

Section 4 – T&Cs

Note: Particular attention is brought to clause 12 (Liability) and you are strongly advised to read the provisions contained therein.

1. User subscriptions

- 1.1 Subject to the Client purchasing the User Subscriptions in accordance with clause 2.5 and clause 8.1, the restrictions set out in this clause 1 and the other terms and conditions of this Agreement, Health Diagnostics hereby grants to the Client a non-exclusive, non-transferable right and licence to permit the Authorised Users to use the Products & Services and the Documentation during the Subscription Term for the Client's internal business operations.
- 1.2 The grant of the licence in clause 1.1 above is subject to the Client's compliance with this Agreement (including all the Sections incorporated into the Agreement).
- 1.3 In relation to the Authorised Users, the Client undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Products & Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Products & Services and / or Documentation;
 - (c) each Authorised User shall keep a secure password for their use of the Products & Services and Documentation, that such password shall be changed frequently and that each Authorised User shall keep their password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to Health Diagnostics within 5 Business Days of Health Diagnostics' written request at any time or times;
 - (e) it shall permit Health Diagnostics or Health Diagnostics' designated auditor to audit the Products & Services in order to establish the name and password of each Authorised User and the Client's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Health Diagnostics' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business;
 - (f) if any of the audits referred to in clause 1.3(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Health Diagnostics' other rights, the Client shall promptly disable access and Health Diagnostics shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 1.3(e) reveal that the Client has underpaid Charges to Health Diagnostics, then without prejudice to Health Diagnostics' other rights, the Client shall pay to Health Diagnostics an amount equal to such underpayment as calculated in accordance with the prices set out in Section 6 within 10 Business Days of the date of the relevant audit.
- 1.4 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Products & Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property,
- and Health Diagnostics reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause 1.4.
- 1.5 The Client shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and / or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - (b) access all or any part of the Products & Services and Documentation in order to build a product or service which competes with the Products & Services and / or the Documentation;
 - (c) use the Products & Services and / or Documentation to provide services to third-parties (including, for example, as a white label service).

- For the avoidance of doubt, this does not restrict the Client from delivering Health Checks to Service Users / Patients in line with its internal business operations;
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Products & Services and / or Documentation available to any third-party except the Authorised Users,
 - (e) attempt to obtain, or assist third-parties in obtaining, access to the Products & Services and / or Documentation, other than as provided under this clause 1; or
 - (f) introduce or permit the introduction of, any Virus or Vulnerability into Health Diagnostics' network and information systems.
- 1.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Products & Services and / or the Documentation and, in the event of any such unauthorised access or use, promptly notify Health Diagnostics.
- 1.7 The rights provided under this clause 1 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.
- 1.8 The Client is responsible at all times for all acts and omissions of each Authorised User (and any and all use of the Products & Services using each Authorised User's access credentials) and shall indemnify and hold harmless Health Diagnostics against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any acts and / or omissions of each Authorised User.
- 1.9 Health Diagnostics does not warrant that the Products & Services are fit for the Client's purposes, are error free or uninterrupted, or are compatible with any hardware or software not specified in the Agreement. Health Diagnostics shall not be liable for the transfer of data over communications facilities, including the internet, and any limitations, delays, and other problems inherent in the use of such communications facilities.
- 2. Additional user subscriptions**
- 2.1 The number of User Subscriptions shall be limited to the quantity stated in the Agreement Particulars and the Client shall not permit the Products & Services to be used by any Authorised Users in excess of this, unless if additional User Subscriptions have been purchased in accordance with this clause 2.
- 2.2 Subject to clause 2.4 and clause 2.5, the Client may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Agreement Particulars and Health Diagnostics shall grant access to the Products & Services and the Documentation to such additional Authorised
- 2.3 Users in accordance with the provisions of this Agreement.
- 2.4 If the Client wishes to purchase additional User Subscriptions, the Client shall notify Health Diagnostics in writing. Health Diagnostics shall evaluate such request for additional User Subscriptions and respond to the Client with approval or rejection of the request. Where Health Diagnostics approves the request, Health Diagnostics shall activate the additional User Subscriptions within 5 Business Days of its approval of the Client's request.
- 2.5 If Health Diagnostics approves the Client's request to purchase additional User Subscriptions, the Client shall, within 30 days of the date of Health Diagnostics' invoice, pay to Health Diagnostics the relevant fees for such additional User Subscriptions as set out in Section 7 (or, if not specified, as communicated by Health Diagnostics to the Client) and, if such additional User Subscriptions are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be agreed between the parties at that time.
- 3. Products & Services**
- 3.1 Where applicable, and in consideration of the Set-Up Charges, Health Diagnostics shall provide the agreed Implementation Services.
- 3.2 Health Diagnostics shall use reasonable endeavours to provide the Support Services in accordance with the Service Levels set out in Section 6.
- 3.3 Health Diagnostics shall, during the Subscription Term, provide the Products & Services and make available the Documentation to the Client on and subject to the terms of this Agreement.
- 3.4 Health Diagnostics shall use commercially reasonable endeavours to make the Products & Services available 24 hours a day, seven days a week, except for:
- (a) unavailability caused by third-party applications used in conjunction with the Products & Services;
 - (b) planned maintenance carried out during the maintenance window of 10.00 pm to 5.00 am UK time; and
 - (c) unscheduled maintenance performed outside Normal Business Hours, provided that Health Diagnostics has used reasonable endeavours to give the Client notice by at least 1.00 pm UK time on the relevant day.
- 3.5 Health Diagnostics will, as part of the Products & Services and in consideration of the support fees set out in Section 7, provide the Client with Health Diagnostics' standard customer Support Services (as detailed in Section 3) during Normal Business Hours. Health Diagnostics may amend the scope of the Support Services in its sole and absolute discretion from time to time.
- 3.6 Health Diagnostics may, from time to time, make changes to the Products & Services to:

