Master Indemnity Agreement

between

1. The Common Services Agency more commonly known as National Services Scotland, constituted pursuant to the National Health Service (Scotland) Act 1978 and having its headquarters at Gyle Square, 1 South Gyle Crescent, Edinburgh EH12 9EB contracting as an agent to NHS Boards (the '**CSA'**); and

2. INSERT SUPPLIER NAME (delete text or overtype to insert Supplier Name) (the '**Supplier**')

MIA Number [will be advised by HFS on receipt of forms]

hereinafter referred to individually as "Party" or collectively as "Parties".

Recitals

A. The CSA is acting on behalf of the NHS Boards in connection with the supply of certain equipment and goods by the Supplier to the NHS Boards.
B. It is anticipated that from time to time the Supplier will supply equipment and other goods to a NHS Board, and each NHS Board is desirous of receiving them on terms as to indemnity by the Supplier.
C. The Supplier has agreed to enter in this Agreement to contract with and to indemnify each NHS Board in order to avoid the need to enter into a separate contract and indemnity agreement on each occasion that the Supplier supplies equipment and other goods to a NHS Board.

1. Definitions

1.1 The following words shall have the following meanings:-

(i) 'Agreement' means this master indemnity agreement, the Schedule to this agreement as executed hereto and the Delivery Note entered into between a NHS Board and the Supplier;

(ii) 'Business Days' means any day other than Saturday, Sunday, Christmas Day, Good Friday or statutory bank holiday in Scotland;

(iii) 'Commencement Date' means the last date of execution of this Agreement;

(iv) 'Controller' shall have the meaning given in the Data Protection Legislation;

(v) 'Data Protection Legislation' means (i) the GDPR as applied in the UK and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to the Processing of Personal Data and privacy; and (iii) any other Law in force from time to time with regards to the Processing of Personal Data and privacy, which may apply to either Party in respect of its activities under the Agreement;

(vi) 'Delivery Note' means the master indemnity agreement delivery note as detailed in the Schedule to this Agreement and executed by the NHS Board and Supplier detailing a piece of Equipment incorporating the terms and conditions of this Agreement;

(vii) ‘Equipment’ means all equipment on loan or to be loaned or supplied free of charge to a NHS Board after the date on which this Agreement comes into force;

(viii) ‘GDPR’ means the General Data Protection Regulation (Regulation (EU) 2016/679) as applied in the UK;

(ix) ‘Good Industry Practice’ means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing equipment and services similar to the Equipment and services provided to the NHS Board pursuant to this Agreement under the same or similar circumstances;

(x) ‘Goods’ means all supplies, consumable items and other goods of any description excluding Equipment;

(xi) ‘Guidance’ means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Equipment and/or any associated services provided by the Supplier, to the extent that the same are published and publicly available or have been published and/ or notified to the Supplier by the Scottish Ministers, NHS Scotland, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Inspectorate, the Information Commissioner’s Office, the European Data Protection Board and/or any relevant regulatory or supervisory body having authority to issue guidance, standards or recommendations with which the NHS Board and the Supplier must comply, or to which it or they must have regard.

(xii) ‘Law’ means any legislation and/or common law insofar as applicable to the performance of the Agreement or any part thereof including without limitation (a) any subordinate legislation; (b) any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972; and (c) any regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the NHS Board and/or the Supplier is bound to comply;

(xiii) ‘NHS Board’ means a National Health Service Board constituted pursuant to the National Health Service (Scotland) Act 1978 or an Integration Authority constituted pursuant to the Public Bodies (Joint Working) (Scotland) Act 2014 as may be amended from time to time as detailed in the executed Delivery Note;

(xiv) ‘Normal Working Hours’ means between 0800 and 1800 on Business Days;

(xv) ‘Personal Data’ shall have the meaning given in the Data Protection Legislation;

(xvi) ‘Premises and Locations’ means the premises and locations as detailed in the Delivery Note relating to the delivery of Equipment from the Supplier to the NHS Board;

(xvii) “Processing” shall have the meaning given in the Data Protection Legislation with “Process” construed accordingly;

(xviii) “Processing Information” shall mean the information, where relevant, set out in Annex A to the Delivery Note;

(xix) ‘Processor’ shall have the meaning given in the Data Protection Legislation;

(xx) 'Register' means the register of suppliers kept and maintained by the CSA.

