

THE UK HEALTH SECURITY AGENCY (UKHSA), AN EXECUTIVE AGENCY OF
DEPARTMENT OF HEALTH AND SOCIAL CARE

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES,
February 2023

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, guidance's issued by regulatory authorities, as amended from time to time and as applicable in England and Wales.

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 UKHSA and the Customer for the supply of Goods and/or Services in accordance with these Conditions and any Specification.

Customer: the person or firm who purchases the Goods and/or Services from UKHSA.

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 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](#)

Domestic UK Law: The Data Protection Legislation and any other law that applies in England and Wales.

Force Majeure Event: any circumstances not within a party's reasonable control including without limitation (a) acts of God, flood, drought, earthquake or natural disaster; epidemic or pandemic; (b) 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; (c) nuclear, chemical, or biological contamination or sonic boom; (d) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (e) collapse of buildings, fire, explosion, or accident; (f) any labour or trade dispute, strikes, industrial action or lockouts; (g) non-performance by suppliers or subcontractors; and (h) 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 UKHSA 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 UKHSA to the Customer.

Supplier Materials: all materials, equipment, documents and other property of UKHSA.

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 legislation or legislative provision is a reference to such legislation or legislative provision as amended or re-enacted. A reference to legislation or a legislative provision includes any subordinate legislation made under that legislation or legislative provision, as amended or re-enacted;

(d) any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be interpreted 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, UKHSA shall supply to the Customer a Specification. The Specification constitutes an offer by UKHSA 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) UKHSA receiving a written acceptance of the Specification, including but not limited to countersigning the Specification, from the Customer; or

(b) any act by UKHSA 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 UKHSA which is not set out in the Contract or the Specification.

2.4 Any samples, drawings, descriptive matter or advertising issued by UKHSA and any descriptions of the Goods or illustrations or descriptions of the Services contained in UKHSA'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 apply:

(a) to the Contract with the Customer for the supply of Goods and/or Services by UKHSA 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 UKHSA 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 and these Conditions shall apply even in the absence of a written Specification.

2.8 UKHSA 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 this Contract.

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 UKHSA 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 UKHSA in connection with any claim made against UKHSA for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with UKHSA following the Customer's instructions. This clause 3.2 shall survive termination of the Contract.

3.3 UKHSA reserves the right to amend the specification if required by any applicable statutory or regulatory requirements and UKHSA shall notify the Customer in any such event.

3.4 Unless anything to the contrary is expressly set out in writing by UKHSA, no Goods supplied hereunder shall be suitable for administration for clinical or diagnostic purposes to humans or animals.

4. DELIVERY OF GOODS

4.1 UKHSA 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 UKHSA 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.

4.5 UKHSA 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 UKHSA with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three (3) Business Days of UKHSA notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by UKHSA'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 UKHSA notified the Customer that the Goods were ready; and (b) UKHSA 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 UKHSA notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, UKHSA 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 UKHSA delivers up to and including five (5) percent (%) 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 UKHSA 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 UKHSA 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 UKHSA 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) UKHSA is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by UKHSA) returns such Goods to UKHSA's place of business at the Customer's cost, UKHSA shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 UKHSA 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 UKHSA'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 UKHSA following any drawing or design supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of UKHSA;

(e) the defect arises as a result of fair wear and tear, willful 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, UKHSA 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 UKHSA 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 UKHSA has received payment in full (in cash or cleared funds) for the Goods; and any other goods that UKHSA 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 UKHSA's bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as UKHSA'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 UKHSA's behalf from the date of delivery;

(e) notify UKHSA immediately if it becomes subject to any of the events listed in clause 16.1; and

(f) give UKHSA such information relating to the Goods as UKHSA 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 UKHSA receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as UKHSA's agent; and

(b) title to the Goods shall pass from UKHSA 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 UKHSA may have:

(a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

(b) UKHSA 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 UKHSA shall provide the Services to the Customer in accordance with the Specification in all material respects.

7.2 UKHSA shall provide to the Customer a Specification. UKHSA 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, UKHSA 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. UKHSA 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 UKHSA's charges arising from the change;

(c) and any other impact of the change on this Contract.

7.4 If the Customer wishes UKHSA to proceed with the change, UKHSA 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 this Contract has been varied in accordance with clause 18.10

7.5 Notwithstanding clause 7.1, UKHSA 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 (2) weeks' notice of any change.

