

NHS Form of Indemnity – A Reference Number [IFA155]

Equipment on loan

Supplier:

Company Name	<u>Viamed Ltd</u>	
Address	<u>15 Station Road, Cross Hills, Keighley, West Yorkshire</u>	
	Postcode	<u>BD20 7DT</u>
Contact name	<u>Steve Hardaker</u>	
Contact e-mail	<u>Steve.hardaker@viamed.co.uk</u>	
Tel	<u>01535 634542</u>	

A DEED made the 8.....day of August.....2015
BETWEEN:

EITHER*

~~NHS Trust/NHS Foundation Trust/Health Authority*~~

(“the Authority”);

OR

The Secretary of State for Health (“the Department”);

AND

Supplier VIAMED LTD
("the Supplier")

WHEREAS

The Supplier is the owner of equipment (the “Equipment”) and wishes to make the Equipment available directly to the Authority or through the Department to NHS Trusts, NHS Foundation Trusts, Health Authorities and other users (“Users”) agreed by the parties for a specified period in accordance with the terms of this Deed. The Equipment and the period for which the Equipment will be on loan to the Authority or the relevant User(s) shall be specified in an NHS Delivery Note completed by the Supplier and the Authority or the relevant User(s) at the outset of the loan. For the avoidance of doubt, there shall be no limit on the number of NHS Delivery Notes which may be completed pursuant to this Deed. “Equipment” shall be deemed to include any part or parts of the Equipment and all replacements and additions supplied by the Supplier during the continuance of this Deed.

IT IS HEREBY AGREED that the Supplier shall make the Equipment available to the Authority or the relevant User(s) by way of loan free of charge for the period agreed between the Authority or the relevant User(s) and the Supplier, at the premises ("the Premises") specified in the relevant NHS Delivery Note on the terms set out in this Deed:-

1. For the avoidance of doubt, this Deed is not a contract for hire pursuant to the Supply of Goods and Services Act 1982.
2. Title to the Equipment shall remain for all purposes fully vested in the Supplier.

***Delete as appropriate**

3. The Equipment (other than Equipment which the Authority or relevant User(s) has taken on loan for the purposes of trial or evaluation at the request of the Supplier) shall at all times after its delivery to the Authority or the relevant User(s) be at the sole risk of the Authority or relevant User(s) as regards damage, loss or destruction. The Authority or the relevant User(s) shall be liable for the repair or replacement of any such Equipment which is damaged, destroyed or lost whilst in its possession or control.
4. Subject to Clause 5, Equipment which the Authority or relevant User(s) has taken on loan for the purposes of trial or evaluation at the request of the Supplier shall at all times after its delivery to the Authority or the relevant User(s) be at the sole risk of the Supplier as regards damage, loss or destruction and neither the Authority nor the relevant User(s) shall be under any obligation to keep the Equipment insured. For all pieces of Equipment on loan to the Authority at any one time the Supplier shall keep a record of the purpose of the loan and, when requested by the Authority upon reasonable notice, communicate the purpose of the loan to the Authority within a reasonable time.
5. The Authority or the relevant User(s), as the case may be, shall be liable for the repair of:
 - 5.1. any damage to the Equipment occurring at the Premises (or during transit in the event that the Authority or relevant User collects the Equipment pursuant to Clause 6) and caused by the Authority or the relevant User(s) failing to use or operate such Equipment in accordance with the express instructions of the Supplier; and
 - 5.2. any damage to the Equipment occurring at the Premises (or during transit in the event that the Authority or relevant User collects the Equipment pursuant to Clause 6) and caused by the act or omission of the Authority or the relevant User(s) their employees, agents or contractors or any third party beyond reasonable control of the Supplier.
6. The Supplier shall use its reasonable endeavours to deliver the Equipment to the Premises on a date agreed between the Supplier and the Authority or the relevant User(s). Except where carried out solely by the Authority or the relevant User(s), delivery shall be effected by the Supplier delivering the Equipment to the Premises or (if otherwise agreed) by the Authority or the relevant User(s) collecting the Equipment from the Supplier's premises or any other premises agreed by the parties. Unless otherwise agreed, the Authority or relevant User(s) shall be responsible for installation of the Equipment at the Premises such that it is in working order for use by the Authority or the relevant User(s). The Authority's responsibility shall also extend to any and all costs and damage caused by or arising out of the failure to correctly install the Equipment, provided always that it is the Authority which has installed the Equipment. For the avoidance of doubt, should the Supplier be responsible for installing the Equipment, the Authority shall have no responsibility to meet any costs and damage caused as a result of the installation.