2. Duration

2.1 This Agreement shall commence on the Commencement Date and continue in force unless terminated in accordance with Clause 9.

3. Agreement

3.1 The Supplier agrees that, unless expressly otherwise agreed by the NHS Board in writing, all loans and supplies of Equipment by the Supplier to a NHS Board during the period of this Agreement will be subject to the terms of this Agreement. This Agreement will apply to the use of the Equipment by employees, agents and sub-contractors of a NHS Board and employees, agents and sub-contractors of any university (who for the avoidance of doubt shall be deemed to be agents of the NHS Board for the purpose of Clause 5 hereof) who use the facilities of the NHS Board for the purposes of teaching students. The Supplier acknowledges that the loan or supply of Equipment to the NHS Board at no cost is of benefit to the Supplier whether that be the evaluation, testing, research, trialling (where the provision of the Equipment is not the main subject of the trial) of the Equipment or other benefit.

3.2 The Supplier agrees that every supply of Goods at no cost by the Supplier to a NHS Board during the period of the agreement will be subject to the terms of this Agreement.

3.3 The parties agree that any of the NHS Boards may enforce the terms of this Agreement, including without limitation the indemnity in Clause 5. Save as provided in this Clause 3.3, a person who is not a party to this Agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Agreement.

4. Supply

Supply on a Loan Basis

4.1 In the event that the Supplier shall lend any Equipment to any NHS Board in return for the evaluation, testing, research or trialling (where the provision of the Equipment is not the main subject of the trial) of the Equipment or other benefit to the Supplier, the following conditions shall apply:-

(i) The Equipment shall be on loan free of charge;

(ii) The NHS Board shall be entitled to use the Equipment at the Premises and Locations;

(iii) The Supplier shall provide the NHS Board with written evidence of the safety of them Equipment, drawing attention to any failures to comply with relevant European or British Standard Specifications or Department of Health Specifications or aspects of safety that have not been fully tested. Restrictions on the use of the Equipment necessary to ensure the safety of patients or staff shall be pointed out to the NHS Board;

(iv) Where, during the period of the loan, the NHS Board records Personal Data, on the Equipment, the NHS Board shall be the Controller and, to the extent that the Supplier Processes any Personal Data, the Supplier shall be the Processor in respect of such Personal Data in terms of the Data Protection Legislation and the provisions of Clause 13 and the Processing Information shall apply;

(v) Before removal of the Equipment by the Supplier, the NHS Board, as Controller, will ensure that either all Personal Data have been securely removed from the Equipment, or will provide instructions to the Supplier on the secure removal of the Personal Data from the Equipment, in line with the NHSScotland Information Security Policy and the Scottish

Government Chief Executive Letter 'Safeguarding the Confidentiality of Personal Data Processed by Third Party Contractors' CEL 25 (2011), in which case the provisions of Clause 13.1 shall apply;

(vi) A Delivery Note shall accompany the delivery of the Equipment identifying the Equipment serial number;

(vii) None of the Equipment shall be modified or interfered with by the NHS Board without the agreement of the Supplier;

(viii) Unless otherwise agreed between the Supplier and the NHS Board in writing, the Supplier shall be responsible for all maintenance of whatever nature to be carried out in respect of the Equipment during the period of loan. Such maintenance by the Supplier shall be in conformance with the Equipment manufacturer's recommendations relating to the Equipment and Good Industry Practice. The Supplier will provide copies of maintenance service reports to the NHS Board should they request them;

(ix) Unless otherwise agreed by the NHS Board in writing, the NHS Board shall not be liable for any charge for maintenance, repair, consumable materials and accessories required for the operation of the Equipment during the period of the loan or for any carriage or installation charges except by prior notification and the issue of an official purchase order by the NHS Board;

(x) The Equipment shall remain continuously at the Supplier's risk during and after the period of the loan as regards damage, loss or destruction and the NHS Board shall not be under any obligation to keep the Equipment insured. For the avoidance of doubt, the Equipment shall not be modified or repaired by the NHS Board without the prior written agreement of the Supplier; and

(xi) Any damage to the Equipment occurring at the Premises and Locations, to the extent this is caused by: (i) the NHS Board failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; (ii) a negligent act or omission of the NHS Board; or (iii) any modifications made to the Equipment not expressly authorised by the Supplier in writing shall be made good by the Supplier at the NHS Board's reasonable cost and expense.

