27.1 The Supplier shall not, except where Clause 27.2 of this Schedule 2 applies, assign, Sub-contract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed, provided that Supplier may at any time assign, transfer, mortgage, charge, subcontract, or deal in any other way with any or all of its rights and obligations under this Agreement in connection with a merger, change of control or sale of assets or assign any of its rights and obligations under this Agreement to a member of the Oxford Group. The Authority may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other way with any or all of Authority's rights and obligations under this Agreement without Supplier's prior written consent. If the Supplier Sub-contracts any of its obligations under this Contract, every act or omission of the Sub-contractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 27.2 Notwithstanding Clause 27.1 of this Schedule 2, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 27.2 of this Schedule 2 shall be subject to:
 - 27.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.9 of this Schedule 2;
 - 27.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
 - 27.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
 - 27.2.4 the provisions of Clause 9 of this Schedule 2 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
 - 27.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.

- 27.3 Any authority given by the Authority for the Supplier to Sub-contract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with this Contract.
- 27.4 Where the Supplier enters into a Sub-contract in respect of any of its obligations under this Contract relating to the manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services, the Supplier shall include provisions in each such Sub-contract, unless otherwise agreed with the Authority in writing, which:
- 27.4.1 contain at least equivalent obligations as set out in this Contract in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods or the performance of the Services to the extent relevant to such Sub-contracting;
 - 27.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law, Guidance, and Good Industry Practice, and record keeping;
 - 27.4.3 contain a prohibition on the Sub-contractor Sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
 - 27.4.4 contain a right for the Authority to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of this Contract;
 - 27.4.5 requires the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 27.4.6 provides that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 27.4.5 of this Schedule 2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 27.4.7 after a reasonable time has passed;
 - 27.4.7 requires the Supplier or other party to pay any sum due to be paid in respect of a valid and undisputed invoice before the end of the period of thirty (30) days beginning with:
 - 27.4.7.1 the day on which the invoice is received by the Supplier in respect of the sum; or
 - 27.4.7.2 if later, the day on which the payment falls due in accordance with the invoice.
 - 27.4.8 permitting the Supplier to terminate, or procure the termination of, the relevant Sub-contract in the event the Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour Law where the Supplier is required to replace such Sub-contractor in accordance with Clause 15.7.3 of this Schedule 2;

- 27.4.9 permit the Supplier to terminate, or to procure the termination of, the relevant Sub-contract where the Supplier replaces such Sub-contractor in accordance with Clause 15.9 of this Schedule 2; and
- 27.4.10 requires the Sub-contractor to include a clause to the same effect as this Clause 27.4 of this Schedule 2 in any Sub-contract which it awards.
- 27.5 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed. Where the Authority pays the Supplier's valid and undisputed invoices earlier than thirty (30) days from verification in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant Sub-contractors within a comparable timeframe from verifying that an invoice is valid and undisputed.
- 27.6 The Authority shall upon written request have the right to review any Sub-contract entered into by the Supplier in respect of the supply of the Goods and/or the provision of the Services and the Supplier shall provide a certified copy of any Sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of Sub-contracts.
- 27.7 If the Authority, as a condition of awarding this Contract, required that the Supplier sub-contract the supply of certain goods, services or works to another supplier, or the Supplier indicated to the Authority that it intended to sub-contract all or part of this Contract to another supplier and relied on that other supplier to satisfy any conditions of participation which the Supplier was required to satisfy in order to be awarded the Contract:
- 27.7.1 the Authority may direct that the Supplier enter into a legally binding arrangement with the other supplier for the purpose of that supplier performing all or part of this Contract (as required or indicated); and
- 27.7.2 if the Supplier fails to enter into a legally binding arrangement as directed by the Authority, the Authority may:
- (i) where the Supplier indicated to the Authority that it intended to sub-contract all or part of this Contract to another supplier and relied on that supplier to satisfy any conditions of participation which the Supplier was required to satisfy in order to be awarded the Contract, direct the Supplier to enter into a legally binding arrangement with another appropriate supplier; or
- (ii) terminate this Contract.
- 27.8 The Authority may at any time transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

28 **Prohibited Acts**

- 28.1 The Supplier warrants and represents that:

- 28.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
 - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
- 28.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 28.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
- 28.2.1 the Authority shall be entitled:
- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
 - (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
- 28.2.2 any termination under Clause 28.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
- 28.2.3 notwithstanding the Dispute Resolution Procedure, any Dispute relating to:
- (i) the interpretation of Clause 28 of this Schedule 2; or
 - (ii) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

29 **General**

- 29.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 29.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.

- 29.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 29.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 29.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 29.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 29.7 The rights and remedies provided in this Contract are independent, cumulative and not exclusive of any rights or remedies provided by general law, any rights or remedies provided elsewhere under this Contract or by any other contract or document. In this Clause 29.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
- 29.8 Unless otherwise expressly stated in this Contract, a person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 29.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the supply of the Goods and the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud. Any tender conditions and/or disclaimers set out in the Authority's procurement documentation leading to the award of this Contract shall form part of this Contract.
- 29.10 This Contract, and any Dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.11 Subject to Clause 22 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 29.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 1

Information and Data Provisions

1 Confidentiality

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

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

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

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

(ii) is or was independently developed by the Recipient or any of its Representatives without reliance upon the Disclosing Party's Confidential Information. "Representatives" means each party's affiliates and its and their respective managers, directors, officers, employees, agents, consultants, advisors and partners, but only to the extent the foregoing receive Confidential Information hereunder and have a duty of confidentiality to the Recipient;

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

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

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

(vi) which the Recipient is required to disclose purely to the extent to comply with Law, where "Law" means any law, regulation or rule, any regulatory (or self-regulatory), governmental or legal authority, including those of a stock exchange, to which a party is subject, or in connection with any legal, regulatory or administrative proceeding or process;

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 The Authority may disclose the Supplier's Confidential Information:

1.3.1 on a confidential basis, to any Representative, who has a need to know such information for the performance of their work with respect to the performance of this Agreement, and who are bound by a written confidentiality agreement with or who are under general confidentiality obligations towards the Recipient or who are subject to professional obligations of confidentiality, in either case under conditions of confidentiality no less onerous than those contained in this Agreement;

1.3.2 the Representatives who will have access to the Discloser's Confidential Information will be (i) notified that the information to which they will receive access to is the Confidential Information of the Discloser (ii) informed of the terms and conditions of this Agreement, and (iii) directed to comply with the terms and conditions of this Agreement applicable to such Representatives;

1.3.3

1.3.4 to any relevant party for the purpose of the examination and certification of the Authority's accounts;

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

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

The Recipient agrees:

a) that it will not reproduce, reverse engineer or exploit the Discloser's Confidential Information, without the prior written consent of the Discloser;

b) that it will be responsible for any breach by its Representatives of the confidentiality or non-use obligations of this Agreement applicable to such Representatives or any other confidentiality obligations to which such Representatives are subject with respect to Confidential Information disclosed thereto. The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Representatives who, in the reasonable opinion of the Supplier, are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. Supplier and each of its Representatives may keep a copy of each document and material as is

necessary to comply with Law, professional rules and standards or internal compliance or document retention policies or contained in an archived computer system backup in accordance with its or its Representative's security and/or disaster recovery procedures.

- 1.4 The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 1.6 Clause 1 of this Schedule 3 shall remain in force:
 - 1.6.1 for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

2 Data protection

- 2.1 The Parties acknowledge and agree that the Parties will not Process Personal Data pursuant to this Agreement. In the event that either Party determines that it is necessary for a Party to Process Personal Data for the purposes of performing its obligations under this Agreement or otherwise does Process Personal Data, the Parties shall promptly enter into a data processing agreement. If the Parties do not execute such data processing agreement within thirty (30) days of it being requested, the requesting Party may, in its reasonable discretion, terminate this Agreement, and the other Party shall, as determined by the requesting Party, securely transfer or destroy all Data that it maintains, if any, and shall destroy any copies of such Personal Data.

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 offer reasonable assistance and cooperation with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
 - 3.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
 - 3.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority, where the request is limited to the subject matter of this Contract;
 - 3.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is

subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority, where the request is limited to the subject matter of this Contract;

- 3.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will reasonably promptly transfer the request to the Authority, where the request is limited to the subject matter of this Contract;
- 3.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract provided Authority does not disclose Supplier's Confidential Information
- 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 Contract is not Confidential Information.
- 3.4 The Supplier consents to the Authority publishing a notice of award of the contract.
- 3.5 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such Sub-contractor were the Supplier.

