

[NB: DRAFTING NOTES ARE HIGHLIGHTED IN GREEN. ENSURE THESE ARE DELETED BEFORE FINALISING. PARTS OF THE AGREEMENT WHERE YOU NEED TO ADD TEXT – OR WHERE TEXT IS OPTIONAL – ARE HIGHLIGHTED YELLOW AND/OR APPEAR IN SQUARE BRACKETS. ENSURE THIS IS COMPLETED, AND HIGHLIGHTING REMOVED, BEFORE FINALISING AGREEMENT.]

WARNING: THIS IS A LEGAL AGREEMENT CREATING LEGALLY BINDING OBLIGATIONS AND EACH PARTY SHOULD SATISFY ITSELF THAT THIS LEGAL AGREEMENT IS SUITABLE FOR ITS SPECIFIC NEEDS AND TAKE LEGAL ADVICE PRIOR TO ENTERING INTO THE SAME.

## RENTAL AGREEMENT FOR EQUIPMENT

This **CONTRACT** is made the ..... day of ..... 20[ ]

BETWEEN

(1) \_\_\_\_\_

whose registered office is at \_\_\_\_\_

(the "**Supplier**")

AND

(2) \_\_\_\_\_

whose principal place of business is at \_\_\_\_\_

(the "**Authority**")

IT IS AGREED as follows:

### 1. INTERPRETATION

1.1 In this Contract (including the Schedule), the following definitions shall apply:

"**Acceptance**" means acceptance of the Equipment by the Authority (and "**Accept**" shall be construed accordingly).

"**Business Day**" is defined at Schedule 4 of the Call-off Terms.

"**Call-off Terms**" means the Call-off Terms and Conditions at Appendix A to Schedule 7 of the Framework Agreement' (and as defined in Schedule 4 of the Framework Agreement).

"**Commencement Date**" means the commencement date specified in paragraph 3.1 of the Schedule.

"**Contract**" means this contract which shall consist of the items referred to in paragraph 1 of the Schedule, in the order of precedence described in the Schedule.

"**Contract Period**" means the period specified as such in paragraph 3 of the Schedule.

"**Contract Price**" means the VAT exclusive sum payable to the Supplier by the Authority (as set out in paragraph 4 of the Schedule) in consideration for the rental of the Equipment to the Authority on the terms set out in this Contract.

**“Equipment”** means the Goods specified at paragraph 2.1 of the Schedule and includes any upgrades, improvements or replacement parts fitted to such Goods during the Contract Period.

**“Goods”** means any and all Goods (as defined in Schedule 4 of the Call-off Terms) that the Supplier is required to supply under this Contract.

**“Good Working Order”** means the uninterrupted, trouble-free operation of the Equipment (subject to pre-agreed and scheduled maintenance and/or downtime) in accordance with the Specification and the Operating Manuals (provided that, in the event of any conflict between the Specification and the Operating Manuals, the Specification shall take precedence).

**“Framework Agreement”** means the Framework Agreement dated [ ] between NHS Supply Chain and the Supplier for the Supply of Patient Monitoring Equipment, Related Accessories and Services.

**“Location”** means the delivery location specified in paragraph 5.1 of the Schedule.

**“NHS Supply Chain”** means Supply Chain Coordination Limited (registered number 10881715) whose registered office is at Wellington House, 133-155 Waterloo Road, London, United Kingdom, SE1 8UG and which acts as the management function of the NHS Supply Chain.

**“Operating Manuals”** all operating manuals and specifications relating to the Equipment which have been provided to the Customer by the Supplier prior to the Commencement Date.

**“Party”** (or **“Parties”**) means a party (or parties) to the Contract.

**“Procedures”** means the medical and/or diagnostic procedures that the Equipment will be used for by the Authority, in accordance with the manufacturer’s instructions (which shall be provided to the Authority by the Supplier).

**“Return Conditions”** means the conditions specified in the Schedule at paragraph 6.

**“Schedule”** means the Schedule to this Contract.

**“Specification”** means the specification for the Equipment set out in Schedule 5(a) of the Framework Agreement, as supplemented by the specification (if any) set out at Appendix 2 to the Schedule.

**“Transfer Option”** means the Authority’s option to acquire the Equipment (if elected) as set out at paragraph 9 of the Schedule.