- (a) improve, update or upgrade existing functionality or services;
- (b) introduce new functionality or services;
- (c) reflect changes to technology or market practice; and / or
- (d) ensure that the Products & Services remain compliant with all applicable laws, legal obligations or regulations.

Any such changes shall not result in a material degradation in the Product & Services.

3.7 If Health Diagnostics has entered into this Agreement as part of a subcontracting arrangement, the following provisions shall apply:

- (a) the Client (who has contracted with the relevant local authority or third-party) shall ensure that all elements of the Agreement meet its (and its customers') requirements;
- (b) the Client must assign a project lead and provide a full specification of all requirements (including configuration, interventions, triage levels, referral pathways and forms, agreed clinical codes, timeframes on all deliverables, minimum datasets and IT build);
- (c) Health Diagnostics will provide reasonable support to assist with compliance but in no circumstances shall be liable for the Client's non-compliance under the head-contract; and
- (d) the Client shall inform Health Diagnostics of any changes in project requirements or any updates to the programme in writing.

4. Data protection

- 4.1 The parties agree that, as a result of Health Diagnostics providing the Products & Services, the transfer of personal data (including sensitive personal data) (both as defined in the Data Protection Act 2018) may occur under this Agreement. The parties agree that, before any personal data is transferred under this Agreement, the parties (including any relevant subcontractors) will enter into a separate data protection agreement detailing the data flow, the relevant processes and procedures in place to ensure that any transfer and processing of personal data takes place in accordance with all applicable laws.
- 4.2 For the avoidance of doubt, Health Diagnostics does not work directly with any Service User / Patient identifiable data hosted on behalf of the Client unless absolutely necessary for the completion of a Client request and any work on
- 4.3 the data hosted on behalf of the Client is done via anonymised data set extraction.
- 4.4 In the event that any Service User / Patient requests that their personal data is deleted from the Product & Services, the Client (or Authorised User) is responsible for processing the request and deleting the required records from the Products & Services. The Client (or Authorised User) should

also inform Health Diagnostics of the request so that Health Diagnostics can ensure the full removal of the personal data from any server backups.

5. Third-party providers

5.1 The Client acknowledges that the Products & Services may require the Client to access the website content of, correspond with, and purchase products and services from, third-parties via third-party websites and that it does so solely at its own risk. Health Diagnostics makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third-party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third-party, and not Health Diagnostics. Health Diagnostics recommends that the Client refers to the third-party's website terms and conditions and privacy policy prior to using the relevant third-party website. Health Diagnostics does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Products & Services.