4 **Information Security**

- 4.1 Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
 - 4.1.1 notify the Authority as soon as reasonably practicable after becoming aware of any unauthorised use or disclosure of the Authority's Confidential Information of which it becomes aware; and
 - 4.1.2 any information security breaches or near misses (including those of Sub-contractors and any other third party suppliers that store, have access to or handle Authority Data and including without limitation any potential or actual breaches of confidentiality, actual information security breaches, loss and/or unauthorised disclosure of information or data, denial of service or detection of ransomware) in line with the Authority's information governance Policies;
 - 4.1.3 fully cooperate with the Authority, without charge, with any audits, investigations or tests (including penetration tests) and any other information security compliance and assurance activities (including online questionnaires) relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information and cooperation as may be reasonably requested by the Authority in relation to such audits, investigations or tests (including penetration tests) and any other information security compliance and assurance activities

- (including online questionnaires);
- 4.1.4 procure that any Sub-contractors and any other third party suppliers that store, have access to or handle Authority Data, fully cooperate with the Authority, without charge, with any audits, investigations or tests (including penetration tests) and any other information security compliance and assurance activities (including online questionnaires) relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information and cooperation as may be reasonably requested by the Authority in relation to such audits, investigations or tests (including penetration tests) and any other information security compliance and assurance activities (including online questionnaires);
- 4.1.5 without prejudice to any other rights or remedies available to the Authority or obligations of the Supplier, implement or procure the implementation of, without charge, any findings from any audits, investigations or tests (including penetration tests) carried out under Clause 4.1.2.and/or Clause 4.1.3 of this Schedule 3 as may be required in writing by the Authority and shall promptly inform the Authority of such implementation; and
- 4.1.6 without prejudice to any other rights or remedies available to the Authority or obligations of the Supplier, without charge remedy or procure the remedy of any vulnerabilities, in the Authority's, Supplier's, Subcontractor's or third party supplier's information and communication technology systems ("**Vulnerabilities**") as may be required in writing by the Authority and where it is not technically feasible to remedy a Vulnerability the Supplier must implement or procure the implementation of appropriate technical and organizational measures to mitigate the risk posed by the Vulnerability as may be required in writing by the Authority and shall promptly inform the Authority of any such remedial action or mitigation implementation.
- 4.1.7 NHS England has certain functions to support the security of health and adult social care systems. Where NHS England is supporting the Authority, the Supplier shall provide full information and cooperation as may be reasonably required by NHS England in support of the exercise of these functions. The Supplier hereby confirms and agrees that the Authority may at any time also appoint NHS England to receive information and provide instructions on its behalf in relation to Clause 4.1 of this Schedule 3.
- 4.1.8 Except where not required in accordance with the Specification and Tender Response Document or where notified to the Supplier by the Authority in writing, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
- 4.1.9 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.
- 4.1.10 Without prejudice to Clause 2.4 of this Schedule 3, where required in accordance with the Specification and Tender Response Document, the Supplier shall complete and publish an annual information governance assessment using the Data Security and Protection Toolkit and shall

achieve all relevant requirements in the relevant Data Security and Protection Toolkit.

Schedule 2

Definitions and Interpretations

1 Definitions

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

“Actual Services Commencement Date”	means the date the Supplier actually commences delivery of all of the Services;
“Actual Supply of Goods Date”	means the date the Supplier actually commences supply of the Goods;
“Actuary”	means a Fellow of the Institute and Faculty of Actuaries;
“Anti-Slavery Policy”	has the meaning given under Clause 19.2.2 of Schedule 2;
“Associated Person”	means a supplier that the Supplier relied on in order to satisfy any conditions of participation which the Supplier was required to satisfy in order to be awarded the Contract, other than a supplier who will enter into a legally binding arrangement to guarantee the performance of all or part of the Contract by the Supplier.
“Authority”/“Customer”	means the authority named on the form of Contract on the first page;
“Authority 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, including any of the Authority’s Confidential Information, and which: (i) are supplied to the Supplier by or on behalf of the Authority; and/or (ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Authority is Controller;
“Authority Confirmation”	means the written confirmation provided (or deemed to be provided) by the Authority that the Goods appear to have been correctly supplied, installed and commissioned ready for use;
“Authority’s Actuary”	means the Government Actuaries Department;

“Authority’s Obligations”	means the Authority’s further obligations, if any, referred to in the Key Provisions;
“Breach Notice”	means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
“Broadly Comparable”	means certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of Fair Deal for Staff Pensions;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to supply the Goods and/or provide the Services including a 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 the provision of the 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;
“Cabinet Office Statement”	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
“Change Control Process”	means the change control process, if any, referred to in the Key Provisions;
“Change in Law”	means any change in Law which impacts on the supply of the Goods and/or provision of the Services which comes into force after the Commencement Date;
“Codes of Practice”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“Commencement Date”	means the date of this Contract;
“Commercial Schedule”	means the document set out at Schedule 6;
“Commitment “	means the complete amount of Goods and the associated fees as listed in the Pricing Table

“Comparable Supply”	means the supply of services and/or goods to another customer of the Supplier that are the same or similar to any of the Services and/or Goods;
“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 Contract including any procurement process which is: <ul style="list-style-type: none"> (a) 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 the Authority’s intranet;
“Connected Person”	means any of the following: <ul style="list-style-type: none"> (a) a person with “significant control” over the Supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (“CA 2006”)); (b) a director or shadow director of the Supplier; (c) a parent undertaking or a subsidiary undertaking of the Supplier; (d) a predecessor company of the Supplier; (e) any other person who it can reasonably be considered stands in an equivalent position in relation to the Supplier as a person within paragraphs (a) to (d) above; (f) any person with the right to exercise, or who actually exercises, significant influence or control over the Supplier; (g) any person over which the Supplier has the right to exercise, or actually exercises, significant influence or control.
“Contract”	means the form of contract at the front of this document and all schedules attached to the form of contract;
“Consigned Goods”	means Goods delivered by the Supplier in response to a Consignment Request prior to their use by the Authority;
“Consignment Request”	means the Authority's request for Goods to be delivered on a consignment basis;

“Contracting Authority”	means any contracting authority as defined in section 2 of the Procurement Act 2023, other than the Authority;
“Contract Manager”	means for the Authority and for the Supplier the individuals specified in the Key Provisions or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2;
“Controller”	shall have the same meaning as set out in the UK GDPR;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
“Convictions”	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
“Cost Increase”	shall have the meaning given to the term in Clause 1.3.2 of Part D of Schedule 7;
“Cost Saving”	shall have the meaning given to the term in Clause 1.3.4 of Part D of Schedule 7;
“Data Protection Legislation”	means the Data Protection Act 2018 and the UK GDPR and any other applicable laws of England and Wales relating to the protection of Personal Data and the privacy of individuals (all as amended, updated, replaced or re-enacted from time to time);
“Data Protection Protocol”	means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance with its terms), which shall include, without limitation, any such document appended to Schedule 3 (Information and Data Provisions);
“Data Security and Protection Toolkit”	means the Data Security and Protection Toolkit online self-assessment tool and as may be amended from time to time or superseded;
“Defective Goods”	has the meaning under Clause 3.6 of Schedule 2;
“Digital Technology Assessment Criteria (DTAC)”	means the Digital Technology Assessment Criteria for Health and Social Care assessment tool and as may be amended from time to time or superseded;

“Direction Letter”	means an NHS Pensions Direction letter issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHS Pension Scheme in respect of the Eligible Employees;
“Dispute(s)”	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Goods and/or Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
“Dispute Resolution Procedure”	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 or, where Clause 32 of Schedule 1 of the Contract applies, the process for resolving Disputes as set out in Schedule 9 For the avoidance of doubt, the Dispute Resolution Procedure is subject to Clause 29.2.3 of Schedule 2;
“DOTAS”	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“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 the Authority may specify from time to time;
“Eligible Employees”	means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their

	<p>compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt a member of Staff who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to Fair Deal for Staff Pensions protection under Part D of Schedule 7;</p>
“Employee Transfer Date”	means the Transferred Staff’s first day of employment with the Supplier (or its Sub-contractor);
“Employment Liabilities”	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
“Environmental Regulations”	shall have the meaning given to the term in Clause 1.2 of Schedule 3;
“eProcurement Guidance”	means any reference to or requirement regarding using technology to facilitate purchasing, payment, and management information collection, within the Regulations and guidance that may be issued from time to time by HM Government or relevant department, including but not limited to the Cabinet Office, the Department of Health and Social Care, and NHS England;
“Equality Legislation”	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;

“EU References”	shall have the meaning given to the term in Clause 1.17 of this Schedule 4;
“Evergreen Sustainable Supplier Assessment”	means the online tool, available on Atamis or such other online tool as may replace Atamis from time to time, which enables suppliers to engage with NHS organisations on the supplier’s sustainability journey and understand how to align with the NHS net zero and sustainability ambitions, including those set out in the NHS Net Zero Supplier Roadmap
“Exclusion Ground”	means any of the: <ul style="list-style-type: none"> (a) mandatory exclusion grounds as set out in Schedule 6 of the Procurement Act 2023; and (b) discretionary exclusion grounds as set out in Schedule 7 of the Procurement Act 2023.
“Exit Day”	shall have the meaning in the European Union (Withdrawal) Act 2018;
“Exit Requirements”	means the Authority’s exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
“Fair Deal for Staff Pensions”	means guidance issued by HM Treasury entitled “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 (as amended, supplemented or replaced);
“FOIA”	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: <ul style="list-style-type: none"> (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract; (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

	<p>such unavailability as part of its business continuity planning;</p> <p>(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;</p> <p>(g) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</p> <p>(h) industrial action which affects the ability of the Supplier to supply the Goods and/or to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</p> <p>(i) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties,</p> <p>but excluding, for the avoidance of doubt, any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union;</p>
“Fraud”	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
“General Anti-Abuse Rule”	means: <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
“General Change in Law”	means a Change in Law where the change is of a general legislative nature (including taxation or duties of

	any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“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 and/or service provider engaged in the manufacture and/or supply of goods and/or the provision of services similar to the Goods and Services under the same or similar circumstances as those applicable to this Contract; including in accordance with any codes of practice published by relevant trade associations;
“Goods”	means all goods, materials or items that the Supplier is required to supply to the Authority under this Contract (including, without limitation, under the Goods and Pricing Table and the Supplier’s Product Terms and Conditions
“Guidance”	means any applicable guidance, supplier code of conduct, direction or determination and any policies, advice or industry alerts which apply to the Goods and/or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health and Social Care, NHS England and NHS Improvement, the Medicines and Healthcare products Regulatory Agency, the European Medicines Agency, the European Commission, the Care Quality Commission, the National Institute for Health and Care Excellence and/or any other regulator or competent body;
“HM Government Cyber Essentials Scheme”	means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
“Implementation Plan”	means the implementation plan, if any, referred to in the Key Provisions;
“Implementation Requirements”	means the Authority’s implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;

