NHS conditions of contract for the supply of services

As amended by Southport and Ormskirk NHS Trust

November 2012

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1 Defined Terms and Interpretation

1.1 In these terms and conditions the words and expressions below will be interpreted to have the meanings adjacent to them:-

1.1.1 "**Affected Party**" means, in the context of Clause 47 the Party whose obligations under the Contract have been affected by the Force Majeure Event;

1.1.2 "**Authorised Officer**" means a person designated as such by the Authority from time to time as notified in writing to the Contractor to act as the representative of the Authority for all purposes connected with the Contract, including any authorised representative of such person;

1.1.3 "**Authority**" means the Beneficiary placing the Order or, if a Third Party Beneficiary places the Order, the Beneficiary to which the Third Party Beneficiary supplies goods and/or services;

1.1.4 "**Beneficiary**" means any or all of:

(a) the Department of Health and all agencies thereof;

(b) GPs;

(c) health service bodies referred to in Section 9 of the National Health Service Act 2006;

(d) the Medical Research Council;

(e) the Secretary of State for Health;

(f) any care trust as defined in section 77 of the National Health Service Act 2006;

(g) any NHS foundation trust listed in the register of NHS foundation trusts maintained pursuant to section 39 of the National Health Service Act 2006;

(h) any body replacing or providing similar or equivalent services to the above;

(i) any statutory successor to any of the above;

and "**Beneficiaries**" shall be construed accordingly;

1.1.5 "**Commencement Date**" means the date agreed by the Parties in writing or detailed in the Specification, on which the provision of the Services is to start;

1.1.6 "**Confidential Information**" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Contract and:

(i) which comprises Personal Data or in the case of the Authority or any Beneficiary which relates to any patient or his or her treatment or medical history;

(ii) the release of which is likely to prejudice the commercial interests of the Authority or (as the case may be) any Beneficiary or the Contractor respectively; or

(iii) which is a trade secret;

1.1.7 "**Contract**" means the agreement between the Authority and the Contractor comprising the Order, these terms and conditions and schedules hereto, and the Specification, and for the avoidance of doubt all other terms, conditions or warranties other than any terms, conditions or warranties implied by law in favour of the Authority or the Beneficiaries are excluded from the agreement between the Authority and the Contractor unless expressly accepted in writing by the Authorised Officer;

1.1.8 "**Contractor**" means the provider of the Services pursuant to the Contract;

1.1.9 "**Contract Manager**" means a person designated as such by the Contractor from time to time as notified in writing to the Authority to act as the duly authorised representative of the Contractor for all purposes connected with the Contract, including any authorised representative of such person;

1.1.10 "**Contract Period**" means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Contract, starting on the Commencement Date, as set out in the Order and/or the Specification (or if the Order and/or the Specification does not set out such a duration, the period from the date of the Order until the Authority terminates by giving not less than 1 month's notice in writing to the Contractor);

1.1.11 "**Contract Price**" means the monies payable by the Authority or any Beneficiaries to the Contractor for the provision of the Services as set out in the Order. In the absence of agreement by the Parties to the contrary, the Contract Price shall be inclusive of all taxes, duties, expenses and disbursements save for VAT (if applicable) and shall include the costs of all equipment and materials including uniforms, training and radio-equipment supplied by the Contractor, all travelling expenses involved and all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any Intellectual Property or Intellectual Property Rights for the purpose of performance of the Contract.;

1.1.12 “**Contract Standard**” means such standard as complies in each and every respect with all relevant provisions of the Contract;

1.1.13 "**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 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

1.1.14 "**Costs**" includes costs, charges, outgoings and expenses of every description;

1.1.15 "**Deliverable**" means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced by or to be produced by or acquired by or to be acquired by the Contractor in the course of the performance of the Services;

1.1.16 "**Dispute Resolution Procedure**" means the procedure set out in Clause 24;

1.1.17 "**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;

1.1.18 “**Employees**” means, for the purpose of Clause 29, the employees assigned to the Services by the incumbent contractor or, as the case may be, by the Authority or any Beneficiaries prior to the Commencement Date;

1.1.19 “**Force Majeure Event**” means one or more of the following to the extent that it is not attributable to the Contractor or the Contractor’s staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Services, but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the

exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Contract;

1.1.20 "**Framework Agreement**" means any agreement which defines, in broad terms, the scope and terms and conditions under which supply contracts will be entered into should the need arise;

1.1.21 "**Good Industry Practice**" means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations;

1.1.22 "**GPs**" means medical practitioners providing General Medical Services or Personal Medical Services under the National Health Service Act 2006 (whether operating in partnership with others or not);

1.1.23 "**Insolvent**" means:

(a) if the Contractor is an individual, that individual or where the Contractor is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;

(b) if the Contractor is a company, the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Contractor's assets, or if the Contractor makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and

(c) any event in any jurisdiction other than England and Wales which is analogous to any of the above;

1.1.24 "**Intellectual Property**" means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;

1.1.25 "**Intellectual Property Right**" includes the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding;

1.1.26 "**In writing**" shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages;

1.1.27 "**Know How**" means all information not publicly known which is used or required to be used in or in connection with the Services existing in any form (including, but not limited to, that comprised in or derived from engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams, brochures, catalogues and other descriptions) and relating to the design, development, manufacture or production of any products; the operation of any process; the provision of any Services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any person;

1.1.28 “**Loaned Equipment**” means equipment owned by the Authority or any Beneficiary which is loaned to the Contractor for the purposes of the Contract;

1.1.29 "**Location**" means the location for the provision of the Services as set out in the Contract or as otherwise agreed in writing between the Authority or any Beneficiary and the Contractor;

1.1.30 "**Loss**" includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss;

1.1.31 “**Month**” means a calendar month;

1.1.32 "**Order**" means any order placed on the Contractor by an Authority or any Beneficiary for the provision of the Services whether or not such order is placed pursuant to a Framework Agreement concluded between the Contractor and any Beneficiary or Beneficiaries as the case may be;

1.1.33 “**Party**” means any party to the Contract individually and “Parties” refers to all of the parties to the Contract collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Contract are third parties;

1.1.34 "**Person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;

1.1.35 "**Personal Data**" means data as defined by the Data Protection Act 1998 which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Contractor and includes any expression of opinion about an individual and any indication of the intentions of the Contractor in respect of an individual;

1.1.36 “**Receipt of Order**” means, if personally delivered, at the time of delivery; if sent by facsimile, at the time of transmission; if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and if sent by electronic mail, provided that a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class

recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent;

1.1.37 "**Recruits**" means any new employees engaged by the Contractor to work on the Services to which this Contract relates (and any amendment to those Services);

1.1.38 "**Replacement Contractor**" means any contractor engaged to replace the Contractor or any sub-contractor of the Contractor;

1.1.39 "**Service Information**" means information concerning the Services provided by the Contractor to the Authority in accordance with Clause 32.1 for inclusion in the Authority's catalogue and/or any Beneficiary's catalogue from time to time;

1.1.40 "**Services**" means the services provided by the Contractor pursuant to, and in accordance with, the Contract;

1.1.41 "**Sites**" means those areas at the Location for the use of the Contractor and his staff in the provision of the Services, as set out in the Specification;

1.1.42 "**Specification**" means the description of the Services together with (where applicable) a brief description of Deliverables to be provided pursuant to such Services as referred to, set out in or attached to the Order (or, if no such description is set out in or attached to the Order, as set out in or attached to any documentation inviting the Contractor to tender for the appointment to provide the Services, including any documentation issued, or made available, to the Contractor by any Beneficiary);

1.1.43 **"Third Party Beneficiary"** means each of the non-NHS bodies set out in the list attached at Schedule 1, as supplied from time to time by the Authority to the Contractor;

1.1.44 "**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses;

1.1.45 "**Year**" means during the Contract Period, any 12 month period commencing on the Commencement Date or an anniversary thereof.

1.2 In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Moreover, where relevant, references to

English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.

1.3 Any headings to Clauses, together with the front cover and the Index are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to Clauses shall mean the Clauses of these terms and conditions.

1.4 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning. The Parties have had equal opportunity to take legal advice and the *contra proferentem* rule shall not apply to the interpretation of these terms and conditions.

1.5 Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The *ejusdem generis* principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.6 In these terms and conditions, words importing any particular gender include all other genders.

1.7 In these terms and conditions, words importing the singular only shall include the plural and vice versa.

1.8 In these terms and conditions “staff” and “employees” shall have the same meaning.

1.9 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.

1.10 All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

1.11 Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.

1.12 Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be

liable for any default on the part of the person acting or omitting to act in that manner.

1.13 All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.

2 Appointment

2.1 The Authority appoints the Contractor to provide the Services:

2.1.1 promptly (and in any event within any time targets as may be set out in the Specification) and in a professional and courteous manner so as to reflect and promote the image of the Authority and any Beneficiary;

2.1.2 strictly in accordance with the Specification and all provisions of the Contract; and

2.1.3 in accordance with all applicable UK and European laws and regulations and Good Industry Practice; and

2.1.4 in accordance with the policies (including, when on any premises of the Authority or any Beneficiary or on any other premises where it works alongside the Authority's or any Beneficiary's staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Authority and any Beneficiary as amended from time to time.

2.2 The Contractor accepts the terms of appointment as provided in Clause 2.1 in consideration of the Contract Price.

3 Performance of the Services

3.1 Subject to Clause 15.1, the Contractor shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Contract Standard.

3.2 To the extent that the Specification includes the date, format and method of delivery of the Services and Deliverables and/or the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Services, the Contractor will abide by the same.