**“Transfer Option Price”** is the price payable for purchase of the Equipment (as set out at paragraph 9(i) of the Schedule) if the Purchase Option is elected.

**“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

- 1.2 Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument. The headings to these clauses shall not affect their interpretation.
- 1.3 Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.4 In the event of any conflict between the terms of this Contract and the terms of a Schedule, the latter shall prevail. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or preceding those terms.

1.5 Any decision, act or thing that the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the Supplier of the name of any person so authorised.

## **2. RENTAL AGREEMENT**

2.1 The Supplier shall rent the Equipment to the Authority for the Contract Period on the terms set out in this Contract.

2.2 The Supplier shall make the Equipment available to the Authority continuously during the Contract Period for the purpose of performing the Procedures, and the Authority's use of the Equipment is subject to the terms of this Contract.

2.3 The Supplier shall provide such training in the operation of the Equipment as is required by the Authority free of charge and at a time agreed by the Parties.

2.4 The Supplier shall provide a customer care line (available [24-hour, 365 days a year]) which shall incorporate both a clinical and technical helpline. A verbal response shall be given to all enquiries within [30 minutes].

2.5 For each item of Equipment supplied, the Supplier shall provide the Authority with:

2.5.1 a user manual and manufacturer's instructions;

2.5.2 a patient instruction leaflet containing, at minimum, details of (i) the Procedure and (ii) customer helpdesk contact details.

2.6 This Contract shall be comprised of the terms referred to in the Schedule, in the order of precedence set out in the Schedule.

## **3. CONTRACT PERIOD**

3.1 The Contract Period shall commence on the date specified in the Schedule or in the absence of such date being specified, on the date of Acceptance of the Equipment by the Authority.

3.2 This Contract shall expire on the expiry of the Contract Period unless it is terminated in accordance with its terms or extended by written agreement of the Parties.

## **4. DELIVERY AND ACCEPTANCE, RISK AND TITLE**

4.1 The Supplier shall deliver the Equipment in accordance with the Call-off Terms (including in relation to delivery lead times).

4.2 In respect of the Equipment supplied under this Contract, the text at Clause 3.3 of Schedule 2 of the Call-off Terms shall not apply. The Equipment shall at all times remain the property of the Supplier, and the Authority shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment in accordance with the terms and conditions of this Contract) except where the Customer acquires the Equipment pursuant to a Transfer Option (in which case, paragraph 9 of the Schedule shall apply).

4.3 The Equipment shall be delivered, installed and configured at the Supplier's risk. The Party named in paragraph 5.2 of the Schedule shall bear risk in the Equipment from Acceptance of the Equipment.

- 4.4 The Authority shall accept the Equipment or reject such Equipment promptly following the Supplier's delivery (and, where appropriate, the Supplier's installation and configuration of the Equipment).
- 4.5 Where the Authority has rejected the Equipment, the Supplier shall collect (and bear the cost of collecting) the rejected Equipment from the Location (whether or not the Contract is terminated).

## **5. PRICE AND PAYMENT**

- 5.1 Subject to Acceptance of the Equipment, the Authority shall pay the Supplier the Contract Price set out in the Schedule in consideration for the rental of the Equipment to the Authority for the Contract Period.
- 5.2 An invoice for each payment due to the Supplier shall be rendered in accordance with the Call-off Terms, on the Supplier's own invoice form to the Authority clearly marked with the Authority's order number (where provided). Except as otherwise provided in this Clause 5, the terms for invoicing and payment are set out in Clause 15 of Schedule 2 of the Call-off Terms.
- 5.3 In respect of Clause 15.16 of Schedule 2 of the Call-off Terms: All payment must, unless otherwise stated in the Schedule, be paid in sterling and must be paid on time, in full and in cleared funds, free and clear of any set-off, counterclaim, deductions or withholding of any nature whatsoever.
- 5.4 The Authority shall not be required to make payment in the event that the Equipment is not in Good Working Order, for the period that it is not in Good Working Order.