7.6 UKHSA shall use reasonable endeavours to meet any performance dates for the Services specified in the Service 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 UKHSA warrants to the Customer that the Services will be provided using reasonable care and skill.

7.8 UKHSA 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 this Contract if, as a result of such observation, it is in breach of any of its obligations under this Contract.

7.9 UKHSA 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. UKHSA shall refund any price received in connection with the relevant proposed test or analysis subject to the UKHSA's costs in connection with the relevant proposed test, analysis or materials. Where monies that were agreed to be paid by the Customer for the Services have not yet been paid, and where UKHSA would have otherwise retained costs under this clause 7.9 had such monies been paid, the Customer will be liable to UKHSA for a sum equivalent to those costs.

7.10 In the event that the Services to be provided by UKHSA 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), UKHSA 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 UKHSA 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 its own cost make arrangements for such removal and transportation. In the event that UKHSA, at the Customer's request, undertakes such removal and transportation on behalf of the Customer, UKHSA shall not be liable for any damage or loss to the Customer's equipment, material and/or samples in its custody and the Customer shall be liable to UKHSA for any additional costs incurred by UKHSA in the removal and transportation of the Customer's equipment, instruments, and/or samples.

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 UKHSA in all matters relating to the Services;

(c) provide UKHSA with such information as UKHSA may reasonably require, including but not limited to health and safety information relating to any samples, equipment or materials submitted to UKHSA for testing and/or analysis and ensure that such information is accurate in all material respects;

(d) provide UKHSA, its employees, agents, consultants and subcontractors, with access to the Customer's premises, equipment, plant, office accommodation and other facilities as reasonably required by UKHSA to provide the Services;

(e) where relevant, provide UKHSA properly and sufficiently cleaned equipment, prepared in any manner as reasonably advised by UKHSA to permit any necessary examination and/or testing;

(f) where relevant, provide an operator to operate the Customer's equipment as necessary to enable UKHSA to examine and test such equipment. In the event that an operator is not provided and UKHSA employees are obliged to operate the Customer's equipment, UKHSA shall accept no liability for any damage to the Customer's equipment and the Customer will be responsible for UKHSA's reasonable costs in supplying employees to operate the Customer's equipment where such the activity of operating the Customer's equipment does not form part of the Specification;

(g) provide UKHSA with such information and materials as UKHSA may reasonably require to supply the Services, including but not limited to health and safety and security information relating to the Customer's premises, and to ensure that such information is accurate in all material respects;

(h) unless agreed otherwise in writing with UKHSA, 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;

(i) 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;

(j) 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

(k) keep and maintain Supplier Materials at the Customer's premises in safe custody at its own risk, maintain Supplier Materials in good condition until returned to UKHSA, and not dispose of or use Supplier Materials other than in accordance with UKHSA's written instructions or authorisation.

8.2 If UKHSA'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 any other rights or remedies available to it, UKHSA 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 that the Customer Default prevents or delays UKHSA's performance of any of its obligations;

(b) UKHSA shall not be liable for any

costs or losses sustained or incurred by the Customer arising directly or indirectly from UKHSA's failure or delay to perform any of its obligations as set out in this clause [8.2](#); and
(c) the Customer shall reimburse UKHSA on written demand for any costs or losses sustained or incurred by UKHSA arising directly or indirectly from the Customer Default.

8.3 The Customer shall not, without the prior written consent of UKHSA, at any time for the duration of this Contract solicit or entice away from UKHSA or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of UKHSA 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 UKHSA'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, 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) UKHSA shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom UKHSA 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 UKHSA for the performance of the Services, and for the cost of any materials.

9.3 Where Services are provided for a fixed price, the 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 price to UKHSA in accordance with the Specification.

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

9.5 UKHSA 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 twelve (12) month period. UKHSA will give the Customer written notice of any such increase one (1) month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify UKHSA in writing within two (2) weeks of the date of UKHSA's notice and UKHSA shall have the right without limiting its other rights or remedies to terminate the Contract by giving two (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 UKHSA that is due to:
(i) any factor beyond the control of UKHSA (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 UKHSA adequate or accurate information or instructions in respect of the Goods.

9.6 In respect of Goods, UKHSA shall invoice the Customer on, or at any time after, completion of delivery. In respect of Services, UKHSA shall invoice the Customer in accordance with the Specification.

9.7 The Customer shall pay each invoice submitted by UKHSA 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 UKHSA, 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 UKHSA on the due date, UKHSA may:
(a) charge interest on such sum from the due date for payment at the annual rate of 4 percent (%) per cent 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 UKHSA in order to justify withholding payment of any such amount in whole or in part. UKHSA may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by UKHSA to the Customer.