3.3 Time shall be of the essence with regard to the obligations of the Contractor under the Contract.

3.4 If the Specification provides for performance of the Services in stages, the Contractor undertakes to perform the Services in strict compliance with the timetable for stages as provided in the Specification.

3.5 The Authority and the Contractor will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Authority, or as the case may be, any Beneficiary to derive the full benefit of the Contract. At all times in the performance of the Services, the Contractor will co-operate fully with any other contractors appointed by the Authority or any Beneficiary in connection with other services at the Location.

3.6 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to notify the Authorised Officer of all significant changes to staffing, rates of pay or conditions of employment, or hours of work or other technological changes at least one month prior to the implementation of any such revised arrangements.

3.7 The Contractor shall provide information in a format, medium and at times specified by the Authority, related to the performance of the Services as may be reasonably required.

3.8 In providing the Services, the Contractor shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Authority's or, as the case may be, to any Beneficiary's computer systems.

3.9 If at any time the Contractor becomes aware of any act or omission or any proposed act or omission by the Authority or any Beneficiary or by any member, official or employee of the Authority or any Beneficiary which prevents or hinders or may prevent or hinder the Contractor from providing the Services in accordance with the Contract then the Contractor shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Contractor's compliance with this Clause shall not in any way relieve the Contractor of any of its obligations under the Contract.

3.10 The Authority and any Beneficiary shall provide the Contractor with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Contractor of any amendments to such documents) to enable the Contractor to comply with its obligations under the Contract.

3.11 The Authority may, where necessary, require the Contractor to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of his own staff whilst carrying out their duties in relation to the Contract at the Location. This shall include, but not be limited to, disciplinary and grievance procedures. The Contractor shall provide the Authority and any Beneficiary with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Authority and any Beneficiary of any amendments to such documents).

3.12 The Contractor will immediately notify the Authorised Officer of any actual or potential problems relating to the Contractor's own suppliers that affects or might affect his ability to provide the Services.

3.13 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Authority and any Beneficiary) in accordance with the Specification. The Contractor must have in place contingency plans and arrangements which are approved by the Authority to ensure continuity of supply.

3.14 The Contractor will immediately notify the Authorised Officer of any actual or potential industrial action, including strike action, whether such action be of his own staff or others, that affects or might affect his ability at any time to provide the Services.

3.15 The Contractor will be responsible for providing and maintaining the Services to the Contract Standard during industrial action, at no additional cost to the Authority and any Beneficiary. The Contractor must have in place contingency plans and arrangements which are approved by the Authority.

3.16 In the event of the Contractor being unable to maintain the Services to the Contract Standard, the Contractor shall without prejudice to the remedies of the Authority and any Beneficiary permit the Authorised Officer and his staff, to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Contractor deemed necessary to maintain the Services by the Authorised Officer during industrial action, or any other such occurrence, without additional charge.

3.17 In the event of a major incident (as defined in the Authority's major incident policy) the Contractor shall perform the Services in accordance with the relevant section of the Specification.

4 Deliverables

4.1 Wherever the Services require the Contractor to provide a Deliverable:

4.1.1 such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Contractor will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Contractor by the Authorised Officer;

4.1.2 the Authority or any Beneficiary may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Contractor by the Authority or any Beneficiary;

4.1.3 the Authority or any Beneficiary will not reject any Deliverable (wholly or in part) without providing written reasons to the Contractor as to why such Deliverable has been rejected;

4.1.4 any dispute as to whether the Authority or any Beneficiary has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and

4.1.5 any Deliverables which are rejected shall be replaced by the Contractor (at no extra charge to the Authority or any Beneficiary) by Deliverables which are reasonably satisfactory to the Authorised Officer.

5 Performance Measurement

5.1 In addition to any more specific obligations imposed by the terms of the Contract, it shall be the duty of the Contractor to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Authorised Officer.

5.2 The Contractor shall institute and maintain a properly documented system of quality control as set out in the Specification and which is to the satisfaction of the Authorised Officer to ensure that the Contract Standard is met.

5.3 In addition to any other rights of the Authority and any Beneficiary under the Contract, the Authorised Officer shall be entitled to inspect the Contractor's quality control system referred to in Clause 5.2 above.

5.4 During the Contract Period, the Authorised Officer may inspect and examine the provision of the Services being carried out at the Location without notice at any time. The Contractor shall provide to the Authority all such facilities as the Authority may require for such inspection and examination.

5.5 The Contractor shall allow the Authority and any person, firm or organisation authorised by the Authority to have access to and to audit all records maintained by the Contractor in relation to the supply of the Services. The Contractor shall assist the Authority or any party authorised by the Authority (as the case may be) in the conduct of the audit.

5.6 If any part of any Service is found to be defective or different in any way from the Specification or otherwise has not been provided to the Contract Standard other than as a result of a default or negligence on the part of the Authority or any Beneficiary, the Contractor shall at its own expense re-perform the Services in question (without additional remuneration therefor) within such time as the Authority or any Beneficiary may reasonably specify failing which the Authority or any Beneficiary shall be entitled to procure performance of the defective Services from a third party or to execute the tasks in question itself. If the cost to the Authority or any Beneficiary of executing or procuring such Services exceeds the amount that would have been payable to the Contractor for such Services, the excess shall be paid by the Contractor to the Authority or any Beneficiary on demand in addition to any other sums payable by the Contractor to the Authority or any Beneficiary in respect of the breach of Contract.

5.7 If the performance of the Contract by the Contractor is delayed by reason of any act or default on the part of the Authority or any Beneficiary or, by any other cause that the Contractor could not have reasonably foreseen or prevented and for which it was not responsible, the Contractor shall be allowed a reasonable extension of time for completion of the Services so affected.

5.8 For each Service, the Authority or any Beneficiary shall ascertain whether the Contractor's provision of the Service in question meets any performance criteria as specified in the Specification or, if the criteria are not so specified, meets the standards of a professional provider of the Services. On or before the fifteenth working day of each calendar month during the Contract Period and within 14 days after termination of the Contract, the Authority or any Beneficiary may:

5.8.1 in respect of each of the Services during the preceding calendar month, provide to the Contractor a notice (each called a "**Performance Notice**") which shall set out a statement of the Authority's or any Beneficiary's dissatisfaction with the Contractor's performance and provision of the Services;

5.8.2 each Performance Notice issued by the Authority or the Beneficiary shall include a proposed rebate of the Contract Price commensurate to the under-performance of the Contractor as recorded in the Performance Notice;

5.8.3 if the Contractor disputes any matter referred to in any Performance Notice and/or the proposed rebate of the Contract Price, the Contractor may raise this objection with the Authority or the Beneficiary and if this matter is not resolved within 7 days the matter shall be referred to the Dispute Resolution Procedure; and

5.8.4 if the Contractor has not raised any objection to the Performance Notice within 7 days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Contractor and the rebate on the Contract Price referred to therein shall become immediately effective.

5.9 The Authority and any Beneficiary's rights under Clause 5.8 are without prejudice to any other rights or remedies the Authority or any Beneficiary may be entitled to.

5.10 On request, the Contractor shall submit to the Authority and any Beneficiary progress reports detailing its adherence to the timetable (if any) as set out in the Specification in a format approved by the Authority or any Beneficiary. The submission and acceptance of such reports shall not prejudice any other rights or remedies of the Authority or any Beneficiary under the Contract.

5.11 If required by the Authority or any Beneficiary, the Parties shall co-operate in sharing information and developing performance measurement criteria with

the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Authority or Beneficiary as the case may be.

6 Contract Price and Payment

6.1 In consideration of the Contractor's due and proper performance of its obligations under the Contract, the Contractor may charge the Authority or, as the case may be, any Beneficiary the Contract Price in accordance with this Clause 6.

6.2 The only sums payable by the Authority or any Beneficiary to the Contractor for the provision of the Services shall be the Contract Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Contractor.

6.3 In accordance with the Contract, where the Contractor is required to provide Deliverables, the Authority or any Beneficiary shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Specification.

6.4 Unless otherwise agreed in writing by the Authority or any Beneficiary and the Contractor, within 15 days of the end of each calendar month, the Contractor shall invoice the Authority or, as the case may be, any Beneficiary for any Services provided by the Contractor in that calendar month. Such invoice shall be rendered on the Contractor's own invoice form clearly marked with the Authority's or the Beneficiary's order number (if any). Invoices must show the period to which they relate and the aspects of the Services for which payment is claimed together with the agreed charging rates and any other details the Authority or the Beneficiary may require. Failure to provide such information will entitle the Authority or the Beneficiary to delay payment of the Contract Price until such information is provided.

6.5 Subject to Clauses 6.3 and 6.6, the Authority or any Beneficiary shall pay any invoice submitted by the Contractor in accordance with Clause 6.4 within 30 days of receipt by the Authority or the Beneficiary of such invoice. The Authority or the Beneficiary shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Authority or the Beneficiary and the Contractor.

6.6 The Authority and any Beneficiary shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority or the Beneficiary from the Contractor.

6.7 Where the performance of the Contractor does not meet the required standard then a deduction as set out in the Specification or as agreed by the Parties may be made.

6.8 Except where otherwise stated in the Order, the Contract Price is exclusive of VAT which shall be payable, if applicable, by the Authority or any Beneficiary in addition to such Contract Price. The invoice provided to the Authority or

any Beneficiary by the Contractor in accordance with Clause 6.4 shall show the VAT calculations separately.