7. Subject to Clauses 7.1 and 7.2 below, the Supplier shall indemnify and hold harmless the Authority, the relevant User(s) and the Secretary of State for Health against all losses suffered by the Authority, the relevant User(s) or the Secretary of State for Health:

- (i) in connection with any defect in the design or manufacture of the Equipment; or
- (ii) arising directly as a result of the provision by the Supplier of negligent training or instruction in the use, or preparation for use, of the Equipment to the Authority, the relevant User(s) or the Secretary of State for Health

7.1. The Supplier shall not be liable for any loss suffered by the Authority, the relevant User(s) or the Secretary of State for Health to the extent that such loss was caused by the negligent acts or omissions of or breach of statutory duty by the Authority, the relevant User(s) or the Secretary of State, save where such acts, omissions or breaches were occasioned as a result of following the instructions of the Supplier or the Supplier's agents, employees or contractors. For the avoidance of doubt, but without prejudice to the generality of the foregoing, the following circumstances shall amount to negligent acts:

- (i) a failure to use or operate the Equipment in accordance with the operating instructions and other relevant information of which the Authority or relevant User(s) has been made expressly aware by the Supplier; including failure to observe requirements for the safe disposal or reprocessing of the Equipment;
- (ii) a failure by the Authority or relevant User(s) to ensure that the Equipment is operated by persons who have been made aware of the method of operation in accordance with Clause 9; and
- (iii) use of the Equipment for a use or in a manner for which it was not intended.

7.2. The Supplier shall be liable for physical damage to the Premises resulting from its negligence up to a maximum of five million pounds (£5,000,000.00) (in respect of any one event or series of connected events).

- (i) Nothing in this Deed shall exclude or limit the Supplier's liability for death or personal injury caused by its negligence or any liability the Supplier may have pursuant to the Consumer Protection Act 1987 to a person who has suffered damage caused by defective Equipment.
- (ii) The Supplier shall not be liable for any loss of profit, income, business, revenue or goodwill or any indirect or consequential losses.
- (iii) Without prejudice to Clauses 7.2 and 7.2(i) above, the Supplier's maximum aggregate liability arising in connection with (a) any defect in the design or manufacture of the Equipment or (b) the provision of negligent training or instruction in the use of, or preparation for use, of the Equipment, whether arising in contract, tort (including negligence) or otherwise, shall in no circumstances exceed five million pounds (£ 5,000,000.00) (in respect of any single event or series of connected events).

7.3. The Supplier does not accept and hereby excludes, any liability for negligence save as provided in this Clause 7.

8. The Supplier shall take out and maintain insurance cover with an insurer reasonably acceptable to the Authority or the relevant User(s) on terms sufficient to cover its liability

to the Authority or the relevant User(s) and the Secretary of State for Health under this Deed and in any event with a minimum indemnity cover of £5 million in any year (or such other amount as may be agreed by the Authority or the relevant User(s) in writing). On request the Supplier shall provide documentary evidence of such insurance cover to the Authority or the relevant User(s). If at any time the Supplier shall default in its obligations to insure as aforesaid then the Authority or the relevant User(s) shall hereby be irrevocably appointed by the Supplier as the Supplier's agent to effect such insurance cover as the Supplier would have taken out and maintained and accordingly the Authority or the relevant User(s) shall recharge to the Supplier (who hereby undertakes to make payment to the Authority or the relevant User(s) promptly on demand) the full cost of effecting such insurance cover together with such sum as shall cover all costs reasonable incurred by the Authority or the relevant User(s) in effecting such insurance provided that such sum shall not exceed an amount equivalent to five per cent (5%) of the cost of the policy effected.