Supply on a Transfer Basis

4.2 In the event that the Supplier shall supply free of charge any Equipment or Goods to the NHS Board the following conditions apply:-

4.2.1 The transfer of the Equipment or Goods, shall be deemed to be a contract for the transfer of goods as defined by Schedule 1 of the Sale and Supply of Goods Act 1994;

4.2.2 The Supplier agrees that this transaction and the transfer of the Equipment or Goods effected by it should be subject to the current **NHS Scotland (Health Facilities Scotland) conditions of contract for the purchase of goods,** and at no cost to the NHS Board;

4.2.3 A delivery note shall accompany the delivery of the Equipment or Goods identifying the Goods by batch number.

5. Indemnity

5.1 The Supplier shall indemnify and hold each NHS Board and its agents harmless against any liability, loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings ('**Losses**') arising from or in connection with (i) the installation, presence, use or removal of the Equipment or Goods on or from the Premises and Locations; or (ii) any breach of Clause 13 of this Agreement, save, in either case, to the extent that any such Losses have been caused by any negligent act or omission by, or on behalf of, the NHS Board or its agents or any failure by the NHS Board to use or operate the Equipment in accordance with the express written instructions of the Supplier . The Supplier's liability in connection with the installation, presence, use or removal of the Equipment or Goods on or from the Premises and Locations of any NHS Board, shall not exceed the sum of £5 million in respect of any one incident, except in the case of death or personal injury caused by negligence, or fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.

5.2 The NHS Board shall have no right to claim for any Losses to the extent that such Losses are in respect of loss of business, loss of business opportunity, loss of business revenue or any consequential loss or indirect loss of any nature.

6. Insurance

6.1 The Supplier shall effect public and product liability insurance against its potential liability under Clause 5 in the minimum sum of five million pounds (£5,000,000) sterling for public liability insurance and five million pounds (£5,000,000) sterling for product liability insurance in respect of any one incident.

6.2 The Supplier shall upon request produce to the NHS Board or any person acting on behalf of the NHS Board documentary evidence that such insurance is properly maintained until such date as that liability may reasonably be considered to have ceased to exist and shall provide confirmation of any policy changes and/or renewals upon request.

6.3 In the event that the Supplier shall default in maintaining the insurance, the Supplier will be removed from the Register and this Agreement will be terminated in accordance with Clause 9.

7. Instructions for Use

7.1 The Supplier shall provide to the NHS Board express written 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 Law. The instruction manuals (where available) shall accompany the Equipment and shall be in the English language and contain appropriate directions as to the operation of the Equipment.

7.2 The Supplier shall provide a telephone number to the NHS Board which shall be manned during Normal Working Hours by those of the Supplier's personnel who are trained and qualified to deal properly with any enquiries the NHS Board may have in relation to the use and operation of the Equipment. The NHS Board will use its reasonable endeavours to notify the Supplier promptly of any fault or safety issue arising with or damage to the Equipment that the NHS Board becomes aware of 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 by the Supplier.

8. Removal of Equipment (for Equipment on Loan Only)

8.1 Upon (i) receipt of a written request at any time from the NHS Board; (ii) at the end of the loan period specified relating to the Equipment (as may be extended from time to time upon the written

agreement of the NHS Board and the Supplier); or (iii) upon termination for any other reason, the Supplier shall remove the Equipment from the Premises and Locations within 21 days of request or date of termination, free of charge, and at that time provide a receipt of the Equipment to confirm collection. For the avoidance of doubt, subject to the Supplier providing reasonable advance notice to the NHS Board, the NHS Board shall grant to the Supplier the right to enter the Premises and Locations to exercise such removal in accordance with this Clause 8.1.

8.2 In the event that any Equipment is not removed by the Supplier in terms of Clause 8.1, the NHS Board may return or dispose of the Equipment at the Supplier's risk and expense and charge the Supplier for cost of storage or disposal from the date of expiry of written request as detailed in Clause 8.1.

8.3 The Supplier shall be solely liable for any damage to the Premises and Locations as a result of the removal of the Equipment by the Supplier. Accordingly, the Supplier shall be liable to the NHS Board for the cost of making good any such damage and reinstating the Premises and Locations to the reasonable satisfaction of the NHS Board.

9. Termination

9.1 This Agreement may be terminated by either party giving to the other party four weeks' written notice to the other expiring at any time.

