

**PUBLIC HEALTH ENGLAND, AN EXECUTIVE AGENCY OF DEPARTMENT OF HEALTH AND
SOCIAL CARE**

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES, OCTOBER 2018

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The Customer's attention is particularly drawn to the provisions of clause 15

1. INTERPRETATION

The following definitions and rules of interpretation apply to the Contract.

1.1 Definitions:

Applicable Laws: all relevant laws, rules, regulations, industry standards, codes of practice, guidances issued by regulatory authorities, as amended from time to time, and as applicable in the UK.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.10.

Contract: the contract between PHE and the Customer for the supply of Goods and/or Services in accordance with these Conditions and any Specification.

Customer: the person or company who purchases the Goods and/or Services from PHE.

Customer Default: has the meaning set out in clause 8.2.

Data Controller: has the meaning set out in the Data Protection Legislation.

Data Processor: has the meaning set out in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection laws including the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: the deliverables set out in the Specification.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h)

non-performance by suppliers or subcontractors; and (i) interruption or failure of utility service.

Goods: the goods (or any part of them) set out in the Specification.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Personal Data: has the meaning set out in the Data Protection Legislation.

Services: the services, including the Deliverables, supplied by PHE to the Customer as set out in the Specification.

Specification: any document, howsoever described, including but not limited to, a quote or an order, containing the description for the Services and/or Goods, including any relevant plans, or drawings, and/or the cost for the Services and/or Goods provided in writing by PHE to the Customer.

Supplier Materials: has the meaning set out in clause 8.1(m).

1.2 Interpretation:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its authorised representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 Upon request, PHE shall supply to the Customer a Specification. The Specification constitutes an offer by PHE to supply Goods and/or Services in accordance with these Conditions.

- 2.2 The Specification shall only be deemed to be accepted on the earlier of:
- (a) PHE receiving a written acceptance of the Specification, including but not limited to countersigning the Specification, from the Customer; or
 - (b) any act by PHE consistent with fulfilling the Specification,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract and the Specification constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of PHE which is not set out in the Contract or the Specification.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by PHE and any descriptions of the Goods or illustrations or descriptions of the Services contained in PHE's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions shall apply:
- (a) to the Contract with the Customer for the supply of Goods and/or Services by PHE to the Customer unless agreed otherwise in writing with the Customer; and
 - (b) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Specification given by PHE is only valid for a period of thirty (30) Business Days from its date of issue.
- 2.7 Acceptance by the Customer of delivery of the Goods and/or performance of the Services shall be deemed to constitute unqualified acceptance of these Conditions.
- 2.8 PHE reserves the right to perform its obligations under these Conditions regarding the supply of Goods and/or Services at any of its premises notwithstanding any representations made to the Customer that such work would be carried out at a specified premise.
- 2.9 If, subsequent to any agreement which is subject to this Contract, an agreement for the provision of Goods and/or Services is made with the same Customer without reference to any conditions of sale and/or supply, such agreement howsoever made shall be deemed to be subject to these Conditions.
- 2.10 The duration of the Contract shall be set out in the Specification.

- 2.11 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods shall be described in the Specification.
- 3.2 To the extent that any Goods are manufactured or altered in accordance with the Customer's instructions, the Customer shall indemnify PHE against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by PHE in connection with any claim made against PHE for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with PHE following the Customer's instructions. This clause 3.2 shall survive termination of the Contract.
- 3.3 PHE reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements and PHE shall notify the Customer in any such event.
- 3.4 Unless anything to the contrary is expressly set out in writing by PHE, no Goods supplied hereunder shall be suitable for administration for clinical or diagnostic purposes to humans or animals.

4. DELIVERY OF GOODS

- 4.1 PHE shall deliver the Goods to the location set out in the Specification or such other location as the parties may agree (**Delivery Location**) at any time after PHE notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Unless agreed in writing, the Customer shall be solely responsible for:
- (a) unloading of goods at the point of delivery. The Customer shall unload and inspect the goods immediately upon their arrival at the Delivery Location; and
 - (b) the disposal of all packaging in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. PHE shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide PHE with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 PHE shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide PHE with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three (3) Business Days of PHE notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by PHE's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which PHE notified the Customer that the Goods were ready; and
 - (b) PHE shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten (10) Business Days after PHE notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, PHE may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if PHE delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 PHE may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 PHE warrants that on delivery, the Goods shall conform in all material respects with the Specification and be free from material defects in design, material and workmanship.
- 5.2 The Customer shall comply with any information and instructions supplied by PHE and relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work, and the Customer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing within seven (7) Business Days from delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) PHE is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by PHE) returns such Goods to PHE's place of business at the Customer's cost,

PHE shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 PHE shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow PHE's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of PHE following any drawing or design supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of PHE;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 Except as provided in this clause 5, PHE shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by PHE under clause 5.3.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery or where applicable, once the Goods have been delivered to the carrier appointed to deliver the Goods to the Customer.