9. The Supplier shall provide to the Authority or the relevant User(s) instructions for use relating to the Equipment and detailed instructional manuals (where available) for the intended purpose stated by the Supplier, including any information and documents required by the Control of Substances Hazardous to Health Regulations 1999. The instruction manual shall accompany the Equipment and shall be in the English language and contain appropriate directions as to the operation of the Equipment. The Supplier shall provide a telephone number to the Authority which telephone line shall be manned during normal working hours by those of the Supplier's staff who are trained and qualified to deal properly with any enquiries the Authority or the relevant User(s) may have in relation to the operation of the Equipment. The Authority or the relevant User(s) will notify Supplier promptly of any fault or safety issue arising with or damage to the Equipment and will use its reasonable endeavours to ensure that the Equipment is not used until such fault or damage has been repaired or the safety issue resolved.
10. Where appropriate, the Supplier warrants and represents that the Equipment complies with the Essential Requirements of the Medical Devices Directive (93/42) and is CE marked. The Supplier further warrants that the Equipment is fit for the intended purpose for which the Equipment is supplied.
11. The Supplier and the Authority or the relevant User(s) shall complete and sign an NHS Delivery Note in relation to each item of Equipment to be covered by this Deed.
12. This Deed shall continue in force from the date hereof until it is terminated by either party in accordance with this clause. For the avoidance of doubt, the parties' obligations under this Deed shall apply only to Equipment which is in the possession of the Authority or the relevant User(s) from time to time and shall not apply to Equipment which has been returned to the Supplier in accordance with Clause 16. This Deed will terminate if either party serves on the other party not less than 3 months' written notice to expire at any time.
13. Upon termination of this Deed for whatever reason the Authority or the relevant User(s) shall forthwith provide the Supplier with written particulars of any contamination or other hazard including any safety hazard that has arisen in respect of the Equipment during the period in which the Equipment was on loan to the Authority or the relevant User(s) sufficient to facilitate compliance by the Supplier with statutory and other reasonable requirements to make safe the Equipment, the contamination and any other hazard so that it may be maintained, repaired, removed, transported or otherwise dealt with by the Supplier as may be appropriate provided that the Authority or the relevant User(s) shall accept no liability whatsoever for any failure by the Supplier to make safe the Equipment or to deal with any contamination or other hazard in accordance with any statutory or

other requirements whether or not such failure has arisen out of or is connected with any written particulars provided by the Authority or the relevant User(s) under this condition, except that the Authority or the relevant User(s) shall be responsible for any and all costs where Equipment is returned to the Supplier with insufficient or incorrect information of a hazard or contamination. If such contamination or other hazard has resulted from the failure of the Authority or the relevant User(s), their servants or agents to use the Equipment for the Supplier's intended purpose, the Authority or the relevant User(s) shall bear the reasonable cost of making safe the Equipment, the contamination and any other known hazard.

14. The Equipment shall not be modified or repaired by the Authority or the relevant User(s) without the prior written agreement of the Supplier.
15. Neither the Authority nor the relevant User(s) shall be liable for any charge for maintenance, repair, consumable materials or accessories required for the operation of the Equipment during the period in which the Equipment is on loan to the Authority or the relevant User(s) or for any carriage or installation charges except as provided in this Deed or by agreement and the issue of an official purchase order by the Authority or the relevant User(s).
16. Upon receipt of a written request at any time from the Authority or the relevant User(s) or at the end of the loan period specified in the relevant NHS Delivery Note, the Supplier shall remove the Equipment from the Premises with all practicable speed, free of charge, and at that time shall provide the Authority or the relevant User(s) with a receipt for the Equipment, and shall have the right to enter onto the Authority's or relevant User(s) premises to exercise such removal.
17. The Supplier shall provide the Authority or the relevant User(s) with reasonable written notice of the time at which it intends to remove the Equipment from the Premises in accordance with Clause 16.
18. The Supplier shall be solely responsible for the cost of making good and reinstating the Premises to the reasonable satisfaction of the Authority or the relevant User(s) following the removal of the Equipment provided always that if the Equipment is free-standing and not in any way attached to the fabric of the Premises then there shall be no obligation on the Supplier under this clause.
19. Nothing in this Deed shall create any obligation on the Authority or the relevant User(s) to purchase or take on paid hire either during the period of this Deed or at any time thereafter any quantity of the Equipment and the Supplier acknowledges that it has not relied on any representation on behalf of the Authority or the relevant User(s) as to any future business between the Supplier and the Authority or the relevant User(s) (except that nothing in this clause shall exclude the Authority's liability for fraudulent misrepresentations) and the Supplier warrants that neither the Authority nor any relevant User(s) is under any obligation to the Supplier in connection with the Equipment (save as expressly set out herein) or future orders therefore.
20. Each party, and its employees and agents, shall at all times keep confidential and secret and shall not (without the prior written consent of the disclosing party) disclose to any person any information or other matters acquired by the receiving party in connection with this Deed save where required to comply with the requirements of any regulatory or other competent authority or as otherwise required by law.
21. Nothing in this Deed is intended to confer on any person any right to enforce any term of this Deed which that person would not have had but for the Contracts (Rights of Third