6.9 The Contractor will keep accurate books and records in relation to the provision of the Services in accordance with sound and prudent financial management. All such books and records shall be made available to the Authority at regular intervals of not less than quarterly.

6.10 In the event of the Authority or any Beneficiary breaching Clause 6.5, the Contractor shall be entitled to charge interest on the outstanding amount owed by the Authority or such Beneficiary in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

6.11 Subject to Clauses 6.12 and 6.13, the Contract Price shall not be subject to any increase whatsoever by the Contractor during the Contract Period.

6.12 In the event that the Contract is varied under Clauses 22 or 23 in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on the adjustment to the Contract Price within 3 months both Parties shall jointly act to resolve the dispute in accordance with Clause 24.

6.13 If the adjusted Contract Price is not so agreed or certified until after such variation has taken effect, the Authority or any Beneficiary shall continue to pay the Contractor at the rate current prior to the variation but shall pay to the Contractor or be entitled to recover from the Contractor as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually paid.

6.14 In the event that the Contract ends or is terminated otherwise than at the end of a complete year, the sum payable by the Authority or any Beneficiary under Clause 6 shall be one twelfth of the annual sum which would otherwise have been payable for the complete year for each completed month.

7 Resources

7.1 The Contract Price includes payment in full for all facilities and resources required by the Contractor to provide the Services in accordance with the Contract. Any facilities or resources needed or used by the Contractor to perform the Services shall be provided by the Contractor without additional cost to the Authority or any Beneficiary.

7.2 The Contractor confirms its satisfaction of its abilities and experience in all respects to perform the Services pursuant to the Contract to the reasonable satisfaction of the Authority.

8 Contract Period

8.1 The Contract shall commence and (subject to any earlier lawful termination) remain in force for the Contract Period.

8.2 The Authority may, by notice in writing, extend the Contract Period, provided that the said notice shall have been given to the Contractor no later than 12 weeks before the end of the Contract Period.

9 Authorised Officers

9.1 Any notice, information or communication given to or made by an Authorised Officer shall be deemed to have been given or made by the Authority.

9.2 The Contractor shall decline from providing the Services to any of the Authority's or Beneficiary's staff who are not Authorised Officers.

10 Employees

10.1 The Contractor shall be entirely responsible for the employment and conditions of service of his staff employed in the Contract.

10.2 The Contractor will employ sufficient employees to ensure that all of the Services are provided at all times and in all respects in complete conformity with the Specification. This will include, but not be limited to, the Contractor providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Contractor will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Contractor's expense) and carries out the Services with regard to

10.2.1 the task or tasks that person has to perform;

10.2.2 all relevant provisions of the Contract and the Specification;

10.2.3 all relevant policies, rules, procedures and standards of the Authority and any Beneficiary (including any racial discrimination and equal opportunities policies);

10.2.4 the need for those working in an health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration;

10.2.5 the need to keep confidential all information howsoever acquired whether relating to the Authority or any Beneficiary and its business, or relating to patients, including but not limited to patient identity, clinical conditions and treatment.

10.3 The Contractor will, when recruiting potential employees for the purpose of the Contract, act in accordance with the Specification.

10.4 The Contractor shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.

10.5 The Authority reserves the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected the Contractor shall supply alternative staff. In addition, the Authorised Officer may (but not unreasonably or vexatiously) instruct the Contractor to take disciplinary action against or to remove from work in or about the provision of the Services any person employed by the Contractor and the Contractor shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute.

10.6 The Contractor shall ensure that any employees to whom reference is made by name in the Specification are actively involved in the provision of the Services or are replaced with employees acceptable to the Authorised Officer. The Contractor acknowledges that if it is ever the wish of the Contractor to change the partners and/or employees committed to provide the Services as provided for in the Specification it shall first give notice of such wish to the Authorised Officer explaining the reasons for such wish together with full details of any proposed replacement partner and/or employee. The Authority shall be under no obligation to approve or accept any such replacement. If any of the partners or employees referred to in the Specification cease, in the reasonable opinion of the Authority, to provide and be responsible for the provision of the Services and the quality of those Services then the Authority may terminate the Contract in accordance with Clause 26.1 paying only for the Services provided up to the date of such termination.

10.7 The Contractor shall procure that all potential staff or persons performing any of the Services during the Contract Period who may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services:

10.7.1 are questioned concerning their Convictions; and

10.7.2 only in the case of potential staff who may reasonably be expected in the course of their employment to have access to children or other vulnerable persons, obtain standard and enhanced disclosures from the Criminal Records Bureau before the Contractor engages the potential staff or persons in the provision of the Services to the Authority and any Beneficiary. The Contractor shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Criminal Records Bureau including, without limitation, the Contractor being registered with the Criminal Records Bureau.

10.8 The Contractor shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with Clause 10.7.1, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Criminal Records Bureau in accordance with Clause 10.7.2, or who fails to obtain standard and enhanced disclosures from the Criminal Records Bureau upon request by the Contractor in

accordance with Clause 10.7.2 is employed without the Authority's prior written consent.

10.9 The Contractor shall procure that the Authority is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Authority.

10.10 The Contractor shall procure that the Authority is kept advised at all times of any:

10.10.1 disciplinary incident relating to his staff involving visitors, or the Authority's or any Beneficiary's staff or property; and

10.10.2 incidence of serious misconduct involving his staff.

10.11 The Contractor shall only employ staff for the purposes of the Contract who:

10.11.1 fulfil any minimum training and qualification requirements of the Authority as set out in the Specification and also all training and qualification requirements that may be deemed necessary by the Authorised Officers, legislation, or any special bodies or associations;

10.11.2 are in good health and have a standard of oral and personal hygiene acceptable to the Authority;

10.11.3 are medically and physically fit in so far as the requirements of the work are concerned.

10.12 The Contractor shall not employ in or about 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 of the Authority's or any Beneficiary's staff, residents, patients or visitors at risk. In all such cases, the Contractor is required to notify the Authorised Officer of each particular incident. The Contractor may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Authority's or any Beneficiary's premises. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Contractor at his own expense.

10.13 The Authorised Officer may, but not unreasonably or vexatiously, require any person employed by the Contractor in or about the provision of the Services to be medically examined at any time during their employment.

10.14 Any medical examination or certification of any member of the Contractor's staff required by the Contract shall be arranged by and shall be at the expense of the Contractor provided always that the Authority shall be entitled at their own expense, to require any medical examination to be carried out by a Medical Practitioner nominated by the Authority.

10.15 The Contractor will comply with the Authority's policy and procedures on Cross Infection and Notifiable Diseases and will co-operate with and act upon the advice of the Authority's or any Beneficiary's Infection Control Representative.

10.16 As a condition of employment in the contract, Contractor's staff:

10.16.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract assignments

10.16.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Contract assignment instructions;

10.16.3 shall not act in a manner reasonably likely to bring discredit upon the Authority or any Beneficiary;

10.16.4 shall be properly and presentably dressed in such uniform as is detailed in the Specification or agreed between the Parties ("the Contract Uniform");

10.16.5 shall not wear the Contractor's uniform, the Contract Uniform or identification, or use his equipment on the Authority's or any Beneficiary's premises unless fulfilling the terms of the Contract;

10.16.6 shall maintain proper standards of appearance and deportment whilst at work;

10.16.7 shall not at any time be on duty under the influence of alcohol or drugs;

10.16.8 shall on being charged with any criminal offence, notify the Contractor immediately;

10.16.9 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;

10.16.10 shall not misuse or abuse the Authority's or any Beneficiary's property;

10.16.11 shall not smoke while on the Authority's or any Beneficiary's premises, except in those areas where smoking is expressly permitted.

10.17 The Contractor shall provide its employees with a form of identification that is acceptable to the Authority and which employees shall display on their clothing at all times when they are at the Location.

10.18 The Contractor and his staff shall confine themselves to the locality of their work and shall cause as little interference and disruption as possible with other personnel and activities at the Location.

10.19 The Authority or any Beneficiary shall not be liable for loss of, or damage to, the personal property of Contractor's staff, howsoever caused.

10.20 It is the joint responsibility of the Contractor and his employees to ensure that the employees supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Contractor to keep records of hours worked for each employee.

11 Control and Supervision of Staff

11.1 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Contractor.

11.2 The Contract Manager shall be suitably qualified in accordance with the Specification. In addition a work history/biography will be submitted to the Authorised Officer for approval prior to interview.

11.3 The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Authority and any Beneficiary shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.

11.4 The Contractor shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Authority and any Beneficiary at all times when any employee of the Contractor is on duty for the provision of the specified Services.

11.5 The Contractor shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.

11.6 The Contract Manager or his deputy shall consult with the Authorised Officer and such other of the Authority's or any Beneficiary's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with the Contract.

11.7 The Contractor shall provide a sufficient complement of supervisory staff in addition to the Contract Manager, to ensure that the Contractor's staff engaged in and about the provision of the Services at the Location are adequately supervised and properly perform their duties at all times.

11.8 All persons appointed to managerial and supervisory positions in accordance with the Specification must be to the acceptance of the Authorised Officer who will have the right to veto the appointment of any candidate who is deemed to be unsuitable.

11.9 The Contractor's staff engaged in and about the provision of the Services shall primarily be under the control and direction of the Contractor's own supervisory staff but nevertheless while on the Authority's and any Beneficiary's premises will obey all reasonable instructions given to them by the Authority's or any Beneficiary's supervisory staff in any matter occasioned by the operational needs of the relevant Service or the health, safety or welfare of anyone.