## **6. OBLIGATIONS OF THE PARTIES IN RESPECT OF EQUIPMENT**

### ***Supplier Obligations***

- 6.1 The Equipment be delivered with evidence that a full decontamination has taken place prior to delivery. This evidence must include a decontamination certificate and where applicable traceability and signature back to the original serial number.
- 6.2 The Supplier shall keep the Equipment serviced, maintained and repaired and in Good Working Order in accordance with the manufacturer's instructions and recommendations and shall (having obtained the prior consent of the Authority) supply and fit any necessary replacement parts, all at the Supplier's own expense.
- 6.3 All replacement parts fitted to the Equipment and all substitutions for the Equipment (together with any upgrades or improvements to the Equipment funded by the Supplier) shall be the property of the Supplier and subject to the Contract.
- 6.4 The Supplier shall not make any changes to the Equipment without the prior written consent of the Authority.
- 6.5 Unless otherwise provided in paragraph 6 of the Schedule (or unless a Transfer Option is exercised), upon expiry or termination of the Contract the Supplier shall, at its own risk and cost, uninstall and collect the Equipment from the Location at a time agreed in advance with the Authority. The Supplier shall make good any loss or damage caused to the Authority's property caused by the uninstallation and/or collection of the Equipment.
- 6.6 Provided that the Authority complies with all the terms of the Contract, the Supplier shall not interfere with the Authority's quiet possession of the Equipment and shall ensure that the Equipment is available continuously during the Contract Period.

### ***Authority Obligations***

- 6.7 The Authority shall keep the Equipment in its possession at the Location and (unless the Equipment is supplied as a portable/relocatable item) shall not move it without the written consent of the Supplier (such consent not to be unreasonably withheld);

- 6.8 The Authority shall not modify the Equipment without the prior written consent of the Supplier;
- 6.9 The Authority shall not sell or offer for sale, assign, mortgage, pledge, underlet, lend or otherwise deal with the Equipment or any interest in it nor to allow the creation of any charge or lien over it without the prior written consent of the Supplier; and,
- 6.10 The Authority shall (unless provided otherwise in paragraph 8 of the Schedule) keep the Equipment insured for its value with a reputable insurer in respect of such Equipment without excess or deduction during the Contract Period and shall provide to the Supplier evidence of such insurance upon request.

## **7. CONFORMITY AND PERFORMANCE OF EQUIPMENT**

- 7.1 The Supplier warrants that the Equipment shall conform to the Specification. For the avoidance of any doubt, all relevant provisions of the Call-off Terms shall also apply in relation to the quality, fitness for purpose and performance of the Equipment (including, without limitation, those provisions at Clauses 1 and 16 of Schedule 2 of the Call-off Terms).
- 7.2 The Supplier shall repair, free of charge, any defect in the Equipment within **5** days of being notified of such defect (or such other period of time as is agreed between the Parties). If the Supplier fails to repair such defect in the Equipment the Supplier shall, at the Authority's request, replace the Equipment within such period of time as is agreed between the Parties.
- 7.3 In the event the Authority rejects the Equipment before Acceptance, or the Supplier fails to remedy any defect in the Equipment within **5** days (or such other period of time as is agreed between the Parties), then the Authority may terminate the Contract and the Supplier shall collect and remove the relevant Equipment free of charge upon demand.
- 7.4 The Supplier shall transfer to the Authority for the Contract Period (unless terminated earlier) the benefit of all manufacturer's and Supplier's guarantees and warranties in respect of the Equipment.

## **8. DEFAULT AND REMEDIES**

- 8.1 For the avoidance of any doubt, the remedies set out in the Call-off Terms shall apply to this Contract (including, without limitation, those set out in Clauses 21 and 22, Schedule 2 of the Call-off Terms).

## **9. VALIDITY AND SEVERABILITY**

- 9.1 If any term of the Contract is invalid it will not affect the validity of the remaining terms and the Contract will continue to be enforceable.

## **10. INFORMATION SECURITY**

- 10.1 Without limitation to any other information governance and security requirements set out in this Contract (including, without limitation, those set out in Schedules 3 and 9 of the Call-off Terms):
- 10.1.1 the Supplier shall notify the Authority forthwith of any information security breaches (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) relating to data that it holds in relation to the Authority or any Contract with the Authority in line with the Authority's information governance policies;
  - 10.1.2 the Supplier shall fully co-operate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments; and
  - 10.1.3 to the extent permitted by law, the Authority shall provide the Supplier with details of its information governance policies insofar as they relate to the Equipment and this Contract.