5.2 If the Client makes use of any third-party applications in conjunction with the Products & Services (including, for example, the Microsoft Power BI Licence), the Client acknowledges that the third-party applications are provided under the terms of the appropriate third-party software licence(s) and the Client agrees to comply with the terms of such licence and that Health Diagnostics will not be liable to the Client for any failure of the Client to do so.

6. Health Diagnostics' obligations

6.1 Health Diagnostics undertakes that the Products & Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Products & Services contrary to Health Diagnostics' instructions, or modification or alteration of the Products & Services by any party other than Health Diagnostics or Health Diagnostics' duly authorised contractors or agents. If the Products & Services do not conform with the foregoing undertaking, Health Diagnostics will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole remedy for any breach of the undertaking set out in clause 6.1.

6.3 Health Diagnostics:

- (a) does not warrant that:

- (i) the Client's use of the Products & Services will be uninterrupted or error-free;
 - (ii) that the Products & Services, Documentation and / or the information obtained by the Client through the Products & Services will meet the Client's requirements; or
 - (iii) the Software or the Products & Services will be free from Vulnerabilities or Viruses; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Products & Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 This Agreement shall not prevent Health Diagnostics from entering into similar agreements with third-parties, or from independently developing, using, selling or licensing documentation, products and / or services which are similar to those provided under this Agreement.
- 6.5 Health Diagnostics warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 6.6 Health Diagnostics shall follow its archiving procedures for Client Data as set out in the Disaster Recovery Policy, as such document may be amended by Health Diagnostics in its sole discretion from time to time. In the event of any loss or damage to Client Data, the Client's sole remedy against Health Diagnostics shall be for Health Diagnostics to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Health Diagnostics in accordance with the archiving procedure described in its Disaster Recovery Policy. Health Diagnostics shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third-party (except those third-parties sub-contracted by Health Diagnostics to perform services related to Client Data maintenance and back-up, for which it shall remain fully liable).
- 7. Client's obligations**
- 7.1 The Client shall:
- (a) nominate a responsible officer to represent the Client, who has executive, clinical and / or administrative authority over the operation of the Products & Services, and inform Health Diagnostics of the responsible officer's name and contact details (including any changes);
 - (b) provide Health Diagnostics with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Health Diagnostics,
- in order to provide the Products & Services, including but not limited to Client Data, security access information and configuration services;
- (c) notify Health Diagnostics of any site closures, clinical system changes or mergers (and any failure to do so may result in continued payment for User Subscriptions);
 - (d) ensure that all Authorised Users have a reliable and secure internet connection;
 - (e) ensure that all Authorised Users receive appropriate training in all aspects they are expected to deliver and have a thorough understanding of the Products & Services;
 - (f) provide and put in place the necessary data processing agreements to allow Health Diagnostics to carry out its obligations under this Agreement;
 - (g) provide the relevant Service User / Patient with the necessary details on what, where, why, how and when their personal data will be used and stored, including obtaining valid consent to the processing;
 - (h) ensure that all Client Data is accurate and complete;
 - (i) ensure that all relevant third-party agreements (including agreements between the Client and the providers / practices and the Trading Partner Agreements) are in place;
 - (j) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (k) carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Health Diagnostics may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (l) ensure that the Authorised Users use the Products & Services and the Documentation in accordance with the terms and conditions of this Agreement (including the End User Software Licence Agreement) and shall be responsible for any Authorised User's breach of this Agreement;
 - (m) obtain and shall maintain all necessary licences, consents, and permissions necessary for Health Diagnostics, its contractors and agents to perform their obligations under this Agreement, including without limitation the Products & Services;
 - (n) ensure that its network and systems comply with the relevant specifications provided by Health Diagnostics from time to time; and
 - (o) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Health Diagnostics' data centres, and all

problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

7.2 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

7.3 The Client acknowledges that Health Diagnostics' obligations and responsibilities to deliver the Products & Services in accordance with this Agreement depend on the following factors:

- (a) the performance of the Client Obligations;
- (b) the Client (including its contractors, employees, subcontractors and, where relevant, the Authorised Users) providing adequate, accurate and timely assistance and information to Health Diagnostics and performing its obligations relating to approval and sign-off as required under this Agreement;
- (c) Health Diagnostics being given appropriate assistance and such physical access to the Client's (or its contractors, subcontractors, providers or practices') sites, facilities and computer systems to allow it to carry out its duties under this Agreement; and
- (d) the Client ensuring that it (and its contractors, subcontractors, employees and, where applicable, Authorised Users) do not undertake or interfere with Health Diagnostics' operations or functions in connection with the Products & Services.