9.10 All sums payable to UKHSA under this 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 this 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 UKHSA. Subject to clause [10.2](#), UKHSA 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 UKHSA obtaining a written licence from the relevant licensor on such terms as will entitle UKHSA to license such rights to the Customer.

10.3 The Customer grants to UKHSA a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and

modify any materials provided by the Customer to UKHSA for the term of the Contract for the purpose of providing the Services to the Customer.

10.4 The Customer acknowledges that UKHSA 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 UKHSA and may be submitted by UKHSA 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 UKHSA acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and UKHSA 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 UKHSA for the duration and purposes of this Contract.

11.5 Without prejudice to the generality of clause [11.2](#), UKHSA shall, in relation to any Personal Data processed in connection with the performance by UKHSA of its obligations under this Contract:

- process that Personal Data only on the written instructions of the Customer unless UKHSA is required by Applicable Laws to otherwise process that Personal Data. Where UKHSA is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, UKHSA shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit UKHSA from so notifying the Customer;
- 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 of 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, pseudonymizing 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);
- ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 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 conditioned are fulfilled:
(i) the Customer or UKHSA has

provided appropriate safeguards in relation to the transfer;
(ii) the Data Subject has enforceable rights and effective legal remedies;
(iii) UKHSA 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) UKHSA 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 this Contract unless required by Applicable Law to store the Personal Data; and
(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.6 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).

11.7 The Customer acknowledges that UKHSA is reliant on the Customer for direction as to the extent to which UKHSA is entitled to use and process the Personal Data. Consequently, UKHSA will not be liable for any claim brought by a Data Subject arising from any action or omission by UKHSA, 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 UKHSA, 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 UKHSA. The Customer shall provide evidence of such licences, consents, permits, as applicable to UKHSA upon UKHSA's request. Failure to obtain any such licences, consents or permits shall not entitle the Customer to withhold or delay payment due to UKHSA under the Contract. The Customer shall be liable for any additional expenses or charges incurred by UKHSA 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 this 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), to a court of competent jurisdiction or any governmental or regulatory authority.

13.3 UKHSA 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). UKHSA is required to pass on to the appropriate authority any information it deems necessary to safeguard public health. UKHSA reserves the right to disclose such information obtained in the course of this Contract. Wherever possible the Customer will be advised of this disclosure. UKHSA may use information generated in the course of this 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 UKHSA 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 UKHSA as a result of or in connection with any claim made against UKHSA 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 these Conditions shall limit or exclude UKHSA's 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; (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) UKHSA shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for: (i) any 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 or damage to goodwill and (vii) any indirect or consequential loss arising under or in connection with the Contract; and (b) UKHSA'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 UKHSA under this Contract.

15.3 For the avoidance of doubt, in the event that the UKHSA fails to perform its obligations and/or is delayed from performing its obligations under this Contract as a result of the UKHSA's priorities and/or resources being re-diverted to respond to a public health emergency; such as a pandemic and/or epidemic. Such delay and/or failure shall be considered a Force Majeure Event and the provisions in clause 18.1 shall be applicable.

15.4 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.

15.5 This clause 15 shall survive termination of the Contract.

16. TERMINATION

16.1 Without limiting its other rights or remedies, each 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 this 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; or (b) the other party commits a material breach of its obligations under this 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; or (c) there is a change of control of the other party; or (d) the other party's financial position deteriorates to such an extent that in the party's reasonable opinion the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract: (a) the Customer shall immediately pay to UKHSA all of UKHSA's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, UKHSA 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 UKHSA 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 this

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) UKHSA 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 UKHSA, 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 this 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.

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 all Applicable Laws.

18.7 No partnership or agency:

(a) Nothing in this 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.

(b) By entering into this Contract, UKHSA does not directly or indirectly endorse the Customer or any of the services or goods that the Customer may provide or trade in. The Customer will not in any way state or imply that this agreement is an endorsement of the Customer by UKHSA or Her Majesty's Government. The Customer shall not use any UKHSA branding or logos unless specifically authorised to do so in writing by UKHSA.

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 terms 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 this Contract and the Goods and/or Services Specification or any terms and conditions issued by the Customer, the Conditions in this Contract shall prevail.

18.12 Dispute Resolution:

(a) All disputes arising out of or in connection with this 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 this 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:

This 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.