11.10 The Contractor shall ensure that his staff carry out their duties and behave while on the Authority's or any Beneficiary's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Contractor's staff shall not cause any unreasonable or unnecessary disruption to the routines, practices, and procedures of the Authority's or any Beneficiary's staff, patients or visitors, or any of the staff of any other contractors.

12 Health and Safety

12.1 While at the Location, the Contractor shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued thereunder, and with the Authority's and any Beneficiary's own policies and procedures.

12.2 The Contractor shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Contract on the Authority's or any Beneficiary's premises.

12.3 The Contractor will be required to nominate a Health and Safety Representative to liaise with the Authorised Officer on all Health and Safety matters.

12.4 The Contractor's staff shall follow a system of accident recording in accordance with the Authority's or any Beneficiary's accident recording procedure and the Contractor's own accident reporting procedures.

12.5 All notifiable accidents shall immediately be brought to the attention of the Authorised Officer.

12.6 The Contractor shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the Contractor's working practices or other occurrences likely to increase such risks or to cause new hazards.

12.7 The Contractor's staff shall be trained to recognise situations which involve an actual or potential hazard including:

12.7.1 danger of personal injury to any person on the Authority's or Beneficiary's premises and

a) where possible, without personal risk, make safe any such situation; or

b) report any such situation to the Authorised Officer;

12.7.2 fire risks and fire precautions and procedures including attendance at fire lectures/drills in accordance with the Authority's or any Beneficiary's policies;

12.7.3 security;

12.7.4 risk management;

12.7.5 major incident;

12.8 The Contractor shall provide such first aid facilities and ensure that his staff abide by such first aid procedures as shall be required by the Authority or any Beneficiary as detailed in the Specification.

12.9 The Contractor shall at any time ensure that the equipment used and procedures operated conform to the Authority's or any Beneficiary's Fire Policy as detailed in the Specification.

12.10 The Contractor shall co-operate with the Authority's or any Beneficiary's Fire, Security and Safety Advisors and shall comply with their reasonable instructions.

12.11 The Contractor will comply with the Control of Substances Hazardous to Health (COSHH) Regulations (as amended) and COSHH hazard management and control.

13 Location

13.1 Subject to satisfactory agreement between the Parties on price, the Authority reserves the right to increase or reduce the number of Locations under the Contract at any time during the Contract Period.

13.2 Without prejudice to any other right or remedy the Authority will endeavour to give as much notice as possible of increases or reductions to the number of Locations under the Contract, although a minimum period of time is not specified in these conditions.

13.3 Upon completion of this Contract the Authority and any Beneficiary shall grant a non exclusive and revocable licence to the Contractor to enter upon the Locations for the sole purpose of providing the Services to the Authority and

any Beneficiary, subject to the provisions of Clauses 5 and 26, for the term of the Contract. The licence thereby granted shall be subject to the conditions of the Contract and shall not be deemed to create a relationship of Landlord and Tenant as between the Authority or any Beneficiary and the Contractor.

14 Use of Authority Sites

14.1 The Authority and any Beneficiary shall during the Contract Period permit the Contractor to use in connection with the provision of the Services certain Sites at the Location as set out in the Specification.

14.2 The Contractor shall use the Sites only in connection with the provision of the Services and shall ensure that the Contractor's staff use the Sites only for that purpose.

14.3 The Contractor shall ensure that the Sites have a clean, tidy and professional appearance at all times.

14.4 The permission given to the Contractor to use the said Sites is personal to the Contractor and the Contractor's staff and shall cease immediately the Contract ceases to be in force. Only the Contractor's own staff and persons making deliveries to the Contractor in connection with the provision of the Services may enter or use any part of the Sites without the prior written permission of the Authorised Officer.

14.5 For the avoidance of doubt it is hereby declared that the permission to enter and use the said Sites is not the grant of a tenancy of any part of the Sites. The Authority and any Beneficiary retains full possession and control over such Sites at all times and the Contractor shall not receive exclusive possession of, or any estate or interest in, any such Sites.

14.6 The Authority and any Beneficiary reserves the right at all times to permit third parties to use the Sites, subject to the rights granted to the Contractor pursuant to the Contract.

14.7 The Contractor shall keep the said Sites clean, tidy and properly secure.

14.8 The Authority and any Beneficiary will provide a sufficient supply of water, gas and electricity to operate equipment used to provide the Services.

14.9 The Authority and any Beneficiary will arrange for the disposal of refuse from authorised collection points as set out in the Specification.

14.10 The Contractor will not alter or modify any part of the Sites without the written permission of the Authorised Officer, unless alteration or modification is part of the Services to be provided by the Contractor. If alteration or modification of the Sites is to be provided by the Contractor, Clause 27.4 will apply.

15 Equipment and Materials

15.1 The Contractor shall be responsible for the provision and installation of all equipment and materials used in connection with the Contract except where these are loaned to the Contractor by the Authority or any Beneficiary in accordance with Clause 16 or transferred into the ownership of the Contractor under Clause 15.13 and 15.14.

15.2 Where equipment and materials are supplied by the Authority or any Beneficiary these will be serviced and maintained by the Authority or that Beneficiary.

15.3 The Contract Manager shall forthwith inform the Authorised Officer of any defects appearing in or losses of, or damage, occurring to the Authority's or any Beneficiary's equipment. The Contractor shall be liable to pay to the Authority or that Beneficiary the cost of any replacement necessary as a result of loss or damage caused deliberately or negligently by the Contractor's staff.

15.4 In accordance with the Specification, the Contractor will, at his own expense, install all necessary equipment for the provision of the Services.

15.5 The Contractor shall ensure that all equipment used in connection with the Contract is maintained in good working order in compliance with manufacturer's instructions and current legislation.

15.6 All equipment and materials used by the Contractor shall comply with latest relevant British Standard or European equivalent specifications where such exist and the Contractor shall upon request furnish the Authorised Officer with evidence to prove that such equipment and materials comply with this condition.

15.7 The Contractor shall:

a) establish effective planned maintenance programmes; and

b) make adequate arrangements for emergency remedial maintenance, to ensure continuity of the Services; and

c) agree all equipment purchases with the Authority; and

d) ensure compliance with all regulations covering the inspection and testing of all equipment used at the Location in the provision of the Services; and

e) maintain records, open for inspection by the Authority of maintenance testing and certification.

15.8 Any communication or electrical equipment used by the Contractor in connection with the Contract shall not cause any interference with or damage to any equipment used by the Authority or any Beneficiary.

15.9 Any communication or electrical equipment proposed to be used by the Contractor in connection with the Contract shall, at the discretion of the Authority be tested and approved by the Authority before use on the Authority's or any Beneficiary's premises.

15.10 Notwithstanding Clause 15.9 the Contractor shall be liable for any damage caused by any communication or electrical equipment used in connection with the Contract.

15.11 The Authority reserves the right to inspect equipment used by the Contractor in or about the provision of the Services at any time and the Contractor shall comply with any directions of the Authorised Officer as to the manner in which such equipment shall be used.

15.12 The Authority or any Beneficiary shall not be responsible, charged or chargeable for any equipment or materials brought on site by the Contractor.

15.13 At the commencement of the Contract all equipment transferred to the Contractor shall be valued by an independent valuer appointed jointly by the Authority and the Contractor. Ownership of this equipment shall be transferred to the Contractor without charge.

15.14 On conclusion of the Contract, all equipment, whether provided by the Contractor or transferred into the ownership of the Contractor by the Authority or any Beneficiary will be re-valued and transferred into the ownership of the Authority or that Beneficiary as set out in the Specification. Where there is any increase or decrease in value of the equipment, this shall be added to or deducted from the Contractor's final payment. Transfer of the equipment to the Authority or any Beneficiary shall be without charge excepting any change in value.

16 Loan of Authority Equipment

16.1 The Contractor shall satisfy himself that any Loaned Equipment is suitable for the purpose intended.

16.2 The Contractor shall be liable for any damage to any Loaned Equipment caused by misdirection or misuse due to negligence on the part of the Contractor, his servants or agents.

16.3 The Authority or any Beneficiary shall not be liable for any damage to the Loaned Equipment caused by a defect in or faulty operation of the Loaned Equipment.

16.4 The Authority or any Beneficiary shall have the right to withdraw Loaned Equipment at any time and shall be under no liability whatsoever for failing to lend equipment at any time.

17 Assignment

17.1 The Contractor shall not assign the whole or any part of the Contract without the prior written consent of the Authority.

17.2 Subject to 17.1 if consent to assign is requested from the Authorised Officer:

17.2.1 the Authority may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to

a) the financial liability;

b) competence; and

c) relevant experience of the proposed assignee

d) as reasonable and valid conditions of their consent under Clause 17.1;

17.2.2 the contractor must warrant that the contractor and assignee will fully comply with Clause 20;

17.2.3 the Contractor must engage the most appropriate and qualified assignee to undertake the supply of the Services.

18 Sub-Contractors

18.1 The Contractor shall not sub-contract the supply of any Services without the previous consent in writing of the Authorised Officer (such consent not to be unreasonably withheld).

18.2 Subject to Clause 18.1 if consent to sub-contract is requested from the Authorised Officer:

18.2.1 the Authority may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to

a) the financial liability;

b) competence; and

c) relevant experience of the proposed sub-contractor

as reasonable and valid conditions of their consent under Clause 18.1;

18.2.2 the contractor must warrant that appropriate and adequate insurance is in place for the life of the sub-contract and that the contractor and sub-contractor will fully comply with Clause 20;

18.2.3 the Contractor must engage the most appropriate and qualified sub-contractor to undertake the supply of the Services.