“Installation and Commissioning Services”	means the installation and commissioning services set out in this Contract (including, without limitation, Schedule 8, which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Intellectual Property Rights”	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
“Interested Party”	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
“Key Provisions”	means the key provisions set out in Schedule 1 ;
“Law”	means any applicable legal requirements including, without limitation: <ul style="list-style-type: none"> (a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales; (b) any enforceable right, power, liability, obligation, restriction, remedy and/or procedure within the meaning of the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; (d) requirements set by any regulatory body as applicable in England and Wales; (e) any relevant code of practice as applicable in England and Wales; and (f) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (e) above);
“Long Stop Date”	means the date, if any, specified in the Key Provisions;
“Losses”	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and

	charges whether arising under statute, contract or at common law;
“Maintenance Services”	means the maintenance services set out in this Contract (including, without limitation, Schedule 8, which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements);
“Measures”	means any measures proposed by the Supplier or any Sub-contractor within the meaning of regulation 13(2)(d) of TUPE;
“Mediation Notice”	has the meaning given under Clause 22.5.1 of Schedule 2;
“Minimum Quantity”	has the meaning given under Clause 32.7 of Schedule 1;
“Net Zero and Social Value Commitments”	means the Supplier’s net zero and social value commitments, each as set out in the Key Provisions and/or the Specification and Tender Response Document;
“Social Value Contract Commitments”	shall have the meaning given in Clause 8.5 of Schedule 1;
“NHS”	means the National Health Service;
“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
“NHS England”	means the body corporate known as NHS England, established under section 1H (1) of the National Health Service Act 2006 and whose head office is at Wellington House, 133-155 Waterloo Road, London SE1 8UG;
“NHS Net Zero Supplier Roadmap”	means the NHS Net Zero Supplier Roadmap set out at the following web address: https://www.england.nhs.uk/greenernhs/get-involved/suppliers/ and as amended from time to time;
“NHS Pensions”	means NHS Pensions (being a division of the NHS Business Services Authority) acting on behalf of the Secretary of State as the administrators of the NHS Pension Scheme or such other body as may from time to time be responsible for relevant administrative

	functions of the NHS Pension Scheme, including the Pensions Division of the NHS Business Services Authority;
“NHS Pension Scheme”	means the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
“NHS Pension Scheme Arrears”	means any failure on the part of the Supplier or any Sub-contractor to pay employer’s contributions or deduct and pay across employee’s contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees;
“NHS Pension Scheme Regulations”	means, as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) and any subsequent regulations made in respect of the NHS Pension Scheme, each as amended from time to time;
“Party”	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
“Payment Date”	means twenty (20) Business Days after the last of the conditions in Clause 1.7 of Part D of Schedule 7 has been satisfied;
“Pension Benefits”	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme;
“Personal Data”	shall have the same meaning as set out in the UK GDPR;
“Policies”	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
“Pre-Acquisition Questionnaire”	means any pre-acquisition questionnaire or documents with a similar title or purpose issued by the Authority and completed by the Supplier relevant to the Goods;
“Premature Retirement Rights”	rights to which any Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under

	the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Premises and Locations”	has the meaning given under Clause 4.1 of Schedule 2;
“Process”	shall have the same meaning as set out in the UK GDPR. Processing and Processed shall be construed accordingly;
“Product Information”	means information concerning the Goods as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's product catalogue from time to time;
“Purchase Order”	means the purchase order required by the Authority's financial systems, if a purchase order is referred to in the Key Provisions;
“Rejected Goods”	has the meaning given under Clause 3.2 of Schedule 2;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Remedial Proposal”	has the meaning given under Clause 15.3 of Schedule 2;
“Requirement to Recall”	has the meaning given under Clause 3.9 of Schedule 2;
“Returned Goods”	has the meaning given under Clause 32.8 of Schedule 1;
“Returns Notice”	has the meaning given under Clause 32.8 of Schedule 1;
“Sales Report”	has the meaning given under Clause 32.5 of Schedule 1;
“Services”	means the services set out in this Contract (including, without limitation, Schedule 8 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier's response to these requirements), which shall include, without limitation, any Installation and Commissioning

	Services and/or any Maintenance Services in respect of the Goods;
“Services Commencement Date”	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Services Information”	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 for inclusion in the Authority's services catalogue from time to time;
“Slavery Act”	has the meaning given in Clause 19.2.1 of Schedule 2;
“Specification”	means the document set out in Schedule 5 (social value) and 8 as amended and/or updated in accordance with this Contract;
“Specific Change in Law”	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staff”	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
“Step In Rights”	means the step in rights, if any, referred to in the Key Provisions;
“Sub-contract”	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
“Sub-contractor”	means a party to a Sub-contract other than the Supplier;
“Subsequent Transfer Date”	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
“Subsequent Transferring Employees”	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be

	undertaken by the Successor or Authority, as appropriate;
“Successor”	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
“Supplier”	means the supplier named on the form of Contract on the first page;
“Supplier Code of Conduct”	means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
“Supplier Net Zero Contract Champion”	shall have the meaning given to the term in Clause 8.4 of Schedule 1;
“Supplier Personnel”	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;
“Supplier Social Value Contract Champion”	shall have the meaning given to the term in Clause 8.7 of Schedule 1;
“Supply of Goods Commencement Date”	means the date supply of the Goods shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
“Term”	means the term as set out in the Key Provisions;
“Termination Notice”	means a written notice of termination given by one Party to the other notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
“Third Party”	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
“Third Party Body”	has the meaning given under Clause 8.5 of Schedule 2;
“Third Party Employees”	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;

“Transfer Amount”	an amount paid in accordance with Clause 1.7 of Part D of Schedule 7 and calculated in accordance with the assumptions, principles and timing adjustment referred to in Clause 1.6 of Part D of Schedule 7 in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or a Third Party’s Broadly Comparable scheme and elected to transfer them to the Supplier’s Broadly Comparable scheme or the NHS Pension Scheme under the Transfer Option;
“Transfer Date”	means the Actual Services Commencement Date;
“Transfer Option”	an option given to each Eligible Employee with either: (a) accrued rights in the NHS Pension Scheme; or (b) accrued rights in a Broadly Comparable scheme, as at the Employee Transfer Date, to transfer those rights to the Supplier’s (or its Sub-contractor’s) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);
“Transfer Option Deadline”	the first Business Day to fall at least three (3) months after the notice detailing the Transfer Option has been sent to each Eligible Employee;
“Transferred Staff”	means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a Sub-contractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;
“Transferring Employees”	means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law;

“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; 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 Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 1.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 1.4 References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
- 1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1.6 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 2, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1.8 Words denoting the singular shall include the plural and vice versa.
- 1.9 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.10 Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 6) and any other part of this Contract, such other part of this Contract shall prevail.
- 1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 1.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 1.13 Any guidance notes in grey text do not form part of this Contract.
- 1.14 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice (“**Receiving Party**”) may ask the Party that issued the Breach Notice (“**Issuing Party**”) to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the

provision of such further information as referred to above as may be requested by the Receiving Party but no such withholding or delay shall invalidate the Breach Notice.

- 1.15 Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document.
- 1.16 For the avoidance of doubt, and to the extent not prohibited by any Law, the term “expenses” (as referred to under any indemnity provisions forming part of this Contract) shall be deemed to include any fine and any related costs imposed by a commissioner, regulator or other competent body.
- 1.17 Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

Schedule 3

[Social Value Contract Commitments]

KPI 1:

NET ZERO TRANSITION PLAN

In 2023, the group established the following near-term and long-term targets which have been validated by the Science Based Targets initiative (SBTi). These targets reaffirm our long-term commitment to being net zero across our entire value chain by 2045. As part of this, we have set interim targets for 2030 that cover Scope 1, 2 & 3 emissions. Alongside this, we are continuing to take actions to reduce our emissions intensity and have set a target an annual target to reduce emissions by tonnes of CO₂e emitted per £m revenue by 2.5%. Our SBTi validated targets are:

- Reduce absolute Scope 1 and 2 GHG emissions 42% by 2030 from a 2023 base year
- Reduce Scope 3 GHG emissions 52% per GBP value added by 2030 from a 2023 base year
- Reduce absolute Scope 1, 2 and 3 GHG emissions by 90% by 2045 from a 2023 base year
- Reach net zero GHG emissions across the value chain by 2045 from a 2023 base year

KPI 2:

OPPORTUNITY AND BELONGING

- Continue running events through our Values in Action community, it will play an integral role in supporting initiatives to embody and embed the planned evolution of our organisational values as “cultural cornerstones”
- Continue to strengthen the skills of our employees through ongoing customised learning and development. Bespoke training solutions will be devised and delivered for several teams needing to focus on key skills and build collective performance
- Improve EHS resources, implementing additional modules, including documents, training, and checklists, which will enhance the value of the database as a one-stop EHS portal for Oxford Nanopore
- Begin to align ONT’s EHS programmes with the international standards for the environment (ISO 14001) and occupational health & safety (ISO 45001)

Schedule 4
Product and Pricing Table

	List Price	Discount	Price	Quantities
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

*Goods are for Research Use Only and are not medical devices

1. The products and fees contained within this table represent the Authority's Commitment within the Term and the Authority commits to paying the full fees by the end of the Term, irrespective of all items in the Pricing Table having been ordered or not.
2. [REDACTED]
3. Goods to be delivered DAP Incoterms 2020 to Delivery Location. Delivery Location will be one of GSTT Recipients' premises within England and is part of the Authority's network of hospitals.
4. The fee for the one-year term of the Q-Line Support Package will be invoiced and due together with the fee for each device.

For the avoidance of doubt, any hardware changes or new releases of hardware introduced by ONT to the current GridION system during the term of this Agreement will be supplied to the Authority [REDACTED].