7.4 If any delay or fulfilment of any of the circumstances in clause 7.3 causes Health Diagnostics delay and / or to incur additional costs or time as a result of such delay or failure then, without prejudice to its other rights and remedies:

- (a) Health Diagnostics shall not be in breach of this Agreement and shall be given an extension of time to meet its obligations under this Agreement to take account of the impact caused by such delay or failure;
- (b) the Client shall pay Health Diagnostics any such reasonable costs and / or charges for work carried out by Health Diagnostics which have been properly and reasonably incurred as a result of such delay or failure by the Client; and
- (c) in the case of clause 7.3(d), Health Diagnostics shall, on giving written notice to the Client, be entitled to suspend access to the applicable elements of the Products & Services until such breach ends and Health Diagnostics (acting reasonably) is satisfied that the Client has put in place reasonable steps to prevent such breach in the future.

8. Charges and payment

8.1 The Client shall pay the Charges (and any agreed additional charges incurred in accordance with this Agreement) to Health Diagnostics for the User Subscriptions in accordance with this clause 8 and Section 7.

8.2 The Client shall pay each invoice within 30 days after the date of such invoice.

8.3 If Health Diagnostics has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Health Diagnostics:

- (a) Health Diagnostics may, without liability to the Client, disable the Client's password, account and access to all or part of the Products & Services and Health Diagnostics shall be under no obligation to provide any or all of the Products & Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Health Diagnostics' bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 12.4(c), non-cancellable and non-refundable; and
- (c) are exclusive of value added tax, which shall be added to Health Diagnostics' invoice(s) at the appropriate rate.

9. Proprietary rights

9.1 The Intellectual Property Rights in the Products & Services (including the Modified Products & Services) and Documentation are, and shall remain, the property of Health Diagnostics. Except as expressly stated in this Agreement, this Agreement does not grant the Client any rights to, under or in, any Intellectual Property Rights, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Products & Services or the Documentation.

9.2 Health Diagnostics reserves the right to grant a licence to use the Products & Services and Documentation to any other party or parties.

9.3 The Client shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that Health Diagnostics may consider necessary or desirable to perfect the right, title and interest of Health Diagnostics in and to the Intellectual Property Rights in the Products & Services (including the Modified Products & Services).

9.4 The Client shall use reasonable endeavours to prevent any infringement of Health Diagnostics'

Intellectual Property Rights in the Products & Services and Documentation and shall promptly report to Health Diagnostics any such infringement that comes to its attention. In particular, the Client shall:

- (a) ensure that each Authorised User, before starting to use the Products & Services or Documentation, is made aware that the Products & Services and Documentation are proprietary to Health Diagnostics and that it may only be used and copied in accordance with this Agreement;
 - (b) implement suitable disciplinary procedures for Authorised Users who make unauthorised use or copies of the Products & Services or Documentation except as provided for under this Agreement; and
 - (c) not permit other third-parties to have access to the Products & Services or Documentation without the prior written consent of Health Diagnostics, who may require that such third-party executes a written confidentiality agreement before being given access to the same.
- 9.5 Save as required to be permitted under sections 50A and 50B of the Copyright Designs and Patents Act 1988, the Client shall have no right to reverse engineer, decompile, copy, adapt or modify the Software.
- 9.6 The provision of any Modified Products & Services by Health Diagnostics shall be in accordance with any timeframes communicated by Health Diagnostics to the Client from time to time and subject to additional charges. For the avoidance of doubt, whilst Health Diagnostics will use reasonable endeavours
- to provide the Modified Products & Services in accordance with any specifications provided by the Client, Health Diagnostics may alter this specification at any time to ensure compatibility and compliance with its then-current Products & Services and documentation.