19 Limitation of liability

19.1 Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the Contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the Contract.

19.2 Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £5 million in any one Year.

19.3 The Contract Price of the Services under the Contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the Contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.

20 Insurance

20.1 The Contractor shall insure against its liability under Clause 19.2 with a minimum limit of indemnity of £5 million per annum or such other sum as may be agreed between the Authority and the Contractor in writing. The Contractor shall maintain professional indemnity insurance to cover all liability under the Contract and provide evidence of such professional indemnity insurance as the Authority may reasonably request from time to time.

20.2 The Contractor shall hold employer's liability insurance in respect of the Contractor's staff in accordance with any legal requirement for the time being in force.

21 Review

21.1 The Contractor shall attend formal, minuted review meetings (each such meeting being a "**Review**"), as required by the Authorised Officer, to discuss the Authority's levels of satisfaction in respect of the Services provided under the Contract and to agree any necessary action to address areas of dissatisfaction. The Contractor will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Authority and the Contractor together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

22 Variation of the contract

22.1 Any variation to the terms of the Contract must be recorded in writing and executed by a director or company secretary (if the Contractor is a company) or an authorised signatory of the Contractor (if the Contractor is not a

company) and the Authorised Officer. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.

22.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

22.3 Each record of variation must be dated and sequentially numbered. Each of the Authority and the Contractor will be entitled to an original executed counterpart of the record of variation.

22.4 Save as provided in any such record of variation, the Contract will continue in full force and effect.

23 Variation of the Specification

23.1 The Authority may at any time propose to the Contractor any reasonable variation or addition to the Specification and the Contractor shall not unreasonably withhold or delay its consent to such variation.

23.2 No such variation or addition shall affect the continuation of the Contract.

24 Dispute Resolution Procedure

24.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract (unless the Authority or any Beneficiary requests in writing that the Contractor does not do so).

24.2 If a dispute arises between the Authority or any Beneficiary and the Contractor in relation to any matter which cannot be resolved by the Authorised Officer and the Contractor Manager either of them may refer such dispute to the Dispute Resolution Procedure.

24.3 In the first instance each of the Authority or such Beneficiary and the Contractor shall arrange for a more senior representative than those referred to in Clause 24.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Authority or such Beneficiary (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

24.4 If the meeting(s) referred to in Clause 24.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a

copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

25 Environmental Considerations

25.1 The Contractor shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.

25.2 Without prejudice to the generality of the foregoing, the Contractor shall:

25.2.1 comply with all reasonable stipulations of the Authority or any Beneficiary aimed at minimising packaging in which any products supplied by the Contractor to the Authority or any Beneficiary, as part of the performance, of the Services are supplied;

25.2.2 promptly provide such data as may reasonably be requested by the Authority or any Beneficiary from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Authority or any Beneficiary under or pursuant to the Contract;

25.2.3 comply with all obligations imposed on it in relation to any products supplied to the Authority or any Beneficiary as part of the performance of the Services by the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC);

25.2.4 label all products supplied to the Authority or any Beneficiary by the Contractor under the Contract and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation;

25.2.5 unless otherwise agreed with the Authority or any Beneficiary, insofar as any products supplied under the Contract comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Authority or any Beneficiary may reasonably require from time to time regarding the costs of such activity;

25.2.6 promptly provide all such information regarding the environmental impact of any products supplied or used under the Contract as may reasonably be required by the Authority or any Beneficiary to permit informed choices by end users;

25.2.7 where goods are imported in to the UK then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 the Contractor shall assume the rolled-up obligations for all activities performed outside the United Kingdom in relation to the goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the goods in addition to any other obligations he may have pursuant to the said regulations.

25.3 The Contractor shall meet all reasonable requests by the Authority or any Beneficiary for information evidencing the Contractor's compliance with the provisions of this Clause.

26 Termination

26.1 The Authority may terminate the Contract (in whole or in part) by serving written notice on the Contractor in any of the following circumstances:-

26.1.1 a material failure (in whole or in part) by the Contractor to perform any material obligation of the Contractor under Clauses 2, 3, 4, 10, 11, 12, 17 18, 20, 22, 25, 29, 30, 35, 36, 37, 38, 39, 41 and 42 provided that (if capable of remedy) such failure has not been remedied to the Authority's reasonable satisfaction within a period of 30 days following written notice demanding remedy of the failure in question being served by the Authority on the Contractor; or

26.1.2 the Contractor fails (in whole or in part) to perform any material obligation of the Contractor owed to the Authority or any Beneficiary on more than 3 occasions; or

26.1.3 the Contractor becomes Insolvent or otherwise ceases to be capable of providing the Services; or

26.1.4 the Contractor is in default of any duty of care or any fiduciary or statutory duty owed to the Authority and/or any Beneficiary and/or any patient, employee or agent of the Authority or, as the case may be, any Beneficiary; or

26.1.5 there is a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the provision of the Services or the image of the Authority; or

26.1.6 the Contractor purports to assign the Contract in breach of Clause 17; or

26.1.7 the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority or, as the case may be, any Beneficiary, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority or, as the case may be, any Beneficiary; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor); or

26.1.8 if in relation to the Contract or any other contract with the Authority or, as the case may be, any Beneficiary the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward to any officer of the Authority or, as the case may be, Beneficiary which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

26.2 The Authority and any Beneficiary shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under Clause 26.1. For the purpose of this Clause, Loss shall include reasonable cost to the Authority and any Beneficiary of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services.

26.3 The Contractor may terminate the Contract in the following circumstance, by giving 1 month's written notice:

26.3.1 if the Authority or any Beneficiary has committed a material breach of the Contract; and

26.3.2 the Contractor has brought the breach of Contract to the attention of the Authorised Officer; and

26.3.3 the Authority or such Beneficiary has not corrected the said breach of Contract within a reasonable period of time.

26.4 The Contractor agrees that upon termination for any reason (under Clause 26.1 or otherwise) or expiry of the Contract it shall not be entitled to make a

claim against the Authority or any Beneficiary in relation to costs incurred by the Contractor in providing the Services or costs incurred in acquiring equipment and/or materials used in the provision of the Services or in engaging third parties in connection with the Services whether or not such costs were amortised in the calculation of the Contract Price payable by the Authority or any Beneficiary under the Contract. For the avoidance of doubt, the Contractor will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.

26.5 The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.

26.6 Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

27 Arrangements on Termination

27.1 The Authority and the Contractor agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.

27.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services (including any Deliverables which remain to be completed as at the date of termination or expiry) and all other items provided on loan or otherwise to the Contractor by the Authority or, as the case may be, any Beneficiary shall be delivered by the Contractor to the Authority or, as the case may be, any Beneficiary provided that the Contractor shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Services or to the extent that the Contractor is required by law to maintain copies thereof or to the extent that the Contractor was possessed of such data documents and records prior to the date of the Contract. In addition, the Contractor shall co-operate fully with the Authority or, as the case may be, any Beneficiary during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.

27.3 The Contractor shall retain all papers, files, records and vouchers relating to the provision of the Services as provided for under Clause 27.2 for the period of 12 years after the date of the termination of the Contract and thereafter shall not destroy them but deliver them to the Authority or, as the case may be, any Beneficiary.

27.4 Upon termination of the Contract under Clause 26.1, all equipment and materials provided and/or assembled by (or which are in the process of being

provided or assembled by) the Contractor or materials and parts of Sites or Locations which are being altered or modified by the Contractor, in accordance with the Contract shall be transferred into the ownership of the Authority or any Beneficiary regardless of whether the assembly of such equipment and materials or the alteration or modification of such Sites or Locations has been completed.

28 Re-tendering and Handover

28.1 Within 21 days of being so requested by the Authority, the Contractor shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue invitations to offer for the future provision of the Services, including but not limited to all employee liability information identified in Regulation 11 of TUPE.

28.2 Where, in the opinion of the Authority, TUPE is likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under 28.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under those Regulations, including in particular (but not limited to):

28.2.1 the number of employees who would be transferred, including their names;

28.2.2 in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;

28.2.3 the general terms and conditions applicable to those employees, including Whitley Council provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements, additional employment benefits and any other particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;

28.2.4 information of any disciplinary or grievance procedure taken against or by an employee within the previous two years;

28.2.5 information of any court or tribunal case, claim or action brought by an employee against the Contractor within the previous two years and any information that the Contractor has reasonable grounds to believe that an employee may bring any court or tribunal case,

claim or action against the Authority or Replacement Contractor arising out of the employee's employment with the Contractor.

28.3 The Authority shall take all necessary precautions to ensure that the information referred to in Clause 28.1 is given only to Replacement Contractors who have qualified to offer for the future provision of services. The Authority shall require that such Replacement Contractors shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Authority and that they shall not use it for any other purpose.

28.4 Subject to Clause 19, the Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under Clause 28.2.

28.5 The Contractor shall allow access to the Sites, in the presence of a representative of the Authority, to any person representing any Replacement Contractor whom the Authority has selected to offer for the future provision of services. For the purpose of such access, where the site is on the Contractor's premises, the Authority shall give the Contractor seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.

28.6 All persons who attend the Contractor's premises for the purposes of Clause 28.5 shall comply with the Contractor's security procedures, subject to such compliance not being in conflict with the objective of the visit.

28.7 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the Replacement Contractor, shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

28.8 Within ten working days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Authority.

29 TUPE

29.1 The Parties hereby acknowledge that, subject to the right of employees under Regulation 4(7) of TUPE, TUPE will operate to transfer each of the Employees to the Contractor on the Commencement Date which shall be the "time of transfer" under TUPE.