Delivery charges have been estimated at £[REDACTED] for the Term of the Contract for the agreed delivery locations. If deliveries to additional locations are required, these will be confirmed to ONT. ONT are to deliver to those additional locations at the same rate. ONT shall make all reasonable efforts to not exceed the estimated delivery charges, and shall notify the Authority in writing if there are any changes to the charges expected.

Schedule 5

Staff transfer

The optional parts of this Schedule 7 below shall only apply to this Contract where such parts have been checked.

Part A No staff transfer to the Supplier under TUPE (only applicable to the Contract if this box is checked)

- 1.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 1.2 If any person who is an employee of the Authority or a Third Party claims, or it is determined, that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
 - 1.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
 - 1.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
 - 1.2.3 if such offer of employment is accepted, the Supplier or a Sub-contractor shall immediately release the person from their employment;
 - 1.2.4 if after that period specified in Clause 1.2.2 of Part A of this Schedule 7 has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or Sub-contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the provisions of Part D of this Schedule 7.

Part B Staff transfer from the Authority under TUPE NOT RELEVANT

Part C Staff transfer from a current provider under TUPE NOT RELEVANT

Part D Provisions regarding pensions NOT RELEVANT)

Broadly comparable pension benefits NOT RELEVANT

Schedule 6

Service Specification

Support Plan

- 1.1 The Goods are for Research Use Only and are not medical devices.
- 1.2 The Devices shall be installed and commissioned at the relevant Premises and Locations by the ONT (please see below clause 5.a IQ/OQ/PQ) .
- 1.3 Each device is delivered with a 12 – month Q-Line Support Package, This Q-Line Support Package includes 12-months of the license required to use the latest Oxford Nanopore software and devices. An active license is required to use the device.
- 1.4 Damages or malfunctions, caused by Authority are not covered under the Support Plan and may require additional evaluation and charges.
- 1.5 The Supplier will promptly notify the Authority of any health and safety hazard which arises, or the Supplier is aware may arise, in connection with the installation and commissioning of Devices and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.

2 Inspection and Testing

The devices are subject to Inspection and Quality Control as per Schedule 2, General Terms and Conditions, Section 3.

3 Relocation of Goods

- 3.1 The warranty available under the Q-Line Support Package for each Device is personal to the Authority and the participating Trust specified in each Order.
- 3.2 [REDACTED] The Authority shall inform Supplier of the intention to relocate a Device to another participating Trust's premises. Such participating Trust will need to agree to and sign the NANOPORE PRODUCT LICENCE TERMS before the Device can be relocated.
- 3.3 The Authority agrees to bear the risk of damage to a Device occurring during any relocation and Devices will need to undergo inspection or a performance check after such relocation. If the Device is found to have been damaged during such Relocation, it will not be covered by any warranty and the Authority will be liable for any repair or replacement costs.
- 3.4 The Authority shall meet the Supplier's reasonable charges and expenses incurred in complying with Clause 3.2 of this Schedule 8 provided that such reasonable charges and expenses are approved in writing by the Authority prior to being incurred by the Supplier.

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

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

5 **Q-Line Support Packages**

Each device comes with a one-year Support Plan. The Q-Line support package includes:

- a. Installation qualification, Operational qualification and Performance qualification (IQ/OQ/PQ).

On-site IQ/OQ/PQ includes the following elements:

Installation qualification (IQ) Validation process to ensure the device has been successfully delivered and installed.

- Correct delivery of device(s)
- Suitable device location
- Adequate electrical supply
- Acceptable environmental and safety conditions
- Appropriate connection to device peripherals

Operational qualification (OQ) Validation process testing the operation of the system as being able to complete the hardware check.

- Correct electrical operation
- Functional internet connection, network settings, and system setup
- Hardware check to validate correct operation of all flow cell positions and software

Performance qualification (PQ) Validation process testing the performance of the system.

- Run a Lambda control experiment to assess device performance. Recommended on initial setup and after significant changes (e.g. software update, implementing automation, new technician onboarding)
- Check reagents, instrument, flow cell, and software performance

Following the performance of the IQ/OQ/PQ, ONT within 2 working days will share a report of the procedure.

- b. Training support - 2 business days on-site provided by Field Application Scientist and 1 business day online.

In addition to the IQ/OQ/PQ, additional onsite and online support can be provided by a member of ONT's team to end users upon reasonable request, for up to two (2) days onsite and one (1) day online.

- c. Repair or replacement of Goods if they do not meet ONT' technical specifications

- Flow Cells

In the event a Flow Cell does not meet ONT' technical specifications of minimum 800 nanopores, and provided that it is within the applicable warranty period (12 weeks

from the delivery date) and the warranty conditions have been met (the Flow Cells have been stored at a temperature between 2 and 8 degree Celsius upon delivery), ONT will replace such Flow Cell free of charge within [REDACTED] of confirmation of the defect.

- Device

In the event a Gridion Q-line does not meet ONT' technical specifications, and provided that the warranty conditions have been met, ONT will repair or replace, free of charge such Gridion, according to the maximum timeline below:

-	[REDACTED]
	[REDACTED]
	[REDACTED]

- Kits

In the event that a Kit is damaged prior to delivery or is missing, ONT will replace such Kit free of charge within [REDACTED] (by email to support@nanoporetech.com) by the end user to ONT.

d. Preventative maintenance visit per year provided.

ONT will provide one (1) preventive maintenance visit per year, on each site, during business hours, scheduled with the end users at least one (1) week in advance and subject to the end users' availability.

e. Phone line and email support.

End user may contact our support team by email at the following address: support@nanoporetech.com. A member of the team will come back to them within 4 hours (Monday to Friday).

If the query is related to a technical question, a Field Application Scientist will call back the end user within 4 hours. In order to ensure that the request is treated in priority the following mention shall be referred to in object of the email: Enhanced Support Q Line

6 Requirement to have a Support Plan

Devices may be used only for so long as they have active Support Plans, regardless of whether the Customer procured it through a Project Pack or a CapEx transaction. The Customer must also maintain a Support Plan to purchase additional Flow Cells or Consumables.

a. Commencement

The Q-Line Support Package starts on the day the Goods are installed or thirty (30) days from the date of delivery, whichever occurs first.

b. License

Oxford hereby grants, under the Oxford Group's patents and copyrights, other than Application Specific IP, to Authority a non-exclusive, non-transferable, limited, personal, revocable license to use Hardware and Software (whether embedded or available separately to enable use of a Device), without the right to sublicense, solely for the Specific Use for so long as Customer has purchased and remains covered by a support plan, as further described in this Standard Support Plan, including the right to use in object code form (a) the Software configured to operate with the Customer's Flow Cells and/or Customer's Devices, and (b) the Oxford Group's Epi2me Labs Software, which when initially registered shall be linked to one validated Customer email address (from which multiple agents and/or laptops may access the EPI2ME interface and EPI2ME's cloud-based environment) (the "**License**"). The Software shall be used only in conjunction with Devices covered by an active Support Plan. Except as otherwise specified in an Order, Customer may not install more than one instance of the Software per laptop, personal computer, workstation, or other suitable computing system owned by Customer. The Software and the Devices may only be used in accordance with the Oxford Group's usage instructions as stated in the Documentation or in the Order. Use of the Devices may involve use of certain third-party software which is subject to the terms of the applicable license(s). Information and third-party license terms with respect to specific Devices and Software are available on the Oxford Website or available in the software splash page.

1.1 Software support

Together with the grant of the License, Oxford undertakes an obligation to provide the following support for Software: (i) Oxford shall provide Customer with access to support information and reference materials in a password-protected section of Oxford's website so long as Customer has registered an account with Oxford and maintains and safeguards associated login details; (ii) If errors arise which cause Software to malfunction, Oxford will undertake commercially reasonable efforts to fix the errors. Oxford may, at its discretion, also provide additional support at no additional cost or for a mutually agreed fee; (iii) Oxford will release patches or new releases of the Software to the Customer. The Customer will be required to install them as soon reasonably possible and otherwise within ninety (90) days after release. Software releases may, in the future, be subject to access codes or other controls. Oxford will provide the Customer with notification of any upcoming Software or license changes that may reasonably be expected to affect service delivery. Oxford will provide such notification at least three (3) months prior to deployment of the relevant change, to allow the Customer to assess and mitigate any potential impact on service delivery. Notwithstanding the foregoing, Oxford may implement unscheduled changes where necessary for safety, security, or regulatory compliance reasons, in which case Oxford will notify the Customer as soon as reasonably practicable thereafter.

1.2 Hardware notification

Oxford does not anticipate any hardware modifications to the GridION Q Line during the Term of this Agreement. However, in the event that a hardware modification is introduced, ONT shall provide the Customer with no less than three (3) months' prior written notice before the change is implemented.

1.3 Goods Support

Oxford undertakes an obligation to provide the following support for Goods: (i) Access to

frequently asked questions, support forums and Documentation in a password-protected section of Oxford's Website; (ii) Access to technical support via email and LiveChat (8 hours a day, 5 days a week, local time) including reasonable remote assistance with installation and configuration (but not including assistance with sample preparation or data analysis), to the extent applicable in the relevant region; (iii) Subject to Section 5 below, and at its sole option, Oxford will repair or replace non-conforming Devices subject to any planned Device sunsetting for which Oxford has provided at least twelve (12) months' prior notice; (iv) Subject to Section 5 below, Oxford will replace Consumables or Flow Cells that do not perform in accordance with then-current Specifications, as defined in the Supplier's Terms.