6.2 Title to the Goods shall not pass to the Customer until PHE has received payment in full (in cash or cleared funds) for the Goods; and any other goods that PHE has supplied to the Customer in respect of which payment has become due.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as PHE's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as PHE's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on PHE's behalf from the date of delivery;
 - (e) notify PHE immediately if it becomes subject to any of the events listed in clause 16.1; and
 - (f) give PHE such information relating to the Goods as PHE may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before PHE receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as PHE's agent; and
 - (b) title to the Goods shall pass from PHE to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 16.1 then, without limiting any other right or remedy PHE may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) PHE may at any time:
 - (i) require the Customer to return all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 PHE shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 7.2 PHE shall provide to the Customer a Specification. PHE and the Customer shall discuss and agree the Specification. The agreed Specification shall form part of the

Contract and be subject to these Conditions. Any amendment to the agreed Specification shall not be valid unless it is made in accordance with clause 18.10.

- 7.3 Where necessary, PHE and the Customer shall agree to meet at regular intervals to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing. PHE shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to PHE's charges arising from the change; and
 - (c) any other impact of the change on the Contract.
- 7.4 If the Customer wishes PHE to proceed with the change, PHE has no obligation to do so unless and until the parties have agreed the necessary variations to its charges and the Services to take account of the change and the Contract has been varied in accordance with clause 18.10.
- 7.5 Notwithstanding clause 7.1, PHE may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services and, where practicable, it will give the Customer at least two weeks' notice of any change.
- 7.6 PHE shall use reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.7 PHE warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.8 PHE shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 8.1 provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 7.9 PHE reserves the right not to test samples or equipment or conduct analysis on any materials which it deems to be unsuitable for such work. Any failure or refusal to test such samples, equipment (which shall include instruments) or materials shall not constitute a breach of these Conditions. PHE shall refund any monies received in connection with the relevant proposed test or analysis subject to PHE's costs incurred in connection with the relevant proposed test, analysis or materials.

- 7.10 In the event that the Services to be provided by PHE involve testing of (including but not limited to equipment testing or microbiological testing), or analysis on, any materials (including but not limited to biological materials or processes), PHE does not make any representation or warranty of any nature, express or implied, that such testing and/or analysis will achieve any particular results.
- 7.11 During the performance of the Services, if PHE deems it necessary that any of the Customer's equipment, instruments, and/or samples should be removed from the Customer's premises, the Customer shall at his own cost make arrangements for such removal and transportation. In the event that PHE, at the Customer's request, undertakes such removal and transportation on behalf of the Customer, PHE shall not be liable for any damage or loss to the Customer's equipment, material and/or samples in its custody.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Specification are complete and accurate;
- (b) co-operate with PHE in all matters relating to the Services;
- (c) provide PHE with such information as PHE may reasonably require, including but not limited to health and safety information relating to any samples, equipment or materials submitted to PHE for testing and/or analysis and ensure that such information is accurate in all material respects;
- (d) provide PHE, its employees, agents, consultants and subcontractors, with access to the Customer's premises, equipment, plant, office accommodation and other facilities as reasonably required by PHE to provide the Services;
- (e) where relevant, provide PHE properly and sufficiently cleaned equipment, prepared in a manner as advised by PHE to permit where necessary examination and/or testing;
- (f) where relevant, provide an operator to operate the Customer's equipment as necessary to enable PHE to examine and test such equipment. In the event that an operator is not provided and PHE employees are obliged to operate the Customer's equipment, PHE shall accept no liability for any damage to the Customer's equipment;
- (g) provide PHE with such information and materials as PHE may reasonably require, including, but not limited to, health and safety information relating to the Customer's premises, to supply the Services, and ensure that such information is accurate in all material respects;
- (h) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws that arise before and during the

performance of the Services at those premises, unless agreed otherwise with PHE;

- (i) inform PHE of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (j) ensure that all Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (k) provide, in a timely manner, such information as PHE may reasonably require to perform the Services, and ensure that it is accurate in all material respects;
- (l) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (m) keep and maintain all materials, equipment, documents and other property of PHE (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain Supplier Materials in good condition until returned to PHE, and not dispose of or use Supplier Materials other than in accordance with PHE's written instructions or authorisation.