29.2 If in relation to any or all of the Employees the transfer of their employment occurs on any date before the Commencement Date, the provisions of Clause 29.1 and this Clause generally will apply to those Employees as if references to the Commencement Date were references to that date.

29.3 If it is determined by a Tribunal or other court of competent jurisdiction or as a result of a change of law that TUPE does not apply at or immediately before the Commencement Date the Contractor shall ensure that it is able to and does use all or any of those who would have been Employees had TUPE applied to the provision of the Services by the Contractor from the Commencement Date on the terms set out in this Clause.

29.4 Where Clause 29.3 applies the relevant Parties shall co-operate generally with a view to securing in a timely and economical manner that, where possible, the employees shall come to be employed by the Contractor.

29.5 Subject to Clause 19, the Contractor shall indemnify and keep indemnified the Authority against any Loss incurred by the Authority connected with or arising from any claim or proceedings by any trade union, elected employee representative, staff association, or Employee made against the Authority in respect of any or all of the Employees or any other employee of the Contractor and which arises from or is connected with any failure by the Contractor to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulations 11, 13 and/or 14 of TUPE.

29.6 Subject to Clause 19, the Contractor shall indemnify and keep indemnified the Authority against any Loss incurred by the Authority connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any Employee or of any other person at any time employed by (or engaged as a consultant by) the Contractor made against the Authority at any time for breach of such contract, policy or any such collective agreement, including but not limited to any claims relating to pay, unfair dismissal, statutory or contractual redundancy pay, discrimination on grounds of sex, race, disability, religion or belief, sexual orientation, or age, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Authority and which results from any act, fault or omission of the Contractor while such Employees were or such other person was employed by the Contractor.

29.7 Subject to Clause 19, the Contractor shall indemnify and keep indemnified the Authority against any Loss incurred from any change or proposed change to the terms and conditions of employment of any Employees where such change is or is proposed to be effected following the transfer of any such person pursuant to the Contract and in respect of any Loss incurred by the Authority arising from the employment or proposed employment of any such Employee otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

29.8 Upon the day which is six months before the Termination Date or as soon as the Contractor is aware of the proposed termination of the Contract or the

provision by it of the Services the Contractor shall upon the request of the Authority and to the extent permitted by law, supply to the Authority all information required by the Authority as to the terms and conditions of employment and employment history of any employees (including all employee liability information identified in Regulation 11 of TUPE) then assigned by the Contractor to the provision of the Services and shall warrant the accuracy of such information.

29.9 Except with the prior written consent of the Authority, the Contractor shall not vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee then assigned by the Contractor to the provisions of the Services (provided always that this provision shall not affect the right of the Contractor to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Contractor shall replace such person with another person of similar skills, qualifications and experience) after the Authority has served notice of the termination of the Contract or after the Contractor shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Services.

29.10 On the termination of the Contract, where there is no transfer pursuant to TUPE such that employees assigned by the Contractor to the provision of the Services do not transfer to a Replacement Contractor, the Contractor shall use reasonable endeavours to procure that the Relevant NHS body or Replacement Contractor as the case may be may use any such employees in the provision of services equivalent to the Services from the date of expiry or termination for a period of up to 12 months thereafter.

29.11 The Contractor shall (save where it would be a criminal offence or otherwise unlawful so to do) in conducting the recruitment for any post which may come to be filled by a new appointee:

29.11.1 question any such person concerning their previous convictions and/or cautions, 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 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order) ("Convictions"); and

29.11.2 require all applicants for employment in such a post to complete an application form in which they are required to disclose all such Convictions and to consent to such details being made available to the Authority; and

29.11.3 in the case of any such applicant who may reasonably be expected in the course of their employment to have substantial access to children are required to complete a police check form; and

29.11.4 in the event that such applicant who discloses any Convictions or who is found to have any Convictions following completion of a police check or who declines or refuses to complete the application form referred to in Clause 29.11.2 above, the Contractor shall not employ such applicant.

29.12 The Contractor shall at all times keep the Authority informed of any employee of the Contractor performing any of the Services who subsequent to his or her commencement of employment with the Contractor receives a Conviction or in respect of whom any previous Convictions become known to the Contractor and if the Authority, acting reasonably, considers that the Conviction has a material bearing upon the suitability of the individual concerned to be engaged in the provision of the Services, such person shall only continue to have access to the persons receiving health services and/or have substantial access to children with the Authority's prior written consent. The Contractor shall indemnify and keep indemnified the Authority against any Loss arising out of any claim by any person in respect of whom the Authority denies consent to continue to provide Services as a result of such person disclosing or receiving a Conviction.

29.13 The Contractor shall procure that all persons appointed by the Contractor to provide any of the Services shall undergo pre-employment health screening to establish in each case whether such person is medically fit for his or her proposed tasks in the provision of any of the Services, such medical screening to be undertaken at the Contractor's cost.

29.14 Records of all pre-employment health screenings shall be held by the Contractor and produced for inspection upon request by the Authority and the Contractor shall procure that the individual member of staff concerned has given his or her written consent to such inspection.

29.15 The Contractor shall ensure that all persons appointed to provide any of the Services are medically fit for his or her proposed tasks in the provision of the Services and the Contractor shall indemnify and keep indemnified the Authority against any Loss arising out of a claim or proceedings by any such person.

30 Code of Practice on Workforce Matters

30.1 The Contractor is committed to complying with and undertakes to comply with the principles and detail of the Code of Practice on Workforce Matters in Public Sector Contracts (the Code), the Cabinet Office Statement: Staff Transfers in the Public Sector 2000 (the Statement) and the Annex to the Statement entitled A Fair Deal for Pensions (the Annex).

30.2 The Contractor hereby indemnifies and shall keep indemnified the Authority against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any failure by the Contractor to comply with and or fully implement the Code, the Statement or the Annex.

30.3 In accordance with the Code the Contractor agrees that it shall only offer to employ and shall only employ Recruits on terms and conditions of employment which are fair and reasonable and which are, overall, no less favourable than those enjoyed by the Employees immediately before the transfer of their employment from the Authority to the Contractor.

30.4 The Contractor shall provide to the Recruits a pension scheme which meets the requirements of paragraph 10 of the Code.

30.5 The Contractor hereby indemnifies and shall keep indemnified the Authority against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any failure by the Contractor to comply with Clause 30.3, or Clause 30.4.

30.6 The Authority shall monitor the Contractor's compliance with the Code, the Statement and the Annex.

30.7 In order to enable the Authority to undertake the monitoring and to assist the Authority in such monitoring the Contractor shall immediately upon request by the Authority, such request to be in writing, provide to the Authority all information requested which is necessary to allow the Authority effectively to monitor the Contractor's compliance with the Code, the Statement and the Annex.

30.8 The information to be provided under Clause 30.7 will be that which is required or necessary to enable the Authority to monitor the Contractor's compliance with the Code, the Statement and the Annex.

30.9 The information provided pursuant to Clause 30.7 shall, if appropriate be anonymised or, if the Authority considers it necessary to receive information which will or may amount to personal data or sensitive personal data within the meaning of the Data Protection Act 1998, the Contractor shall ensure that it obtains appropriate and necessary consent from the Employees and the Recruits to disclose such information for the purpose of the monitoring and the Authority agrees to respect the confidentiality of the information so provided.

30.10 The Contractor shall warrant the accuracy of the information provided to the Authority under Clause 30.7 and hereby indemnifies and shall keep indemnified the Authority from against all losses, costs, demands, claims, awards, expenses, damages, compensation and any other liabilities arising from or connected with any claim arising from any inaccurate or misleading information provided by the Contractor to and used by the Authority.

30.11 If the Authority considers that the Contractor has failed to comply with or may fail to comply with the Code, the Statement or the Annex then:

30.11.1 it will raise any concerns it has with the Contractor in the first instance and seek an explanation for the actual or potential failure;

30.11.2 if the Authority is not satisfied with the Contractor's explanation it will require, in writing, the Contractor to remedy the fault and the Contractor undertakes and agrees to do so as soon as is reasonably practicable;

30.11.3 if for any reason the Contractor fails to remedy or fails within a reasonable time to remedy the fault it will be in breach of this Contract and the Authority shall be entitled to enforce the terms of this Contract against the Contractor.

30.12 THE PARTIES AGREE THAT ANNEX A TO THE CODE IS EXPRESSLY INCORPORATED INTO THIS CONTRACT AND THAT IT AND NOT THE DISPUTE RESOLUTION PROCEDURE SET OUT IN CLAUSE 24 SHALL BE USED BY THE PARTIES TO RESOLVE DISPUTES ABOUT THE APPLICATION OF THE CODE.

31 Intellectual Property

31.1 Subject to Clause 19, the Contractor agrees to indemnify and keep indemnified the Authority and any Beneficiary against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any Deliverable, process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

32 Electronic Product Information

32.1 The Contractor shall provide the Authority or, as the case may be, any Beneficiary the Service Information in such manner and upon such media as agreed between the Contractor and the Authority or, as the case may be, any Beneficiary from time to time for the sole use by the Authority and any Beneficiary.

32.2 The Contractor warrants that the Service Information is complete and accurate as at the date upon which it is delivered to the Authority or, as the case may be, any Beneficiary and that the Service Information does not contain any data or statement which gives rise to any liability on the part of the Authority or, as the case may be, any Beneficiary following publication of the same in accordance with this Clause 32.