To the maximum extent permitted by law, these are the Customer's sole remedies and Oxford's sole warranty obligations.

c. Exclusion

Oxford commitment under the Standard Support Plan does not apply in the following particular circumstances: (a) abuse, misuse, neglect, negligence, accident, improper storage or use contrary to the Documentation, Specifications or the Nanopore Product Terms and Conditions by the Authority; (b) improper handling, installation, maintenance or repair by the Authority; (c) unauthorized alterations by the Authority; (d) Force Majeure events; (e) use with third party goods not provided by Oxford; or (f) devices are run offline or when Oxford does not have access to necessary telemetry data.

Oxford makes no warranty or representation and gives no indemnity in respect of products or software of any third party. Oxford makes no warranty or representation regarding accuracy, adequacy, timeliness, completeness, merchantability, fitness for a particular purpose or non-infringement (except with respect to the Software's compliance with the respective Documentation). Oxford makes no warranty regarding security of data or of the Customer's communications, and assumes no liability for delay, failure, interruption or corruption of data or information.

Packaging:

Supplier does not collect packaging. Flow Cells are delivered with pre-paid envelopes for their return to Supplier.

See attached further technical specification details to comply with this Contract.



GridION Q technical
specification.pdf

Schedule 7

1 **Dispute Process**

- 1.1 During any Dispute, including a Dispute as to the validity of the Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 1.2 In the case of a Dispute the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the Dispute and shall follow the procedure set out in this Schedule 9.
- 1.3 In the event of a Dispute either Party may serve a Dispute Notice on the other Party to commence formal resolution of the Dispute. The Dispute Notice shall set out:
 - 1.3.1 the material particulars of the Dispute; and
 - 1.3.2 the reasons why the Party serving the Dispute Notice believes the Dispute has arisen.
- 1.4 Following the service of a Dispute Notice the Parties shall first seek to resolve the Dispute by convening a meeting between the Authority's Contract Manager and the Supplier's Contract Manager (together the "**Contract Managers**").
 - 1.4.1 The meeting of the Contract Managers must take place within five (5) Business Days of the date of the Dispute Notice (the "**Dispute Meeting**").
 - 1.4.2 The Contract Managers shall be given ten (10) Business Days following the date of the Dispute Meeting to resolve the Dispute.
 - 1.4.3 The Contract Managers can agree to further meetings at levels 2 and/or 3, as referred to at clause 5.1 of the Key Provisions in Schedule 1, in addition to the Dispute Meeting, but such meetings must be held within the ten (10) Business Day timetable set out in Clause 1.4.2 of this Schedule 9.
 - 1.4.4 If at any point it becomes clear that the timetable set out cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the timetable. Any agreed extension to the timetable shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 1.5 If the procedure set out in Clause 1.4 of this Schedule 9 has been exhausted and fails to resolve the Dispute either Party may request the Dispute be resolved by way of a binding expert determination (pursuant to Clause 1.6 of this Schedule 9). For the avoidance of doubt, the Expert shall determine all matters (including, without limitation, matters of contractual construction and interpretation) in connection with any Dispute referred to binding expert determination pursuant to Clause 1.6 of this Schedule 9.
- 1.6 Where the Dispute is referred to binding expert determination the following process will apply:
 - 1.6.1 The Party wishing to refer the Dispute to expert determination shall give notice in writing to the other Party informing it of its wish to refer the Dispute to expert determination and giving brief details of its position in the Dispute.
 - 1.6.2 The Parties shall attempt to agree upon a single expert (who must have no connection with the Dispute unless both Parties have consented in writing) (an "**Expert**"). For the avoidance of doubt, where the Dispute relates to contractual interpretation and construction, the Expert may be Queen's

Counsel. In the event that the Parties fail to agree upon an Expert within five (5) Business Days following the date of the notice referred to in Clause 1.6.1 of this Schedule 9 (or if the person agreed upon is unable or unwilling to act), the Parties agree that the Expert will be nominated and confirmed to be appointed by the Centre for Effective Dispute Resolution.

- 1.6.3 The Expert must be willing and able to complete the expert determination process within thirty (30) Business Days of the Date of Final Representations (as defined in Clause 1.6.5 of this Schedule 9).
- 1.6.4 The Expert shall act as an expert not as an arbitrator or legal advisor. There will be no formal hearing and the Expert shall regulate the procedure as he sees fit.
- 1.6.5 The Parties shall each have the right to make written representations to the Expert and will, with reasonable promptness, provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision. Such representations must be made within twenty eight (28) Business Days of the Expert being appointed, or fourteen (14) Business Days after the last documents requested by the Expert have been provided to the Expert, whichever is the later (“**Date of Final Representations**”). Any documents provided to the Expert and any correspondence to or from the Expert, including email exchanges, shall be copied to the other Party simultaneously.
- 1.6.6 The Expert shall have the power to open up, review and revise any certificate, opinion, requisition or notice and to determine all matters in Dispute (including his jurisdiction to determine matters that have been referred to him).
- 1.6.7 The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the Dispute and may issue orders that one or both of the Parties are to pay such third party costs, stating the proportion. For the avoidance of doubt, where the Expert is not Queen’s Counsel, and the Expert requires advice or assistance on matters of contractual interpretation and construction, the expert may take such advice and assistance from a third party Queen’s Counsel of their choosing under this Clause 1.6.7 of this Schedule 9. The Parties will pay any such third party costs incurred pursuant to this Clause 1.6.7 of this Schedule 9 in such proportions as the Expert shall order. In the absence of such order such third party costs will be paid equally.
- 1.6.8 The Expert shall provide the Parties with a written determination of the Dispute (the “**Expert’s Decision**”) within thirty (30) Business Days of the Date of Final Representations, which shall, in the absence of fraud or manifest error, be final and binding on the Parties.
- 1.6.9 The Expert’s Decision shall include reasons.
- 1.6.10 The Parties agree to implement the Expert’s Decision within five (5) Business Days of the Expert’s Decision being provided to them or as otherwise specified as part of the Expert’s Decision.
- 1.6.11 The Parties agree that the Expert shall be entitled to proceed to give his binding determination should one or both Parties fail to act in accordance with the procedural timetable set out above.

- 1.6.12 The Parties will pay the Expert's costs in such proportions as the Expert shall determine. In the absence of such determination such costs will be shared equally.
- 1.6.13 The Parties agree to keep confidential all information arising out of or in connection with the expert determination, including details of the underlying Dispute, except where disclosure is required by Law.
- 1.7 Nothing in this Contract shall prevent:
 - 1.7.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Goods and/or Services; or
 - 1.7.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party (including Intellectual Property Rights) or which relates to the safety of patients and other service users or the security of Confidential Information, pending the resolution of the relevant Dispute in accordance with the Dispute Resolution Procedure.
- 1.8 Subject to Clause 1.7 of this Schedule 9 neither Party may commence legal proceedings in relation to a Dispute until the dispute resolution procedures set out in this Schedule 19 have been exhausted. For the avoidance of doubt, either Party may commence legal proceedings to enforce the Expert's Decision.
- 1.9 This Schedule 9 shall survive the expiry of or earlier termination of this Contract for any reason.

Schedule 10

Supplier Products Terms and Conditions

These Nanopore product terms and conditions (the “Agreement”) are a contract between you (“Customer”) and Oxford. Please read this Agreement carefully.

1. Terms. Capitalized terms used herein shall have the meanings set forth on Exhibit A.
 - 2.1 Devices Purchased as CapEx Devices or Packs (Mk1D and P2Solo). Devices (but not the embedded software) made available under an order for a CapEx sale, Mk1D Pack or P2Solo Pack are sold. The embedded software is licensed under and for the term of the Support Plan. Devices are made available with an initial one-year Support Plan, which includes a software license unless otherwise expressly specified in the Order. Additional one-year Support Plans (and included software licenses) may be purchased on the Oxford Website. Continuation of Support Plan is necessary for continued use of all Devices.
 - 2.2 Devices in a Project Pack. Project Packs are available only in the UK, EU, US, Canada, Singapore, Japan and Australia. Devices offered in a Project Pack are leased, and made available hereunder for use by Customer. Devices are made available with an initial one-year Support Plan term, unless otherwise expressly specified in the Order. Additional one-year Support Plan terms may be purchased as provided on the Oxford Website. Customer shall keep the Device in Customer’s possession at the Delivery Location until Customer returns the Device to Oxford or destroys the Device in accordance with Oxford’s instructions. Customer shall not sell, distribute or transfer the Device to any third party without Oxford’s approval until purchased and owned by the Customer. Customer shall, as soon as reasonably possible (and not longer than sixty (60) days) after the expiration of the applicable Support Plan or termination of this Agreement, return to Oxford at Oxford’s expense all leased Devices it had received in good condition (ordinary wear and tear excepted). Oxford reserves the right to recover from Customer the then current purchase price for any Device not returned inclusive of one-year of Support Plan for such Device, or the value of the Project Pack associated with that Device in the event the Device is not then currently offered for sale.
 - 2.3 Flow Cells. Flow Cells are leased, not sold, and made available hereunder for use by Customer in conjunction with the Devices. Customer shall return to Oxford, using the prepaid packaging provided by Oxford, the Flow Cells as soon as reasonably possible and not longer than sixty (60) days) after use, expiration of the Useful Life of the Flow Cells, or termination of this Agreement (whichever is sooner) in good condition (ordinary wear and tear excepted), except that Customer shall not return Contaminated Flow Cells to Oxford, and instead shall provide Oxford proof of legal and appropriate destruction of Contaminated Flow Cells. Oxford reserves the right to recover from Customer the then current price of an individual Flow Cell, or individual pack of Flow Cells if a single Flow Cell is not offered by Oxford, for any Flow Cell not returned (excepting any Contaminated Flow Cells for which proof of legal and appropriate destruction has been provided to Oxford). Customer shall keep the Flow Cell in Customer’s possession at the Delivery Location until Customer returns the Flow Cell to Oxford or destroys the Flow Cell in accordance with Oxford’s instructions. Customer shall not sell, distribute, or transfer the Flow Cell to any third party.