10. Confidentiality

- 10.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Health Check Programme, including but not limited to:
- (a) the existence and terms of this Agreement or any agreement entered into in connection with this Agreement;
 - (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, of the disclosing party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; and

- (c) any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
 - (i) details of the Products & Services, and the results of any performance tests of the Products & Services, shall constitute Health Diagnostics' Confidential Information; and
 - (ii) Client Data shall constitute Client Confidential Information.

10.2 The provisions of this clause 10 shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 10);
- (b) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (c) the parties agree in writing is not confidential or may be disclosed; or
- (d) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

10.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third-party, except as expressly permitted by this clause 10.

10.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 10.

10.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 10.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 10.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause 10 are granted to the other party, or to be implied from this Agreement.
- 10.8 On termination or expiry of this Agreement, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third-parties (to the extent technically and legally practicable); and
 - (d) certify in writing to the other party that it has complied with the requirements of this clause 10, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause 10 shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 13 (Termination).
- 10.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 10.11 The above provisions of this clause 10 shall continue to apply after termination or expiry of this Agreement.
- 11. Indemnity**
- 11.1 The Client shall defend, indemnify and hold harmless Health Diagnostics against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
- (a) the Client causing harm (whether directly or indirectly) to Health Diagnostics' brand and / or reputation in any way (including where the Client / Authorised User provides a low quality service to the Service Users / Patients when using the Products & Services or makes unsubstantiated / malicious claims in relation to the Products & Services);
 - (b) the care and advice provided by the Client (including its subcontractors, employees, contractors and, where relevant, the Authorised Users, providers and practices) to any Service User / Patient;
 - (c) any breach of clause 1;
 - (d) any breach of clause 9; and
 - (e) any breach of clause 10.
- 11.2 The Client shall defend, indemnify and hold harmless Health Diagnostics against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Products & Services and / or Documentation, provided that:
- (a) the Client is given prompt notice of any such claim;
 - (b) Health Diagnostics provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - (c) if agreed between the parties, the Client is given sole authority to defend or settle the claim.
- 11.3 Health Diagnostics shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Products & Services or Documentation in accordance with this Agreement infringes any patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- (a) Health Diagnostics is given prompt notice of any such claim;
 - (b) the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Health Diagnostics in the defence and settlement of such claim, at Health Diagnostics' expense; and
 - (c) Health Diagnostics is given sole authority to defend or settle the claim.
- 11.4 In the defence or settlement of any claim, Health Diagnostics may procure the right for the Client to continue using the Products & Services, replace or modify the Products & Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

- 11.5 In no event shall Health Diagnostics, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- (a) a modification of the Products & Services or Documentation by anyone other than Health Diagnostics;
 - (b) the Client's use of the Products & Services or Documentation in a manner contrary to the instructions given to the Client by Health Diagnostics; or
 - (c) the Client's use of the Products & Services or Documentation after notice of the alleged or actual infringement from Health Diagnostics or any appropriate authority.
- 11.6 The foregoing and clause 12.4(c) state the Client's sole rights and remedies, and Health Diagnostics' (including Health Diagnostics' employees, agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.
- 12. Limitation of liability**
- 12.1 Health Diagnostics shall not be liable to the Client in any circumstances in relation to any of the following:
- (a) any issues with, failures of or unavailability of third-party applications used in conjunction with the Products & Services;
 - (b) any user input errors;
 - (c) any inaccuracies or incomplete inputs of the Client Data;
 - (d) any errors in the data extracted from a clinical system;
 - (e) any missing data due to the non-completion of any required processes;
 - (f) any reports not transferred due to incomplete data sets;
 - (g) any reports not filed by the practice / provider;
 - (h) any referrals not actioned by the practice / provider;
 - (i) any reports transferred to practiced outside of the agreed area;
 - (j) any example document templates provided;
 - (k) any modifications made to the Products & Services based on the Client's provided specifications;
 - (l) the care and advice provide by the Client (including its subcontractors, employees, contractors and, where relevant, the Authorised Users, providers and practices) to any Service User / Patient;
 - (m) any missing data due to the non-completion of specified process(es); and
 - (n) any loss or destruction of data.
- 12.2 Except as expressly and specifically provided in this Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Products & Services and the Documentation by the Client, and for conclusions drawn from such use. Health Diagnostics shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Health Diagnostics by the Client in connection with the Products & Services, or any actions taken by Health Diagnostics at the Client's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - (c) the Products & Services and the Documentation are provided to the Client on an "as is" basis.
- 12.3 Nothing in this Agreement excludes the liability of Health Diagnostics:
- (a) for death or personal injury caused by Health Diagnostics' negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 12.4 Subject to clause 12.1, 12.2 and clause 12.3:
- (a) Health Diagnostics shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and / or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;
 - (b) the payment of Service Credits in accordance with Section 6 is acknowledged by the Client to be the sole remedy in respect of any breach of the Service Level requirements; and
 - (c) Health Diagnostics' total aggregate liability in contract (including in respect of the indemnity at clause 11.3), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited in each Contract Year to the total Licence Charges paid and / or payable by the Client in that Contract Year.
- 12.5 Nothing in this Agreement excludes the liability of the Client for any breach, infringement or misappropriation of Health Diagnostics' Intellectual Property Rights.
- 13. Termination & Suspension**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and

- remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(j) (inclusive);
 - (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 13.2 Health Diagnostics may terminate this Agreement immediately on written notice in the event that the Client:
- (a) is in breach of clause 9;
 - (b) is in breach of clause 10;
 - (c) does anything to harm Health Diagnostics' brand and / or reputation in any way (including where the Client / Authorised Users provide a low quality service to Service Users / Patients when using the Products & Services or makes unsubstantiated / malicious claims in relation to the Products & Services); or
 - (d) does anything (or allows anything to be done) that challenges Health Diagnostics' Intellectual Property Rights.
- 13.3 On termination of this Agreement for any reason:
- (a) other than where the Agreement is terminated due to the fault of Health Diagnostics, Health Diagnostics shall be entitled to:
 - (i) retain all Charges paid by the Client under this Agreement and recover any unpaid Charges due under any issued invoices; and
 - (ii) charge the Client a termination fee, based on duration of the remainder of the Term at the point which the Agreement is terminated and the anticipated volume that formed the basis of the agreed Charges, communicated to the Client at the point of termination;
 - (b) all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Products & Services and / or the Documentation;
 - (c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - (d) Health Diagnostics may destroy or otherwise dispose of any of the Client Data in its possession unless Health Diagnostics receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. Health Diagnostics shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by Health

Diagnostics in returning or disposing of Client Data; and

- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

Exit Assistance

- 13.4 Not more than 3 months prior to the end of the Term, Health Diagnostics shall develop (with the assistance of the Client) an exit plan (including the applicable charges) for the orderly and efficient transition of the Client Data. This may include an end date for the data transfer, after which no data received will be processed and / or included in any transfer.
- 13.5 Any exit assistance provided by Health Diagnostics will be subject to an additional charge, agreed with the Client at the point that the scope of the exit assistance is agreed, and if the exit assistance goes beyond the scope and / or timeframe agreed between the parties, Health Diagnostics shall be entitled to levy further additional charges.
- 13.6 The assistance provided by Health Diagnostics in accordance with clause 13.4 shall not require Health Diagnostics to provide any training or development work. In no circumstances shall the exit assistance involve the transfer of any of the Products & Services (or any Software which forms a part of the same), Documentation, proprietary information, trade secrets and / or Confidential Information of Health Diagnostics.

Suspension

- 13.7 Health Diagnostics may, without prejudice to any other rights or remedies available to it, suspend the Client's access to, or use of, the Products & Services in whole or in part and on an Authorised User by Authorised User basis immediately on notice to the Client if:
 - (a) the Client has failed to pay any amounts due to the Health Diagnostics in accordance with clause 8;
 - (b) the Client is otherwise in breach of its obligations under this Agreement;
 - (c) there is an attack on the Products & Services used by Client or if Client Data is accessed or manipulated by a third-party without the Client's consent;
 - (d) Health Diagnostics is required by applicable law to suspend the Client's access to, or use of, the Products & Services; or
 - (e) Health Diagnostics reasonably believes that the suspension of the Products & Services is necessary to protect its infrastructure, network or the use of the Products & Services by other customers because of a threat to the security, integrity or use of the Products & Services.