8.2 If PHE's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, PHE shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays PHE's performance of any of its obligations;
- (b) PHE shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from PHE's failure or delay in performing any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse PHE on written demand for any costs or losses sustained or incurred by PHE arising directly or indirectly from the Customer Default.

8.3 The Customer shall not, without the prior written consent of PHE, at any time for the duration of the Contract solicit or entice away from PHE or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of PHE in the provision of the Services.

9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Specification or, if no price is quoted, the price set out in PHE's published price list as at the date of delivery. The

price of the Goods is exclusive of VAT and all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 Where Services are provided on a time and materials basis:

- (a) the charges shall be calculated in accordance with the agreed daily or hourly fee rates, as set out in the Specification; and
- (b) PHE shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom PHE engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by PHE for the performance of the Services, and for the cost of any materials.

9.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Specification as amended from time to time in accordance with clause 9.5(a) The Customer shall pay the total price to PHE in accordance with the Specification.

9.4 PHE shall add VAT to its invoices at the appropriate rate.

9.5 PHE reserves the right to:

- (a) increase its standard daily or hourly fee rates for the charges for the Services or the fixed price as set out in the Specification, provided that such charges cannot be increased more than once in any 12 month period. PHE will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify PHE in writing within 2 weeks of the date of PHE's notice and PHE shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer; and
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to PHE that is due to:
 - (i) any factor beyond the control of PHE (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give PHE adequate or accurate information or instructions in respect of the Goods.

- 9.6 In respect of Goods, PHE shall invoice the Customer on or at any time after completion of delivery. In respect of Services, PHE shall invoice the Customer in accordance with the Specification.
- 9.7 The Customer shall pay each invoice submitted by PHE within thirty (30) days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by PHE, and time for payment shall be of the essence of the Contract.
- 9.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay PHE on the due date, PHE may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against PHE in order to justify withholding payment of any such amount in whole or in part. PHE may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by PHE to the Customer.
- 9.10 All sums payable to PHE under the Contract shall become due immediately on its termination, despite any other provision. This clause 9.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in and arising out of or in connection with the Services (including Supplier Materials) shall be owned by PHE. Subject to clause 10.2, PHE licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If this Contract is terminated, this licence will automatically terminate.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on PHE obtaining a written licence from the relevant licensor on such terms as will entitle PHE to license such rights to the Customer.
- 10.3 The Customer grants to PHE a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to PHE for the term of the Contract for the purpose of providing the Services to the Customer.

10.4 The Customer acknowledges that PHE is subject to the rules of Crown copyright.

11. DATA PROTECTION

11.1 The Customer acknowledges and agrees that Personal Data of the Customer will be processed by and on behalf of PHE, and may be submitted by PHE to a credit reference agency.

11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

11.3 The Customer and PHE acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and PHE is the Data Processor.

11.4 Without prejudice to the generality of clause 11.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to PHE for the duration and purposes of the Contract.

11.5 Without prejudice to the generality of clause 11.2, PHE shall, in relation to any Personal Data processed in connection with the performance by PHE of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless PHE is required by Applicable Laws to otherwise process that Personal Data. Where PHE is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, PHE shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit PHE from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or PHE has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) PHE complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) PHE complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- 11.6 PHE shall not without the written consent of the Customer appoint any third party processor of Personal Data under the Contract. Where such consent is given, PHE and the third party processor shall enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11. As between the Customer and PHE, PHE shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 11.
- 11.7 Either party may, at any time on not less than thirty (30) days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 11.8 The Customer acknowledges that PHE is reliant on the Customer for direction as to the extent to which PHE is entitled to use and process the Personal Data. Consequently, PHE will not be liable for any claim brought by a Data Subject arising from any action or omission by PHE, to the extent that such action or omission resulted directly from the Customer's instructions.