32.3 In the event the Service Information ceases to be complete and accurate, the Contractor shall promptly notify the Authority or, as the case may be, any Beneficiary in writing of any modification or addition to or any inaccuracy or omission in the Service Information.

32.4 The Contractor grants the Authority or, as the case may be, any Beneficiary a non-exclusive royalty free licence in perpetuity to use and exploit the Service Information and any Intellectual Property therein for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority or any Beneficiary contracts from time to

time. No right to illustrate or advertise the Product Information is granted to the Contractor by the Authority or any Beneficiary as a consequence of the licence conferred by this Clause 32.4 or otherwise under the terms of this Contract.

32.5 The Authority or, as the case may be, any Beneficiary may reproduce for its sole use the Service Information provided by the Contractor in the Authority's catalogue and/or any Beneficiary's catalogue from time to time which shall be made available on the National Health Service internal communications network in electronic format or made available on the Authority's external website and/or any Beneficiary's external website or any other electronic media of the Authority or any Beneficiary (as the case may be) from time to time.

32.6 Before any publication of the Service Information (electronic or otherwise) is made by the Authority or, as the case may be, any Beneficiary, the Authority or, as the case may be, any Beneficiary will submit a copy of the relevant sections of the Authority's catalogue or any Beneficiary's catalogue (as the case may be) to the Contractor for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Contractor shall have no right to compel the Authority or any Beneficiary to exhibit the Product Information in any product catalogue as a result of the approval given by it pursuant to this Clause 32.6 or otherwise under the terms of this Contract.

32.7 If requested in writing by the Authority or, as the case may be, any Beneficiary, the Contractor and the Authority or, as the case may be, any Beneficiary shall forthwith negotiate in good faith an agreement to use the Electronic Trading Systems.

32.8 Subject to Clauses 19 and 32.9, the Contractor agrees to indemnify and keep indemnified the Authority and/or any Beneficiary against any liability, loss, costs, expenses, claims or proceedings whatsoever arising out of or in connection with any statement relating to the goods and services (including, without limitation, the Services) or information or material on or description of the goods and services (including, without limitation, the Services) provided by or on behalf of the Contractor which is included in the Authority's catalogue or any Beneficiary's catalogue from time to time (as the case may be) or any associated material produced by the Authority or any Beneficiary (as the case may be) for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority or Beneficiary contracts from time to time.

32.9 The Contractor shall not be required to indemnify or keep indemnified the Authority and/or the Beneficiary against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under Clause 32.8 as a result of the Authority or Beneficiary's wilful or negligent misrepresentation of any statement relating to the goods and services (including, without limitation, the Services) or information or material on or description of the goods and services (including, without limitation, the Services) provided by or on behalf of the Contractor which is included in the Authority's catalogue or any

Beneficiary's catalogue from time to time (as the case may be) or any associated material produced by the Authority or any Beneficiary (as the case may be) for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority or Beneficiary contracts from time to time.

33 Sales Information

33.1 If requested by the Authority or any Beneficiary, the Contractor shall provide the Authority or, as the case may be, any Beneficiary with statements giving accurate and complete details of the quantity and value of the Services provided by the Contractor to the Authority pursuant to the Contract. The frequency, format and level of detail to be included in such statements shall be as specified by the Authority in the Order (or, if no such description is set out in or attached to the Order, as set out in or attached to any documentation inviting the Contractor to tender for the appointment to provide the Services, including any documentation issued, or made available, to the Contractor by any Beneficiary).

33.2 The Contractor shall keep at its normal place of business detailed, accurate and up to date records of the quantity and value of the Services provided by it to any Authority or, as the case may be, any Beneficiary, on or after the date of the Contract and pursuant to the Contract together with accurate details of the identity of the Authority or, as the case may be, any Beneficiary to which such Services were provided. Subject to any other auditing process being agreed between the Authority or, as the case may be, any Beneficiary and the Contractor in writing, the Authority or, as the case may be, any Beneficiary shall be entitled by prior appointment to enter the Contractor's normal place of business during normal office hours and to inspect such records in order to verify whether any statement supplied by the Contractor to the Authority or, as the case may be, any Beneficiary pursuant to Clause 33.1 is accurate and complete.

34 Audit and Accounts

34.1 For the purpose of:

34.1.1 the examination and certification of the Beneficiary's accounts; or

34.1.2 any examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Beneficiary has used its resources,

34.2 the Comptroller and Auditor General and the Beneficiary or its auditors may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanation as he considers

necessary. The Contractor acknowledges that it will fully cooperate with any counter fraud policy or investigation, whether carried out by the NHS Counter Fraud and Security Management Service, or any equivalent body, successor or function, at any time. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under this contract.

35 Confidentiality

35.1 In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this Clause 35, each party ("the 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:

35.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

35.1.2 the provisions of this Clause 35 shall not apply to any Confidential Information which:-

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

(b) is obtained by a third party who is lawfully authorised to disclose such information; or

(c) is authorised for release by the prior written consent of the Discloser; or

(d) the disclosure of which is required to ensure the compliance of the Authority or (as the case may be) any Beneficiary with the Freedom of Information Act 2000 (the FOIA).

35.2 Nothing in this Clause 35 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 or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 35 as if any reference to the Contractor in this Clause 35 were a reference to such holding company.

35.3 The Contractor authorises the Authority and any Beneficiary to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Goods supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking".

The Authority and any Beneficiary shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Authority and any Beneficiary shall not without good reason claim that the lowest price available in the market is the realistic market price.

35.4 The Contractor acknowledges that the Authority and Beneficiaries are or may be subject to the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Contractor will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.

35.5 The Contractor agrees that:

35.5.1 without prejudice to the generality of Clause 35.2, the provisions of this Clause 35 are subject to the respective obligations and commitments of the Authority and any Beneficiary (as the case may be) under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;

35.5.2 subject to Clause 35.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority or a Beneficiary (as the case may be);

35.5.3 where the Authority or a Beneficiary is managing a request as referred to in Clause 35.5.2, the Contractor shall co-operate with the Authority or Beneficiary making the request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

35.6 The Contractor shall and shall procure that its sub-contractors shall:

35.6.1 transfer any request for information, as defined under section 8 of the FOIA, to the Authority or a Beneficiary as soon as practicable after receipt and in any event within five (5) working days of receiving a request for information;

35.6.2 provide the Authority or a Beneficiary with a copy of all information in its possession or power in the form that the Authority or a Beneficiary requires within five (5) working days (or such other

period as the Authority or a Beneficiary may specify) of the Authority or a Beneficiary requesting that Information; and

35.6.3 provide all necessary assistance as reasonably requested by the Authority or a Beneficiary to enable the Authority or a Beneficiary to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

35.7 The Authority or Beneficiary (as the case may be) may consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.

35.8 The Parties, including a Beneficiary, acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority or Beneficiary shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

35.9 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority or the Beneficiary to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

35.10 The Authority or the Beneficiary may consult with the Contractor to inform its decision regarding any redactions but the Authority or the Beneficiary shall have the final decision in its absolute discretion.

35.11 The Contractor shall assist and cooperate with the Authority or the Beneficiary to enable the Authority or the Beneficiary to publish this Contract.

35.12 This Clause 35 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 35 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

35.13 In the event that the Contractor fails to comply with this Clause 35, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

35.14 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the

provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Agreement, to the general public.

36 Data Protection

36.1 The Contractor shall comply with the Data Protection Act 1998 ("the 1998 Act") and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Authority and any Beneficiary by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act, namely:

36.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Authority and any Beneficiary by the Seventh Principle;

36.1.2 only to process Personal Data for and on behalf of the Authority and any Beneficiary, in accordance with the instructions of the Authority or such Beneficiary and for the purpose of performing the Services in accordance with the Contract and to ensure compliance with the 1998 Act;

36.1.3 to allow the Authority to audit the Contractor's compliance with the requirements of this Clause 36 on reasonable notice and/or to provide the Authority with evidence of its compliance with the obligations set out in this Clause 36.

36.2 Subject to Clause 19, the Contractor agrees to indemnify and keep indemnified the Authority and any Beneficiary against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Authority and any Beneficiary as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Contractor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees or agents in the Contractor's performance of the Contract or as otherwise agreed between the Parties.

36.3 Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Authority and any Beneficiary with reasonable assistance in complying with subject access requests served on the Authority and any Beneficiary under Section 7 of the 1998 Act and the Contractor consulting with the Authority and any Beneficiary prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

37 The Human Rights Act 1998

37.1 The Contractor shall, and shall use reasonable endeavours to ensure that its employees or agents and/or sub-contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998.

37.2 Subject to Clause 19, the Contractor agrees to indemnify and keep indemnified the Authority and any Beneficiary against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under Clause 37.1.

38 Warranty

38.1 The Contractor warrants to the Authority that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Contract. At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Authority or, as the case may be, any Beneficiary and accordingly the Contractor shall not be authorised to bind the Authority or, as the case may be, any Beneficiary**.**

39 Relationship of the Parties

39.1 The Contractor shall not incur any liabilities on behalf of the Authority or, as the case may be, any Beneficiary; or, make any representations or give any warranty on behalf of the Authority or, as the case may be, any Beneficiary; or, enter into any contract or obligation on behalf of the Authority or, as the case may be, any Beneficiary.

40 Agency

40.1 The Contractor acknowledges that the Authority may have placed the Order pursuant to a Framework Agreement established by a Beneficiary for the Authority.