## **11. ENTIRE AGREEMENT AND VARIATION**

11.1 The Supplier shall provide to the Trust the Equipment solely in accordance with the terms and conditions set out in this Contract, which represents the entire agreement between the Parties. All other contractual terms which in any way add to, vary or contradict the Contract upon which the Supplier may seek to rely or otherwise impose on the Authority shall be excluded and not form part of the Contract (whether or not such other contractual terms post-date the Contract) unless the Authority has specifically agreed in writing to be bound by any of such other contractual terms.

11.2 No later variation shall be binding unless it has been agreed in writing and signed by an authorised representative of the Supplier.

11.3 All costs and expenses (including legal costs and expenses) incurred by the Supplier in relation to any variation of the terms of the Contract shall, unless otherwise agreed, be the responsibility of the Authority.

## 12. **THIRD PARTY RIGHTS**

12.1 Save as otherwise provided herein, a person who is not a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## 13. **LAW AND JURISDICTION**

13.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

13.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

This Contract has been entered into on the date stated at the front of it.

Signed for and on behalf of [SUPPLIER]

Print name: \_\_\_\_\_

Designation: \_\_\_\_\_

Signed for and on behalf of [AUTHORITY]

Print name: \_\_\_\_\_

Designation: \_\_\_\_\_

## SCHEDULE

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**Contract number/reference/date:** [\*\* ] between the parties referred to below (the "**Contract**")

**The Parties:**

(1) [\*\* ] registered in England and Wales no. [\*\* ] and having its registered office at [\*\* ] (the "**Supplier**"); and

(2) [\*\* ] having its office at [\*\* ] (the "**Authority**");

**Whereas:**

(A) The parties hereto have entered into the Contract ("**Parties**").

(B) This Schedule is entered into pursuant to the Contract.

**It is agreed:**

**1 Contract**

The Contract shall comprise the following items in the following order of precedence:

1. This Schedule;
2. The Rental Agreement terms and conditions set out at the front end of this document;
3. The Call-off Terms;
4. The Specification (including the Authority Specification at Appendix 2);
5. Appendix 1 (Contract Price).

**2 Equipment**

2.1 The Equipment to be supplied under this Contract shall be as follows:

Equipment: [\*\* ] (the "**Equipment**")

**3 Contract Period and Termination**

3.1 The Contract shall commence on [\*\* ] and (subject to the right of early termination set out at paragraph 3.2 below) shall expire on [\*\* ] (the "**Contract Period**").

3.2 Without prejudice to any other right of termination set out in this Contract, [either Party] [The Authority] may terminate the Contract by giving to the [other] [Supplier] not less than [ ] weeks prior written notice.

**4 Contract Price**

4.1 The Contract Price is set out in Part 2 of Appendix 1 to this Schedule.

**5 Delivery and Risk:**

***Delivery – Location and Time***

5.1 The Supplier shall deliver the Equipment to the following location at the following time: [\*\* ]

***Risk in the Equipment***

5.2 The Party that shall, from the date of Acceptance, bear the risk of loss or damage to the Equipment however caused shall be the: **SUPPLIER/AUTHORITY** (delete as appropriate). **If no selection is made, the Authority is responsible.**

**6 Return Conditions**

The Return Conditions will be as follows:

- (i) Will the Authority be responsible for returning the Equipment at the end of the Contract Period (instead of the usual position under Clause 6.5 above where the Supplier is collect them from the Authority)? **YES/NO** (*delete as appropriate*). **If no selection is made 'No' is deemed applicable.**
- (ii) Which Party is to be responsible for the costs of returning/collecting the Equipment at the end of the Contract Period: **SUPPLIER/AUTHORITY** (*delete as appropriate*). **If no selection is made, Supplier is responsible.**
- (iii) For the avoidance of any doubt, the options selected above in this paragraph 6 do not affect Clause 4.5 of the Rental Agreement (in relation to rejected Equipment).

Additional Supplier Return Conditions:

[\*\* ]

## **7 Supplemental conditions**

- (i) The following additional terms shall apply: (*delete as appropriate*)

[[Not applicable] / [\*\* ].]