12. LICENCES AND CONSENTS

12.1 The Customer shall be solely responsible for ensuring that it has the necessary licences, consents, permits, from any third party including any government or other authority, in order to procure the Services and/or Goods from PHE, including for the acquisition, carriage or use of the Goods by the Customer, or for the carriage or handling of any samples submitted for testing to PHE. The Customer shall provide evidence of such licences, consents, permits, as applicable to PHE upon PHE's request. Failure to obtain any such licences, consents or permits shall not entitle the Customer to withhold or delay payment due to PHE under the Contract. The Customer shall be liable for any additional expenses or charges incurred by PHE as a result of such failure by the Customer.

13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers, technical or commercial know-how, specifications, inventions, processes or initiatives of the other party except as permitted by this clause 13.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law (including under the Freedom of Information Act 2000 or under the Environmental Information Regulations 2004), a court of competent jurisdiction or any governmental or regulatory authority.

13.3 PHE is an executive agency of the Department of Health and Social Care and is accountable to the Secretary of State for Health and Social Care (England). PHE is required to pass on to the appropriate authority any information it deems necessary to safeguard public health. PHE reserves the right to disclose such information obtained in the course of the Contract. Wherever possible the Customer will be advised of this disclosure. PHE may use information generated in the course of the Contract for epidemiological purposes. Any information that is made public will only be done so in an anonymised, and usually aggregated, form.

13.4 Except as set out in this clause 13, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14. INDEMNITY

- 14.1 The Customer shall keep PHE indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by PHE as a result of or in connection with any claim made against PHE by its employees, agents or sub-contractors or a third party for death, personal injury or damage to property arising out of, or in connection with the Goods or Services to the extent that such liability is wholly or partly attributable to the negligent acts or omissions of the Customer, its employees, agents or subcontractors.
- 14.2 This clause 14 shall survive termination of the Contract.

15. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 15.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 and section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 15.2 Subject to clause 15.1 but notwithstanding anything to the contrary in these Conditions:
- (a) PHE shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - (i) loss of profit;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings,
 - (v) loss of use or corruption of software; data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) any indirect or consequential loss, arising under or in connection with the Contract; and

- (b) PHE's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the monies received by PHE under the Contract.

15.3 Except as set out in these Conditions, all warranties, conditions and other terms expressed or implied by statute, common law or otherwise, including but not limited to the terms implied by section 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982, are, to the fullest extent permitted by law, excluded from the Contract.

15.4 This clause 15 shall survive termination of the Contract.

16. TERMINATION

16.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than twenty-one (21) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing of the breach;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party (being an individual) is the subject of a bankruptcy petition, application or order;

- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (i) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(c) to clause 16.1(j) (inclusive);
- (l) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16.2 Without limiting its other rights or remedies, PHE may terminate the Contract by giving the Customer one month's written notice.

16.3 Without limiting its other rights or remedies, PHE shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and PHE if:

- (a) the Customer fails to make pay any amount due under the Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 16.1(c) to clause 16.1(m) (inclusive) or PHE reasonably believes that the Customer is about to become subject to any of them.

17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract:

- (a) the Customer shall immediately pay to PHE all of PHE's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, PHE shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then

PHE may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

17.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

18. GENERAL

18.1 Force Majeure: Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for two (2) months, the party not affected may terminate this agreement by giving thirty (30) days' written notice to the affected party.

18.2 Assignment and subcontracting:

- (a) PHE may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of PHE, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or sent by email to the address communicated between the parties at the time of entering into the Contract.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time

that the courier's delivery receipt is signed, or if sent by fax or email, on the next Business Day after transmission.

- (c) This clause 18.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails.
- 18.4 Waiver: A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 Severance: If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.6 Compliance with laws: In performing their respective obligations under this Contract, each party shall comply with the Applicable Laws.
- 18.7 No partnership or agency: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.8 Entire agreement:
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 18.9 Third parties: The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 18.10 Variation: Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.11 Conflict: If there is an inconsistency between any of the provisions in these Conditions and the Goods and/or Services Specification or any other terms and conditions purported to be issued by the Customer, these Conditions shall prevail.
- 18.12 Dispute Resolution:
- (a) All disputes arising out of or in connection with the Contract shall to the extent possible be settled amicably by negotiation between the parties within thirty (30) days from the date of written notice by either party of the existence of such a dispute.
 - (b) If the dispute is not resolved in accordance with clause 18.12(a) the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting the mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than sixty (60) days after the date of the ADR notice.
 - (c) No party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 18.13 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.