9.2 Notwithstanding the termination or expiry of this Agreement, any obligations which, expressly or by implication, are intended to come into or continue in force on or after such termination or expiry, including for the avoidance of doubt, without limitation, the Supplier's obligations under Clauses 4, 5, 8.2, and 10, shall remain in full force and effect.

10. Decontamination

10.1 Upon termination of the loan for whatever reason, the NHS Board shall forthwith provide the Supplier with written particulars of any known contamination or other known hazard which has arisen in respect of the Equipment during the period of loan sufficient to facilitate compliance with statutory and other reasonable requirements in order to make safe the Equipment, the contamination and any other hazard, so that it may be maintained, repaired, removed, transported or otherwise dealt with as may be appropriate, which shall be the Supplier's responsibility at the Suppliers cost and expense (save that the NHS Board shall be responsible for reimbursing the Supplier's reasonable costs and expenses to the extent that such reasonable costs or expenses are incurred by the Supplier directly as a result of (i) the NHS Board failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; or (ii) a negligent act or omission of the NHS Board).

11. Warranties

11.1 The Supplier warrants, represents and undertakes to the NHS Board that:

11.1.1 The Equipment shall be suitable for the purposes as referred to in the NHS Board's order/request form, be of satisfactory quality, fit for its intended purpose and shall comply with the standards and requirements set out in any user manuals or other information provided to the NHS Board by the Supplier relating to the Equipment;

11.1.2 It has ensured that the transport and delivery of the Equipment means that it is delivered in good and useable condition;

11.1.3 At the point of delivery to the NHS Board, the Equipment shall be:

(i) free of any form of contamination; and

(ii) free of any Personal Data.

11.1.4 Where there is any instruction information, including without limitation user information, that accompanies the Equipment, it has provided this to the NHS Board and will provide updated copies should the instruction information change at any time during the period of any loan of the Equipment to the NHS Board;

11.1.5 Any equipment it uses for the purposes of the delivery, installation, commissioning, maintenance, repair or removal of the Equipment shall comply with all relevant requirements under Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain at the Supplier's risk and responsibility at all times;

11.1.6 It has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply (in the form of a loan or transfer) the Equipment to the NHS Board and for the NHS Board to use such Equipment for its intended purpose as set out in the relevant NHS Board's order/request form;

11.1.7 Where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;

11.1.8 Receipt of the Equipment by or on behalf of the NHS Board and use of the Equipment and/or of any other item or information supplied or made available to the NHS Board will not infringe any third party rights, to include without limitation any intellectual property rights;

11.1.9 It will comply with all

(i) Laws,

(ii) Guidance and

(iii) policies, rules and procedures of the NHS Board in so far as such policies rules and procedures have been notified to the Supplier from time to time,

in each case as is relevant to the supply of the Equipment and/or the provision of any related services and/or the removal of the Equipment;

11.1.10 It will provide any services using reasonable skill and care and in accordance with Good Industry Practice;

11.1.11 It will promptly notify the NHS Board of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Equipment and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

11.1.12 It shall use Good Industry Practice to ensure that any information and communications technology, hardware and/or software forming part of the Equipment shall be free from corrupt data, viruses, worms and other computer programs or code which might cause harm or disruption to the NHS Board's information and communications technology systems;

11.1.13 It has the right and authority to enter into this Agreement and that it has the capability and capacity to fulfil its obligations under this Agreement;

11.1.14 It is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement;

11.2 Unless otherwise agreed with the NHS Board in writing, where the importation, supply, delivery, installation, maintenance and/or removal of the Equipment under this Agreement relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such Equipment is supplied to the NHS Board, all such Equipment which is a medical device shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the sale, manufacture, assembly, importation, storage, distribution, supply, delivery or installation of such Equipment shall have been complied with. Without limitation to the foregoing provisions of this Clause 11.2, the Supplier shall, upon written request from the NHS Board, make available to the NHS Board evidence of the grant of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.

11.3 The Supplier shall provide the NHS Board with written evidence of the safety of the Equipment, drawing attention to any failures to comply with relevant European or British Standard Specifications or Department of Health Specifications or aspects of safety that have not been fully tested. In these circumstances, any restrictions on the use of the Equipment necessary to ensure the safety of patients or others shall be confirmed by the Supplier to the NHS Board as part of the usage instructions for that item of Equipment.