2.4 Useful Life. Flow Cells are Approved for multiple experiments (following directions provided in the Documentation) during their respective useful life as stated on the Oxford Website or as otherwise stated on the Order (“Useful Life”). Consumables are Approved for the number of experiments provided in the Documentation during their respective Useful Life. Customer agrees that the Goods will not be handled other than by qualified and trained Persons.

2.5 Safeguarding Goods. Customer shall: (a) maintain the Goods in good condition and in a safe location, under environmental conditions as specified in the Documentation and (b) give Oxford such information about the Goods or Software, including information regarding location, condition and maintenance of the Goods and Customer’s compliance with this Agreement, as Oxford may request from time to time.

2.6 Change to Goods or Software. If unable to provide the Goods or Software specifically set out in this Agreement, Supplier must provide Authority with at least twelve (12) weeks’ notice of any updated or replacement products or technology to allow Authority sufficient time for any necessary change management processes, including any recalibration. Any new or replacement products must be approved by the Authority and shall be charged by Supplier at the same price or less as the original Goods or Software. Supplier shall provide the Authority all materials reasonably required to support revalidation of any updated or replacement products or technology at no additional cost. In the event that the Supplier proposes to supply the Authority with R10 flow cells instead of R9 flow cells, the Authority shall have the right to reject this change, or request that such change be delayed by a timeframe to be specified by the Authority, and the Supplier shall continue to supply R9 flow cells as requested by the Authority in accordance with the terms of this Agreement.

3. Orders

3.1 Pre-printed Terms. Any terms proposed in Customer’s acceptance of a quotation or an Order that add to, vary from, or conflict with the terms herein or in the quotation are hereby rejected. Any such proposed terms shall be void and the terms herein and in the email confirming acceptance of the Order shall constitute the complete and exclusive statement of the terms and conditions of the Agreement between the parties with respect to the applicable Order. If any terms of this Agreement conflict with the Order, the terms of the Order shall control solely with respect to such purchase.

Fees; Shipping Costs; Taxes.

3.2.1 Fees. The price of the Goods and/or Software and/or services (the “Fee”) is as shown in the Order.

3.2.2 Shipping Costs; Taxes; Insurance. Customer will be responsible for any taxes (including value added tax), duties, levies, or other government fees; standard packaging, delivery and handling charges or shipping insurance charges unless agreed to elsewhere in these terms or if stated in the Order. If any such charges apply, Oxford will add them to Customer’s Invoice. If Customer is a tax-exempt Person, Customer shall provide to Oxford proof of such status when setting up their account with Oxford and in any event, no later than upon placement of an Order, failing which, Oxford shall be entitled to invoice Customer for the relevant taxes.

3.3 Payment Terms. Customer agrees to pay to Oxford the Fee, any applicable bank fees associated with funds transmittal and other charges under the Order in full according to the payment terms set forth in the Order, or, if payment terms are not specified therein, within thirty (30) days of receipt of the Invoice. Except as otherwise

provided in an Order, all fees regardless of multipart deliveries must be paid within nine (9) months of the Order date and any Goods ordered but not requested to be delivered within nine (9) months of the Order date are forfeited, unless Oxford caused the delay.

3.4 Insolvency. To the extent permissible under applicable law, if Customer becomes insolvent or Oxford reasonably believes that Customer is about to become insolvent and Oxford notifies Customer accordingly, then, without limiting any other right or remedy available to Oxford, Oxford may cancel or suspend any deliveries under the Agreement without incurring any liability, and any outstanding amounts in respect of the Goods delivered to Customer will become immediately due.

3.5 Right to Use Contact Information. Customer grants Oxford Group the right to retain and use any and all personal information included in the Order(s) for purposes of providing Customer notice regarding an Order, shipping and logistics relating to the Order, providing support, facilitating completion of additional orders, and making Customer aware of new products and services available any reason without Customer's prior consent.

4. Pseudonymized Health Data. Notwithstanding Section 3.8, Customer shall not upload, transmit, store or modify data that contains the information of any Person, including without limitation, data consisting of human genomic information, whether or not Instrument Data, unless Customer has pseudonymized such data and obtained informed prior written consent of the subject and does not make available to Oxford information that permits such Pseudonymized Data to be re-identified. Except with respect to contact information of Customer and its relevant personnel, Customer shall not make available to Oxford personal data, protected health information or personal information as defined by applicable law.

5. Customer will use its best efforts to cooperate with and assist Oxford in identifying and preventing any unauthorized use, copying, or disclosure of the Goods or Software. Customer shall secure and protect all printed materials, manuals, software programs, disks, copies, and other media, if any, that embody, contain, or describe any Oxford Confidential Information in a manner consistent with the protection of Oxford's rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder. Customer further agrees that it shall be strictly liable for all damages to the Oxford Group that result from any disclosure of any Oxford Confidential Information by Customer to any third party unless permitted by this Agreement. If Customer is a government entity subject to legal requirements regarding public disclosure, Customer will not be in breach of this Agreement as a result of its compliance with such laws; provided, to the extent permitted by applicable law, that: (a) Customer promptly informs Oxford of a request to disclose any Oxford Confidential Information or making a determination that disclosure of any of the same is required under applicable law; and (b) Customer identifies, and discloses to Oxford, the requesting party, the information to be disclosed and the specific binding legal authority requiring such disclosure with sufficient time for Oxford to interpose an objection to such disclosure or take such other action as Oxford deems necessary to protect the Oxford Confidential Information. The Software, components of the Flow Cells, Specifications, Documentation and Instrument Data are treated by Oxford as trade secrets.

6. Term; Termination

6.1 Term. This Agreement shall continue in effect until terminated as provided herein. Support Plan must be maintained to purchase additional Devices, Flow Cells or Consumables and accordingly will be automatically added to new Orders when

expired. Unless otherwise expressly agreed, this Agreement shall govern purchase and sale or lease of Goods, Services and licenses to Software.

6.2 Termination. Except as otherwise provided in Section 10.3, as applicable, either Party may terminate this Agreement upon prior written notice if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving notice of such breach; provided, however, that Oxford shall have the right to terminate this Agreement immediately and without notice upon (a) Customer's breach of the provisions of Section 2 of this Agreement, or (b) Customer's infringement or filing of an action or commencing a proceeding contesting Oxford Group's ownership of or the validity or novelty of any Oxford Group patent. Any breach by Customer of any agreement between Oxford and Customer may, at Oxford's discretion, be deemed a breach of this Agreement and/or any of the Agreements between the parties. In addition, either Party may terminate an individual Support Plan upon thirty (30) days written notice to the other Party, provided, however, that such notice is provided prior to the end of the then-current Support Plan.

6.3 Warranty. Oxford warrants to Customer, during the applicable Warranty Period: Devices and Flow Cells will perform according to Specifications in all material respects. The foregoing warranty does not apply to the extent non-conformance is due to (a) abuse, misuse, neglect, negligence, accident, improper storage or use contrary to the Documentation, Specifications (including the IT requirements as provided on <https://store.nanoporetech.com>) or this Agreement, including, without limitation, provisions regarding Useful Life; (b) improper handling, installation, maintenance or repair (unless performed by Oxford's personnel); (c) unauthorized alterations; (d) Force Majeure events or (e) use with a third party's good not provided by Oxford. Device and Flow Cell warranties are conditioned on Oxford's access to real-time telemetry data or in the case of Devices, provision of telemetry data to Oxford per Oxford instructions in the event real-time telemetry is not provided by Customer.

6.4 Remedy and Procedure for Warranty Coverage. Oxford will, at its sole option, repair a non-conforming Device covered by the warranty in Section 6.3 or replace it with functionally equivalent, reconditioned, or new Device. Oxford will, subject to Customer's compliance with Section 3.1 of Schedule 2 – General Terms and Conditions, replace a non-conforming Flow Cell covered by the warranty in Section 6.3. To be eligible for repair or replacement under the warranty, in addition to compliance with Section 3.3, Customer must (a) promptly contact Oxford's Customer Solutions group to report the non-conformance, (b) cooperate with Oxford in confirming or diagnosing the non-conformance, (c) return the non-conforming piece of Hardware to Oxford following Oxford's instructions and at Oxford's expense or, if agreed by Oxford and Customer, grant Oxford's authorized Customer Solution personnel access to the non-conforming Hardware in order to confirm the non-conformance and make repairs and/or arrange replacements. To the maximum extent permitted by applicable law, these are Customer's sole remedies and Oxford's sole warranty obligations.

6.5 Consumables. During the term of this Agreement, Oxford will replace any Consumables that do not perform in accordance with Oxford's then-current Specifications for the same; provided that, any nonconformance is not attributable to (a) abuse, misuse, neglect, negligence, accident, improper storage or use contrary to the Documentation, Specifications or this Agreement, including, without limitation, provisions regarding Useful Life; (b) improper handling including use beyond the Useful Life; (c) Force Majeure events or (d) use with a third party's good not provided by Oxford.

6.6 Limitations. Except for any warranty, condition or guarantee that cannot be excluded by law, all warranties implied or otherwise not stated in this Section 7 are excluded. To the maximum extent permitted by applicable law, the Oxford Group does not make, and hereby disclaims, any representation or warranty, express or implied, regarding the accuracy, adequacy, timeliness, completeness, merchantability, fitness for a particular purpose or non-infringement of any kind with respect to the goods or the software (except with respect to the software's compliance with the respective documentation), including but not limited to, warranties of fitness for any particular purpose (except with respect to the software's compliance with the respective documentation) (including any purpose relating to a customer's legal or regulatory compliance obligations). Customer assumes responsibility for the results obtained from Customer's use of the Goods and the Software. Customer acknowledges that Customer has not relied on any statement, promise, representation, assurance, or warranty made or given by any member of the Oxford Group or its agents which is not set out in this Agreement.