40.2 In such cases, the Beneficiary or, as the case may be, Beneficiaries which established the Framework Agreement shall only be liable for any Order placed under such Framework Agreement if the Order was placed on the Contractor by the Beneficiary or, as the case may be, Beneficiaries.

40.3 In all other instances, the Authority has placed the Order on the Contractor as principal and the Beneficiary or, as the case may be, Beneficiaries which established the Framework Agreement as agent for the Authority shall have no liability in respect thereof.

41 Inducements to Purchase

41.1 The Contractor shall not offer to the Authority or any of its employees or agents or, as the case may be, any Beneficiary or any of its employees or agents as a variation of the Contract, or as an agreement collateral to it, any advantage other than a cash discount against the Contract Price or training of the employees of the Authority or, as the case may be, any Beneficiary in connection with the Services.

42 General

42.1 Save as required by law and/or the requirements of any relevant stock exchange and Clause 32, no publicity shall be made by any of the Parties relating to any matter in connection with the Contract without the prior written consent of the other Party.

42.2 The Contractor shall from time to time upon the request of the Authority, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Contract.

42.3 Any provision of the 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 hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

42.4 The Contractor 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 the Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Authority for any misrepresentation (whether made carelessly or not) or for breach of any warranty unless the representation relied upon is set out in the Contract or unless such representation was made fraudulently.

42.5 The failure by the Authority, the Contractor or, as the case may be, any Beneficiary to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

42.6 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.

42.7 The Contractor warrants represents and undertakes to the Authority that 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 Contractor and that there are no material contracts existing to which the Contractor is a party which prevent it from entering into the Contract; and that the Contractor has satisfied itself as

to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.

42.8 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.

43 Third Party Rights

43.1 The Authority and the Contractor acknowledge that they have entered into the Contract for the benefit of each of the Beneficiaries and each of the Third Party Beneficiaries. Accordingly, the Authority and the Contractor agree that (in addition to the Authority's right to enforce the Contract) each of the Beneficiaries and each of the Third Party Beneficiaries may enforce any term of the Contract.

43.2 Save as provided in Clause 43.1 of the Contract, a person who is not a Party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

43.3 All or any of the provisions of the Contract may be rescinded or varied by the Parties in their entirety or in part without the consent of or the need to give any notice to any person not a Party to it.

43.4 The Contractor agrees that it will not raise as a defence or set off against any claim brought against it by any Beneficiary or any Third Party Beneficiary any matter which would have been available to the Contractor by way of defence or set off if proceedings had been brought against the Contractor by the Authority or by way of counterclaim against such of the Beneficiaries or Third Party Beneficiaries if such Beneficiary or Third Party Beneficiary had been a Party to the Contract.

44 Third Party Beneficiaries

44.1 In the event that any Third Party Beneficiary wishes to enforce its rights under Clause 43.1 the following provisions shall apply:

44.1.1 the Third Party Beneficiaries shall have the same rights as the Beneficiaries under the Contract and shall comply with all the terms of the Contract which apply to the Beneficiaries;

44.1.2 the Third Party Beneficiaries acknowledge that the Contract is for use within the NHS and accordingly agree to exercise their rights under the Contract only in relation to the provision of goods and/or services to the Authority or any of the Beneficiaries and not for any other purpose whatsoever. In exercising their rights under the Contract the Third Party Beneficiaries shall at all times treat all

information concerning the Contract with the strictest confidence and in accordance with Clause 35;

44.1.3 the Third Party Beneficiaries shall not enter into any obligations in the name of the Authority or any Beneficiary and shall not make any representations or give any warranties on behalf of the Authority or any Beneficiary;

44.1.4 where Services are ordered by any Third Party Beneficiary the Contractor agrees that it shall supply such Services to such Third Party Beneficiary and invoices for the Services supplied to such Third Party Beneficiary shall be issued by the Contractor to, and in the name of, such Third Party Beneficiary and such Third Party Beneficiary shall be liable for settlement thereof;

44.1.5 the Authority shall not be liable to any Third Party Beneficiary for any acts or omissions of the Contractor or for any loss, damage or other expenses incurred or suffered by any Third Party Beneficiary as a result of such Third Party Beneficiary exercising its rights under the Contract;

44.1.6 each Third Party Beneficiary undertakes to indemnify and keep indemnified the Authority and any Beneficiary from and against all costs, claims, demands, liabilities, damages, losses and expenses (including all legal expenses) incurred or suffered by the Authority or any Beneficiary:

a) arising out of or in connection with any act or omission of the Third Party Beneficiary or any breach of any term of the Contract by the Third Party Beneficiary;

b) as a result of any claim, loss, injury, damage, expense or delay suffered or incurred by the Contractor or any third party arising directly or indirectly from or in any way connected with the acts or omissions of the Third Party Beneficiary in enforcing its rights under the Contract, whether wilful, reckless, fraudulent, negligent, dishonest or otherwise;

and the Third Party Beneficiary shall at its own expense take out and maintain adequate insurance in respect of such liabilities and provide evidence of such insurance as the Authority may reasonably request from time to time;

44.1.7 in the event of any dispute:

a) between the Contractor and any Third Party Beneficiary relating to any act or omission of such Third Party Beneficiary or any breach of any term of the Contract by such Third Party Beneficiary;

b) between the Authority and any Third Party Beneficiary relating to the supply of goods and/or services by the Third Party Beneficiary to the Authority or any Beneficiary;

the Authority reserves the right to suspend such Third Party Beneficiary's rights under the Contract until such dispute has been resolved;

44.1.8 if the Contractor makes a claim against any Third Party Beneficiary for any act or omission of such Third Party Beneficiary or any breach of the Contract by such Third Party Beneficiary the Contractor agrees that it shall not include the Authority or any Beneficiary as a party to any proceedings against such Third Party Beneficiary;

44.1.9 the Authority shall notify any Third Party Beneficiary which is removed from the list set out in Schedule 1 and such Third Party Beneficiary shall immediately cease to place Orders under the Contract.

45 Equality and Non-discrimination

45.1 The Contractor shall not:

45.1.1 discriminate directly or indirectly or by way of victimisation or harassment against any person on racial grounds within the meaning of the Race Relations Act 1976 (as amended) ("**the 1976 Act**") contrary to Part II (Discrimination in the Field of Employment) and/or Part III (Discrimination in Other Fields) of the 1976 Act;

45.1.2 contravene Part IV (Other Unlawful Acts) of the 1976 Act.

45.2 The Contractor shall notify the Authority immediately of any investigation of or proceedings against the Contractor under the 1976 Act and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

45.3 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the 1976 Act due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

45.4 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 45.

45.5 In addition to its obligations under this clause 45 relating to race equality, the Contractor shall:

45.5.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Race Relations Act 1976 (as amended), the Equal Pay Act 1970, the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995 (as amended), the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Equality Act (Sexual Orientation) Regulations 2007, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Contractor shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this clause 45.5 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 45.5; and

45.5.2 in the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with the Authority in light of the Authority's obligations to comply with statutory equality duties. The Contractor shall take such 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 in the provision of the Services.

46 Notices

46.1 Any notice to be given under the Contract shall either be delivered personally, sent by facsimile or sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

46.1.1 if personally delivered, at the time of delivery;

46.1.2 if sent by facsimile at the time of transmission;

46.1.3 if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

46.1.4 if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

46.2 In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

47 Force Majeure

47.1 No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.

47.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

47.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

48 Law

48.1 The Contractor submits to the jurisdiction of the English courts and agrees that the Contract is to be governed and construed according to English law.

49 Supplementary

49.1 In the event that the Authority wishes to discontinue maintenance on any Equipment (including for reasons of end of support, parts unavailability or decommissioning of the asset or other reason agreed with the Contractor) then the Authority shall:

49.1.1 Serve a minimum of one month’s notice in writing to the Contractor;

49.1.2 For any Contracts that are terminated part way through the Contract period, the remaining part of the Contract that has been paid for will be credited back to the Authority on a pro rata basis.

49.2 In the event that the Contractor is unable to continue providing Services on any Equipment due to End of Support the Contractor shall:

49.2.1 Serve no less than twelve months' notice in writing of such to the Authority;

49.2.2 Upon cessation of Services within 30 days make a full pro rata credit in respect of the balance of any period for which a maintenance fee has been paid in advance.

49.3 In the event that the Authority elects to decommission any Equipment:

49.3.1 The Authority shall serve no less than one month's notice in writing of such to the Contractor;

49.3.2 Upon decommissioning and within 30 days the Contractor shall make a full pro rata credit in respect of the balance of any period for which a maintenance fee has been made in advance.

49.4 In the event of parts unavailability:

49.4.1 The Authority shall have the right to terminate the Contract in respect of services in respect of the affected asset;

49.4.2 Within 30 days of such termination the Contractor shall make a full pro rata credit in respect of the balance of any period for which a maintenance fee has been paid in advance.

49.5 Adding Equipment to this agreement:

49.5.1 The Authority shall be entitled to add additional assets to the Contract. Within 7 days of the Authority notifying the Contractor of their intention to add additional Equipment to this Contract, the Contractor will confirm in writing the price to be charged. The price charged will be in line with the pricing quoted at the outset of the Contract. Any Equipment added to this Contract will be covered under this Contract and for the duration of the original Contract. The Authority may decline to accept any new price quoted for new Equipment to be added.

49.6 The Contractor shall upload any service sheets arising from any visit to the Authority to the Authority's online service management system, OPTIMiSe Service, and shall co-operate with the Authority's management team to deliver visibility of all service visits and to demonstrate compliance with the agreed PPM regime

Schedule 1

Third Party Beneficiaries