11.4 The Supplier further warrants and undertakes to the NHS Board that it will inform the NHS Board in writing immediately upon becoming aware that any of the warranties set out in this Clause 11 and/or elsewhere as part of this Agreement have been breached or there is a risk that any such warranties may be breached.

11.5 Any warranties provided under this Clause 11 are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing party.

12. No Purchase or Paid Hire Obligations

12.1 Nothing in this Agreement shall create any obligation on the NHS Board to purchase or take on paid hire, either during the period of this Agreement or at any time following its termination or expiry, any quantity of the Equipment and the Supplier warrants that it has not relied on any representation on behalf of the NHS Board as to any such business between the Supplier and the NHS Board.

13. Data Protection

13.1 Where, during the period of the loan, the NHS Board records Personal Data on the Equipment, the NHS Board shall be the Controller of such Personal Data and, to the extent that the Supplier, upon request from the NHS Board pursuant to Clause 4.1 (iv) securely erases Personal Data from the Equipment before the removal of Equipment, the Supplier shall be the Processor in respect of such Processing of the Personal Data in terms of the Data Protection Legislation;

13.2 Where the NHS Board is the Controller and the Supplier is the Processor, to the extent that the Parties have these roles in terms of the Data Protection Legislation, the Supplier agrees to comply with the obligations applicable to Processors described by Article 28 of the GDPR which include, but are not limited to the following:

(i) to implement and maintain appropriate technical and organisational security measures sufficient to comply at least with the obligations imposed on the NHS Board by Article 28(1);

(ii) to not engage another Processor without the prior written authorisation of the NHS Board (Article 28(2));

(iii) to act only on documented instructions from the NHS Board including those set out in the Processing Information (Article 28(3)(a)). The Supplier shall immediately inform the NHS Board if, in its opinion, an instruction infringes any Data Protection Legislation;

(iv) to ensure that personnel authorised to Process Personal Data are under contractual confidentiality obligations to (Article 28(3)(b));

(v) to take all measures required by Article 32 GDPR in relation to the security of Processing (Article 28(3)(c));

(vi) to respect the conditions described in Article 28(2) and (4) for engaging another Processor (Article 28(3)(d));

(vii) to assist the NHS Board, by appropriate technical and organisational measures, insofar as this is possible, to respond to requests for exercising the rights of Data Subjects rights (Article 28(3)(e));

(viii) to assist the NHS Board, as appropriate, to ensure compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of the Processing and the information available (Article 28(3)(f));

(ix) to destroy or return all Personal Data to the NHS Board at the expiry or early termination of this Agreement, unless storage is legally required (Article 28(3)(g));

(x) to maintain a record of Processing activities as required by Article 30(2) GDPR;

(xi) to allow the NHS Board to audit the Supplier's compliance with the obligations described in this Clause 13, on reasonable notice subject to the NHS Board complying with all relevant health and safety and security policies of the Supplier and to provide the NHS Board with evidence of its compliance with the obligations set out in this Clause 13;

(xii) to obtain the prior agreement of the NHS Board to store or Process Personal Data outside the European Economic Area and where the Supplier does Process Personal Data, to do so in compliance with the Data Protection Legislation; and

(xiii) to notify the NHS Board as soon as practicable after becoming aware of Personal Data Breach.

13.3 In this Clause 13, , 'Data Subject', and 'Personal Data Breach' shall have the meanings given in the Data Protection Legislation.

14. Confidentiality and Freedom of Information

14.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (which undertaking, in the case of the Supplier shall include the confidential information of the NHS Boards), except as expressly permitted in this Agreement.

14.2 Each party may disclose the other party's confidential information (or in the case of the Supplier, the confidential information of the NHS Boards):

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14; and

(ii) as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information, or the confidential information of the NHS Boards, for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14.4 Nothing whether expressly provided in this Agreement, or otherwise implied, shall preclude the CSA or a NHS Board from making public under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and/or any codes or regulations applicable from time to time relating to access to public authorities' information ('FOI'), details of all matters relating to this Agreement unless (i) such details constitute a trade secret; (ii) the disclosure of such details would or would be likely to prejudice substantially the commercial interests of any person (including but not limited to the Supplier, the CSA or the NHS Board); or (iii) such details fall within any other exemption under FOI provided always that application of any such exemption shall be at the sole discretion of the CSA or NHS Board, as applicable. The CSA or the NHS Board, as applicable, will take all reasonable steps to provide the Supplier with notice of any intended disclosures under FOI prior to making such information public.