7. Operations. Use of the Goods requires internet connectivity solely to enable (i) client-initiated, outbound, encrypted in transit (HTTPS) transmission of structured run performance telemetry data and (ii) client-initiated, outbound, encrypted in transit (HTTPS) access to Oxford Group's single sign on system for Hardware and/or run authorization. Customer is solely responsible for obtaining all internet connectivity necessary to use the Goods. Installation of third-party software not Approved, or use of the Goods or the Software other than as Approved, is prohibited, and may interfere with successful sequencing. The Goods and the Software shall not be used (a) by any Person that is, or is affiliated with, a current or potential Competitor; (b) on behalf of or for the benefit of a Competitor; (c) for the development of any other product or service that competes or could compete with the products or services of the Oxford Group (except to the extent applicable laws specifically prohibit such restriction); or (d) for designing or redesigning products intended for commercial use to better compete with the Goods or the Software, or other competitive purposes. Customer acknowledges that the means used by the Oxford Group that are designed to secure software, data and systems related to this Agreement may require that a Device or set of Devices and/or a Flow Cell or set of Flow Cells match a user ID assigned to Customer and/or that such Devices and Flow Cells are matched according to the Order and/or that particular workstations match unique Oxford-issued keys. Customer acknowledges this may limit Customer's ability to share Hardware and that, notwithstanding these measures (and other reasonable administrative, physical, and technical safeguards), Oxford cannot ensure the security of information or other materials made available hereunder in Oxford's custody or control. Customer acknowledges and agrees that the Goods and Software shall not be available under this Agreement for any health assessment or to diagnose, treat, mitigate, cure or prevent any disease or condition where required validation or registration of the Goods and/or Software with regulatory authorities has not been obtained.

8. Export Controls and Sanctions.

8.1 Customer represents and warrants that Customer is not a citizen, national, or resident of, and is not under control of, the government of Cuba, Belarus, Iran, Sudan, Libya, North Korea, Syria, the Crimea and disputed regions of Ukraine, nor any country to which export or re-export of Goods or Software is prohibited under Export Controls or Sanctions, and that Customer and relevant Customer personnel are not Sanctions Restricted Persons.

8.2 Customer further represents and warrants that Customer is not headquartered in and its ultimate parent company is not headquartered in Macau, Afghanistan, Belarus, Burma, Cambodia, Central African Republic, China, Democratic Republic of Congo, Cuba, Cyprus, Eritrea, Haiti, Iran, Iraq, North Korea, Lebanon, Libya, Russia, Somalia, Republic of South Sudan, Sudan, Syria, Venezuela, or Zimbabwe.

8.3 The Goods, the Software or part thereof may be subject to Export Control or Sanctions and Customer must not, directly or indirectly, sell, export, re-export, transfer, divert or otherwise make available the Goods or Software or associated information or technology to any destination or person or otherwise take any action or omit to take any action, which could expose Oxford to the risk of violating, or negative consequences under, Export Controls or Sanctions.

8.4 Customer represents and warrants that it will not use the Goods or Software for, and will not allow the Goods or Software to be used for WMD End-Use or Military End-Use.

8.5 The Goods or Software may only be used in the jurisdiction to which they are delivered and may not be redistributed.

8.6 Oxford may terminate this Agreement with immediate effect upon written if Oxford considers in its sole discretion that it would be impossible, impracticable or unlawful to perform any obligations or exercise any rights under this Agreement due to Sanctions or Export Controls risks.

8.7 United Kingdom Customers. This Section 10.3 applies only if the Customer is located in the United Kingdom. Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, warranty, or other term of condition, implied or imposed by any legislation that cannot lawfully be excluded or limited, including under the Unfair Contract Terms Act 1977, as amended by the Consumer Rights Act 2015 (the "UTCA") (a "Non-Excludable Provision"). To the maximum extent permitted by law, the Parties agree that any limitation of liability, remedy, warranty, guarantee or other term of condition set forth in this Agreement is reasonable (as such term is defined in the UTCA). To the maximum extent permitted by law, in the event any limitation of liability, remedy, warranty, guarantee or other term of condition set forth in this Agreement (i) is deemed not to be reasonable (as such term is defined in the UTCA) and is therefore not excludable or (ii) is otherwise deemed to be a Non-Excludable Provision, Oxford's entire liability for breach of a Non-Excludable Provision in relation to this Agreement or the Customer's use of the Goods or Software is limited to (at Oxford's option): (i) replacing the relevant Goods or Software, (ii) supplying the relevant Goods or Software again or (iii) repairing the relevant Goods or Software, in any such case in accordance with Sections 3.3 and 7.2.

9. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any such modification or deletion shall not affect the validity and enforceability of the rest of the Agreement. All restrictions specified in this Agreement shall apply to the maximum extent permissible under applicable law. If Customer believes it has additional rights or the right to act contrary to the express restrictions specified in the Agreement under mandatory laws (including, without limitation, national laws implementing Directive 2009/24/EC and similar laws), Customer agrees to provide Oxford with at least thirty (30) days prior written notice and any reasonably requested information before exercising such rights, to allow Oxford to offer alternatives at Oxford's sole discretion.

10. **Non-Waiver.** A waiver by either Party of any right or remedy arising under this Agreement or by law is only effective if given in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay to exercise any right or remedy provided under the Agreement or by law will constitute a waiver by that Party of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.

11. **Notice.** Any notice under this Agreement must be given in writing, which may include email. Notice by post should be sent to Customer or Oxford's address as specified on the Order, or to the relevant Party's registered office if no such address has been given, or as Customer or Oxford may otherwise direct in writing from time to time. Notice will be deemed received: (i) if delivered personally, on the date of delivery; (ii) if sent by prepaid first-class post or other next working day delivery service, on the second business day after posting; (iii) if delivered by commercial courier, on the date the courier's delivery receipt is signed; or (iv) if sent by fax or email, one business day after transmission.

12. **Governing Law.** This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the laws of England and Wales. Customer hereby consents to the exclusive jurisdiction of the courts of England, for resolution of any dispute or claim arising in connection with this Agreement. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply.

13. **Successors and No Third-Party Beneficiaries.** A person who is not a party to this Agreement shall have no right to enforce its terms, except for each member of the Oxford Group, who are express third-party beneficiaries of this Agreement. This Agreement is binding upon each Party's respective successors and assigns.

14. **Entire Agreement and Acknowledgement.** This Agreement, together with the incorporated terms and conditions, constitutes the complete and exclusive agreement between Customer and Oxford with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein with respect to the subject matter hereof. To the extent permitted under applicable law, the terms of this Agreement apply to the exclusion of any other terms that Customer may seek to impose or incorporate, including any terms specified on the Order, Customer purchase order, or implied by statute, trade, custom, practice, or course of dealing. This Agreement may not be amended except in a writing duly signed by Customer and an authorized representative of Oxford.

15. **Equitable Remedies.** Customer acknowledges and agrees that the Goods and Software are of a special, unique, unusual, extraordinary, and intellectual character such that any use of the Goods or Software in a manner inconsistent with this Agreement would irreparably injure Oxford in a manner for which money damages would not be sufficient to compensate Oxford. Accordingly, Customer agrees that, in addition to any other remedies available to Oxford at law, in equity or under this Agreement, Oxford shall be entitled to seek specific performance, injunctive relief and other equitable relief, including seizure of any Goods in Customer's possession or the compelled assistance of Customer in recovering improperly transferred Goods or Software, to prevent any actual or threatened misuse of the Goods or Software. Customer also acknowledges that this provision applies regardless of whether such use in a manner inconsistent with this Agreement is deemed to be a material breach and even in the absence of the exercise by Oxford of any rights to termination under Section 6.2.

16. Assignment. Oxford may at any time assign, transfer, mortgage, charge, subcontract, or deal in any other way with any or all of Oxford's rights and obligations under this Agreement in connection with a merger, change of control or sale of assets or assign any of its rights and obligations under this Agreement to a member of the Oxford Group. Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other way with any or all of Customer's rights and obligations under this Agreement without Oxford's prior written consent.

17. Survival. The provisions of Sections, 1, 2.2, 3.1, 3.2, 3.3, 3.4, of Schedule 2 – General Terms and Conditions, 11.3 of Schedule 2 – General Terms and Conditions, 15.3.3 of Schedule 2 – General Terms and Conditions and Sections 11.7, 12, 13 and 14 of Schedule 2 – General Terms and Conditions, as well as any obligation to pay Fees for materials ordered or services provided prior to termination, shall survive any expiration or termination of this Agreement for any reason.

Exhibit A - Definitions

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlled by, under common control with, or controlling, such Person.

"Application Specific IP" means Oxford Proprietary Information that pertains to or covers aspects, features or applications of the Goods or Software (and use thereof), only with respect to specific features, fields, or applications.

"Approved or Approval" means, with respect to any Goods or Software, the use, protocol, process, documentation, specifications, or third-party component (i) identified in the Information, Workflow, Safety and Legal, Multiplexing or Compatibility tab associated with such Goods or Software on <https://store.nanoporetech.com/> or (ii) as described in its associated Specification or Documentation at the time of the applicable Order or in the applicable Order.

"Assurance" means the confirmation of installation of the Device as recorded in Oxford Nanopore's records.

"Biological Data" means processed nucleotide sequence data and tertiary analysis data that provides a characterization of the biological, genetic, biochemical and/or physiological properties, compositions, or activities of the materials analysed using the Goods and the Software.

"CapEx Order" means an Order for purchase of a Device or Devices under these terms and conditions, including transfer of title to the Device(s) as more fully described in the Order.