Parties) Act 1999. The parties acknowledge that the provisions of this Clause 21 shall not affect any right or remedy which exists or is available, whether express or implied, apart from the Contracts (Rights of Third Parties) Act 1999.

EXECUTED AND DELIVERED AS A DEED BY AND ON BEHALF OF: -

Name of NHS Trust/ NHS Foundation Trust/ Health Authority:-

[]

OR The Secretary of State for Health *

acting by:

Name: SANDRA BARROW

Position: COMMERCIAL POLICY ADVISOR

Signature: S. M. Barrow.

EXECUTED AND DELIVERED AS A DEED BY, FOR AND ON BEHALF OF: -

Supplier Name: Viamed Ltd

acting by:

1st Signatory

Name: Helen Lamb

Position: Director/Company Secretary**

Signature: H. Lamb

2nd Signatory

Name: Derek Lamb

Position: Director/Company Secretary**

Signature: D. Lamb

*Delete as appropriate (the form should be executed by the Authority OR by The Department
– see Guidance Notes)

** Delete as appropriate

Form of Indemnity – B Reference Number [IFB155]

Free issues

Supplier:

Company Name	Viamed Ltd		
Address	15 Station Road, Cross Hills, Keighley, West Yorkshire		
		Postcode	BD20 7DT
Contact name	Steve Hardaker		
Contact e-mail	Steve.hardaker@viamed.co.uk		
Tel	01535 634542		

A DEED made the 8 day of August 2016 BETWEEN:

EITHER*

NHS Trust/NHS Foundation Trust/Health Authority*

..... ("the Authority");

OR

The Secretary of State for Health ("the Department");

AND

Supplier VIAMED LTD ("the Supplier").

WHEREAS

The Supplier is the owner of goods (the "Goods") and wishes to transfer the legal and equitable title in the Goods to the or to NHS Trusts, NHS Foundation Trusts, Health Authorities and other users agreed with the Department in accordance with the terms of this Deed. The Goods shall be specified in an NHS Delivery Note completed by the parties at the time of the transfer. For the avoidance of doubt, there shall be no limit on the number of NHS Delivery Notes which may be completed by the parties pursuant to this Deed.

IT IS HEREBY AGREED that the Supplier shall transfer the legal and equitable title in the Goods to the Authority or the relevant User(s) free of charge on the terms set out below:

1. Sections 12 to 15 of the Sale of Goods Act 1979 (as amended) are to be implied into this Deed.
2. Clause 16 (Limitation of liability) and Clause 17 (Insurance) of the *NHS Conditions of Contract for the Purchase of Goods* (July 2007 edition) shall be incorporated into this Deed.

*Delete as appropriate

EXECUTED AND DELIVERED AS A DEED BY AND ON BEHALF OF: -

Name of NHS Trust/ NHS Foundation Trust/ Health Authority:-

[]

OR The Secretary of State for Health *

acting by:

Name: **SANDRA BARROW**
Position: **COMMERCIAL POLICY ADVISOR**

Signature: 

EXECUTED AND DELIVERED AS A DEED BY, FOR AND ON BEHALF OF: -

Supplier Name: Viamed Ltd

acting by:

1st Signatory

Name: Helen Lamb

Position: Director/Company Secretary**

Signature: 

2nd Signatory

Name: Derek Lamb

Position: Director **

Signature: 

*Delete as appropriate (the form should be executed by the Authority OR by Secretary of State for Health – see Guidance Notes)

** Delete as appropriate