14.5 The Supplier shall provide all such assistance as may be required by the CSA or the NHS Board to enable the CSA or the NHS Board to comply with its obligations under FOI.

15. General

15.1 Each of the parties is independent of the other and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee nor are the parties engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise.

15.2 Failure or delay by either party to exercise an option or right conferred by this Agreement shall not of itself constitute a waiver of such option or right.

15.3 The delay or failure by either party to this Agreement to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

15.4 Any provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

15.5 Each party to this Agreement acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other party for any misrepresentation or undertaking (whether made carelessly or not) or for

breach of any warranty unless the representation, undertaking or warranty relied upon is set out as part of this Agreement or unless such representation, undertaking or warranty was made fraudulently.

15.6 Each party shall bear its own expenses in relation to the preparation and execution of this Agreement including all costs, legal fees and other expenses so incurred.

15.7 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 15.7, right includes any power, privilege, remedy, or proprietary or security interest.

15.8 All written and oral communications and all written material referred to under this Agreement shall be in English.

15.9 Any notice required to be given by either party under this Agreement shall be in writing quoting the date of delivery of the Equipment and shall be delivered by hand or sent by prepaid first class recorded delivery to the addresses given above, or by email to such person or address as one party may inform the other party in writing from time to time. A notice shall be treated as having been received:

15.9.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or

15.9.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or

15.9.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

16. Law and Jurisdiction

16.1 This Agreement, 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 Scotland. The parties irrevocably agree that the courts of Scotland shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

IN WITNESS WHEREOF these presents typewritten on this and the ten (10) preceding pages and Schedule in one (1) part are executed as follows:-

On behalf of **THE COMMON SERVICES AGENCY**

Place	Place . .....
Date	Date .....
Signed by	Witnessed by .....
Print Name	Print Name .....
Designation	Designation .....
	Address .....

.....

On behalf of INSERT SUPPLIER NAME

Place	Place . .....
Date	Date .....
Signed by	Witnessed by .....
Print Name	Print Name .....
Designation	Designation .....
	Address .....
	.....

This is the Schedule referred to in the Master Indemnity Agreement between the Common Services Agency and the Supplier

Schedule Part One

Master Indemnity Agreement Delivery Note

Master Indemnity Agreement Delivery Note

Equipment on Loan/Free of Charge

Goods Supplied Free of Charge

Supplier: .....

MIA No: .....

NHS Board: .....

Date: .....

Equipment Details:

Description of Equipment/Goods	
Model	
Make	
Serial Number	
Premises & Locations	
Planned Preventative Maintenance	
Period of Loan/ Expiry Date	
Health Board Reference No: *(Asset Management/Equipment/Job No)*	
Personal Data and Data Subjects:	Will Personal Data be Processed [Delete as appropriate – if yes – please complete Processing Information in Annex A]]

The NHS Board acknowledges receipt of the Equipment and/or Goods specified above

- are on loan for the period specified above and;
- are for use by the NHS Board

respectively on the terms set out in the then current version of the Master Indemnity Agreement between the Supplier and the Common Services Agency (on behalf of the NHS Board).

It is the Supplier's responsibility to arrange free of charge prompt collection of any Equipment on loan after an agreed loan period has expired. The NHS Board will take no responsibility for, and may dispose of the Equipment if it is not collected within 21 days of the date of the notice issued under Clause 8.1 of the Master Indemnity Agreement.

Signed for the Supplier: .....

Print Name: ..... Date: ……

Signed for the NHS Board: .....

Print Name: ..... Date: ……

Annex A – Processing Information

Description	Details
Identity of the Controller and Processor	*The Parties acknowledge that for the purposes of the Data Protection Legislation, the NHS Board is the Controller and the Supplier is the Processor in accordance with Clause 4,1(iv) of the MIA.*
Subject matter of the Processing	*[This should be a high level, short description of what the processing is about i.e. its subject matter]*
Duration of the Processing	*[Clearly set out the duration of the processing including dates]*
Nature and purposes of the Processing	*[Please be as specific as possible, but make sure that you cover all intended purposes.* *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.* *The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]*
Type of Personal Data	*[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]*
Categories of Data Subject	*[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]*
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	*[Describe how long the data will be retained for, how it be returned or destroyed]*