- (ii) The following terms of the Contract shall not apply:

[[Not applicable] / [\*\* ].]

## **8 Further Equipment-related Obligations**

**(For each sub-paragraph below, delete 'yes' or 'no' as appropriate. If no selection is made, 'No' shall be deemed to apply for sub-paragraph 8(i) and 'Yes' shall be deemed to apply for sub-paragraph 8(ii).)**

- (i) The Supplier shall keep the Equipment insured for its value with a reputable insurer in respect of such Equipment without excess or deduction during the Contract Period and shall provide to the Authority evidence of such insurance upon request. **YES/NO [NB: If 'No' applies, the Authority insures in accordance with clause 6.10.]**
- (ii) The Authority shall be responsible for making good any loss to the Supplier arising from any loss or damage to the Equipment occurring prior to its collection by the Supplier (that cannot be recovered through the Supplier's insurance) **PROVIDED THAT** the Authority shall not be responsible for loss or damage arising through fair wear and tear, through defects in the Equipment or through an act or omission of the Supplier. **YES/NO**

## 9 Transfer Option

9.1 Is a Transfer Option applicable to the Contract? **YES/NO**

*(Delete as applicable. If no selection is made 'No' shall be deemed to apply.)*

9.2 Transfer Option A and Transfer Option B are set out below. Does Transfer Option A or Transfer Option B apply? **TRANSFER OPTION A APPLIES / TRANSFER OPTION B APPLIES**

*(Delete as applicable. If 'yes' is selected in response to 9.1 but no selection is made at 9.2 above, 'Transfer Option B' will apply by default.)*

### **TRANSFER OPTION (A):**

- (i) The Transfer Option Price (excluding VAT at the applicable rate) is: **[insert Transfer Option Price]**
- (ii) The Authority shall, subject to paragraph (iii) below, have the option to purchase the Equipment on the last Business Day of the Contract Period at the Transfer Option Price. The Transfer Option is exercisable by the Authority by giving written notice to the Supplier not less than **[ten (10)]** Business Days prior to the end of the Contract Period.
- (iii) The Transfer Option may be exercised only if the Authority has met the payment commitments under this Contract up to the date of exercise of the Transfer Option.
- (iv) Upon completion of the purchase of the Equipment under this paragraph 9, the Supplier's title to the Equipment shall transfer to the Authority free from all charges and encumbrances affecting the Equipment. The Equipment shall transfer to the Authority in the condition and at the location of the Equipment on the date of transfer (provided that this shall not relieve the Supplier of any of its obligations relating to maintenance of the Equipment arising before the expiry of the Contract Period).
- (v) The Supplier agrees to carry out all such actions as may be reasonably necessary (at its own cost) to give full effect to the transfer of title in the Equipment to the Authority.

**OR**

### **TRANSFER OPTION (B)**

- (i) The Supplier will transfer title in the Equipment to the Authority upon the expiry of the Contract Period provided that the Trust has met the payment commitments under this Contract up to the expiry date.
- (ii) The Supplier's title to the Equipment shall transfer to the Authority free from all charges and encumbrances affecting the Equipment. The Equipment shall transfer to the Authority in the condition and at the location of the Equipment on the date of transfer (provided that this shall not relieve the Supplier of any of its obligations relating to maintenance of the Equipment arising before the expiry of the Contract Period).
- (iii) The Supplier agrees to carry out all such actions as may be reasonably necessary (at its own cost) to give full effect to the transfer of title in the Equipment to the Authority.

**This Contract** has been entered into on the day and date given below:

**Signed by** [**\*\*** ] for and on behalf of the Supplier      **Signed by** [**\*\*** ] for and on behalf of the Authority

Print Name: .....      Print Name: .....

Job Title: .....      Job Title: .....

Date of Signature: ...../...../20.....      Date of Signature: ...../...../20.....

**APPENDIX 1**

**CONTRACT PRICE**

**[INSERT RENTAL PAYMENT SCHEDULE FOR EQUIPMENT HERE]**

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## APPENDIX 2

### AUTHORITY SPECIFICATION

[IF AUTHORITY HAS A SUPPLEMENTAL SPECIFICATION FOR THE EQUIPMENT, INSERT HERE]

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