"Competent Authority" means any of: 1) the United Kingdom; 2) the European Union or any of its Member States; 3) the United States of America; 4) any country in which obligations under this Agreement are to be performed or in which the Parties are incorporated or operate; and 5) the respective governmental institutions and agencies of any of the foregoing in items 1)-4).

"Competitor" means any entity or person that develops, sells, or distributes any third party tool, software process or system for genomic sequencing, analysis of nucleic acids or molecule sensing that competes with any member of the Oxford Group.

"Consumables" means a kit containing wash or flushing solution ("Wash Kit"); a kit for preparation of Customer's samples ("Sequencing Kit") and other chemicals and materials available from Oxford and used to run samples.

“Contaminated Flow Cells” means Flow Cells that have been used with or otherwise in contact with materials of Biohazard Level 3 or higher.

“Device” means each nanopore sequencing device identified and defined on the Oxford Website and such Device’s Documentation.

“Documentation” means Oxford’s user manuals, package inserts and similar documentation for the Goods and the Software in effect on the day the Goods ship, which may contain additional terms and conditions, whether provided with the Goods and Software at the time of shipment or electronically on Oxford’s website.

“Export Controls” means any laws that control, restrict, or impose licensing requirements on export, re-export, or transfer of goods, software, technology, or services, issued or adopted by a Competent Authority.

“Feedback” means all suggestions, comments, feedback regarding, modifications or improvements to, enhancements or derivative works of any Oxford Proprietary Information, including any content Customer may add to Oxford’s Resources and Support website at <https://nanoporetech.com/community>.

“Flow Cell” means the flow cell with pre-loaded nanopores, membranes that hold the nanopores and electrochemistry on a chip surface, designed for the applicable Device.

“Force Majeure” means an event beyond a Party’s reasonable control such as, without limitation, industrial disputes, strikes, failure of energy sources or transport networks, acts of God, war, terrorism, riot, civil commotion, failure of technical facilities, collapse of building structure, malicious damage, breakdown of machinery or default of suppliers or subcontractors. Notwithstanding anything else to the contrary, Oxford may suspend or terminate use of or substitute any Goods or Software to the extent needed to protect against the risk of injury, comply with law or avoid infringement.

“Goods” means, collectively, the Hardware and Consumables.

“Hardware” means, collectively, Devices and Flow Cells.

“Instrument Data” means any data generated by or through use of a Device, including, without limitation, instrument run reports, run parameters, run operating conditions, and any data generated by or available through use of Software that is not Biological Data.

“Intellectual Property Rights” means all patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Military End-Use” means: (i) incorporation into items included on the list of military goods, software and technology to which Export Controls apply, or use of production, test or analytical equipment and components for the development, production or maintenance of such listed military items; or (ii) use by a Military End-User.

“Military End-User” means: (i) any military forces, para-military forces, police forces, security services or intelligence services of a country subject to a military embargo pursuant to Export Controls or Sanctions; or (ii) any persons involved in the

procurement, research, development, production or use of dual-use goods, software or technology on behalf, or at the direction, of any of the entities mentioned in paragraph (i).

“Nanopore Extension Requirements” means: (a) all titles and trademarks, copyright, patent marking and restricted rights notices are reproduced on any materials embodying Nanopore Extensions or Nanopore Chemistries; (b) any materials embodying or describing Nanopore Extensions or Nanopore Chemistries must carry prominent notices stating that Customer created or modified it, and giving a relevant date of creation or modification; (c) use of the Nanopore Extension and/or Nanopore Chemistry by third parties or by Customer in the provision of third party services is limited to non-commercial gain and may not be conditioned on payment of a license fee (or other consideration) for use of same; (d) the Nanopore Extension or Nanopore Chemistry may not be disclosed to or used by any Competitors and Customer may not authorise any Competitors to use the Nanopore Extension or Nanopore Chemistry; (e) any Nanopore Extension or Nanopore Chemistry is made available under terms and conditions that provide that the Nanopore Extension and/or Nanopore Chemistry is provided “AS IS” and subject to the Nanopore Extension Requirements; and (f) use of any Nanopore Extension or Nanopore Chemistry is limited to the Specific Use and only in conjunction with Goods and Software.

“Order” means the order for the purchase or loaning of Goods from Oxford, as set out in an electronic order placed via the Oxford Website or other web address specified in the order, or submitted by email to a representative at Oxford, which references and incorporates the applicable Oxford quote.

“Oxford” means with respect to any Order, the member of the Oxford Group that is a counterparty to such Order.

“Oxford Confidential Information” means any information disclosed by any member of the Oxford Group that is disclosed in a manner such that Customer should reasonably understand such information to be confidential. Oxford Confidential Information shall, regardless of marking, include but shall not be limited to, Oxford Proprietary Information, the Consumables, pricing unavailable on Oxford Website, user interface specifications, equipment, Software, Instrument Data, Oxford Group research, development, trade secrets, software design, data collection, inventions, source code, APIs (application programming interfaces), software specifications, software routines, screen displays, data entry formats, data base structures, data base formats, flow charts, printouts and prompting sequences embodied in any software; provided, however, Oxford Confidential Information shall not include (a) any information already in the public domain (other than as a result of a violation of any duty of confidentiality) at the time of disclosure by Oxford; (b) Biological Data; (c) information already known to Customer at the time of disclosure (other than as a result of a violation of any duty of confidentiality); or (e) information disclosed to Customer in good faith by a third party who has an independent right to such information (other than as a result of a violation of any duty of confidentiality).

“Oxford Group” means Oxford Nanopore Technologies plc, and any of its Affiliates.

“Oxford Proprietary Information” shall mean (a) the Hardware, Software, the EPI2ME interface and Instrument Data; and (b) all other materials owned or licensed by any member of the Oxford Group, including, the design and processes used to manufacture the Goods or the Software and any Intellectual Property Rights therein or appurtenant thereto as well as any improvement, modification or enhancement thereto made by or on behalf of the Oxford Group.

“Oxford Website” means <http://www.nanoporetech.com>.

“Party” or “Parties” in singular or plural usage, shall mean Customer or Oxford as required by the context.

“Person” means any individual, firm, partnership, company, corporation, association, organization, government, government agency or other legal entity.

“Pseudonymized Data” means data in which personal data is replaced with one or more artificial identifiers, or pseudonyms. For example, a name is replaced with a unique number and the unique number is not made available in connection with the other data.

“Rights” means all rights possibly granted under intellectual property rights.

“Sanctions” means as in force from time to time, any treaty, law regulation, decree, ordinance, order, decision, directive, policy, demand, request, rule or requirement imposed, administered or enforced from time to time by any Competent Authority: (a) relating to any economic, financial trade or other, sanction, restriction, embargo, import or export ban, prohibition on receipt or transfer of funds or assets or on performing services, or equivalent measure; or (b) directed at prohibiting or restricting dealings with Sanctions Restricted Persons.

“Sanctions Restricted Person” means any person or entity: (i) included on any sanctions list (or equivalent) maintained by a Competent Authority; (ii) owned for 50% or more or controlled by any person or entity appearing on a list referred to in item (i);

“Software” means Oxford’s MinKNOW software, Oxford Group’s Epi2me Labs software, Epi2me software, Base Caller software, and other Device software, as applicable and as defined its Documentation, whether pre-loaded on and/or embedded in the Hardware or provided separately, including related Documentation.

“Specific Use” means any purpose for which the Goods or Software, as applicable, were designed or as expressly specified in an Order or Documentation provided that “Specific Use” specifically excludes any act by Customer to: (a) use the Goods or Software other than in accordance with this Agreement, the Specifications, Oxford’s instructions or the Documentation; (b) use Consumables, where such use is a re-use of a previously used Consumable; (c) use the Goods or Software for health assessment or to diagnose, treat, mitigate, cure or prevent any disease or condition where validation or registration of the Goods and/or Software with regulatory authorities has not been obtained but is required; (d) use the Hardware or Consumables in conjunction with third-party commercial products, primers, materials, reagents, consumables, software, or services that are designed or intended to work with Oxford’s Goods, services or Software and that are not Approved or otherwise authorized by Oxford for use (e.g. Customer’s and third-party’s non-commercial reagents and open source software tools may be used without Oxford Approval or authorization); (e) copy, modify, create any derivative works of the Goods or Software except as approved in writing by Oxford (except to the extent applicable laws specifically prohibit such restriction); (f) separate the Goods into their component parts; (g) reverse engineer, decompile, disassemble or otherwise attempt to derive the composition of the Goods or Software (except to the extent applicable laws specifically prohibit such restriction); (h) extract or isolate components of the Goods or subject them to non-authorized analysis; (i) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to Goods or Software; or (j) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Goods, Software or components thereof

“Supplier Specifications” means Oxford’s written specifications for the specific version of the Goods or the Software in effect on the date the Goods ship from Oxford.

“Support Plan” means the support plan agreement(s) available on Oxford Website

“Warranty Period” means (i) with respect to the Devices, one year from the date of delivery, or for the duration of the applicable Support Plan if longer, and (ii) with respect to Flow Cells and Consumables, three months from the date of delivery, or as expressly specified in an Order.

“WMD End-Use” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapon.

Schedule 11

CHANGE CONTROL FORM

Change Form

CF Number:	[number]	Date of Request:	
Originator:			
Reason For Change:			
Details of Change:			
Date Change Effective From:			
Contract Price Change	YES/NO (if "YES" provide full details)		

Effect on the Agreement	YES/NO (if "YES" provide full details)
Amendment Text to Clauses and Relevant Schedules/Annexes to Implement Change	

The Service Provider's Representative	The Purchaser's Representative
SIGNATURE:	SIGNATURE:
DATE:	DATE:

[00]