- 13.8 Health Diagnostics shall use reasonable endeavours to re-establish or permit access to the Products & Services as soon as possible following Health Diagnostics' determination that the cause of the suspension has been resolved.

- 13.9 Health Diagnostics shall have no liability whether under this Agreement or at law to the Client for any exercise of its rights pursuant to clause 13.7.

14. Change Request Process

- 14.1 The Client may at any time request changes to this Agreement, or the Products & Services covered by this Agreement, through the Change Request Form.
- 14.2 Neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold or delay its agreement to such request.
- 14.3 Health Diagnostics will advise the Client of the likely impact of any change on the Charges and timescales under this Agreement within a reasonable timescale, prior to such implementation.
- 14.4 Health Diagnostics will respond in writing to, or both parties will meet to discuss, any request or recommended change as soon as practicable, and in any event within twenty (20) Business Days following receipt of the request or recommendation. Such response may include the estimation of additional fees.
- 14.5 Until such time as any change is formally agreed, Health Diagnostics will, unless otherwise agreed, continue to perform and to be paid under this Agreement as if such change had not been requested or recommended.
- 14.6 Any agreement to a requested or recommended change will become valid as an amendment to the Agreement only when recorded in writing and signed by authorised representatives of both parties.

15. Dispute resolution procedure

- 15.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), the parties shall follow the procedure set out in this clause:
 - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Project Manager / IT Manager of Health Diagnostics (as applicable) and equivalent counterpart of the Client shall attempt in good faith to resolve the Dispute;
 - (b) if the Project Manager / IT Manager of Health Diagnostics (as applicable) and equivalent counterpart of the Client are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of Health

- Diagnostics and equivalent counterpart of the Client who shall attempt in good faith to resolve it;
- (c) if the Managing Director of Health Diagnostics and equivalent counterpart of the Client are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Business Days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR; and
- (d) unless otherwise agreed between the parties, the mediation will start not later than 20 days after the date of the ADR notice.
- 15.2 No party may commence any court proceedings in relation to the whole or part of the Dispute 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.
- 15.3 If for any reason the Dispute is not resolved within 30 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 29.
- 16. Force majeure**
- Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.
- 17. Conflict**
- 17.1 If there is an inconsistency between any of the provisions in the T&Cs of this Agreement and the Sections then, with the exception of the Agreement Particulars, the provisions in the T&Cs of this Agreement shall prevail.
- 17.2 This Agreement takes precedence over any other terms and conditions agreed between the parties (including any additional terms introduced by the Client) in relation to the same subject matter.
- 18. Variation**
- No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19. Waiver**
- 19.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 20. Rights and remedies**
- Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 21. Severance**
- 21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2 If any provision or part-provision of this Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 22. Entire agreement**
- 22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party acknowledges that in entering into this Agreement 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 this Agreement.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 23. Assignment**
- 23.1 The Client shall not, without the prior written consent of Health Diagnostics, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 23.2 Health Diagnostics may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 23.3
- 24. No partnership or agency**
- Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any

obligation or liability and the exercise of any right or power).

25. Third-party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27. Notices

27.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the email address set out in the Agreement Particulars (or an address substituted in writing by the party to be served).

27.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

27.3 This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. Governing law

This Agreement 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 interpreted in accordance with the law of England and Wales.

29. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

30. Interpretation

30.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Additional Services: any services provided by Health Diagnostics outside of the agreed scope of Services set out in this Agreement, including pursuant to the Change Request Process.

Authorised Users: those employees, agents and independent contractors of the Client who are authorised by the Client to use the Products & Services and the Documentation, as further described in clause 1.3(d).

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

Change Request Process: the process set out in clause 14.

Charges: those charges payable by the Client under the Agreement, as set out in Section 7.

Client Data: the data inputted by the Client and /or Authorised Users on the Client's behalf for the purpose of using the Products & Services or facilitating the Client's use of the Products & Services.

Client Obligations: the obligations of the Client (including its employees, representatives, subcontractors and, where relevant, the Authorised Users) detailed in the Agreement, including the Client Dependencies.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.1.

Contract Year: the period of 12 months from the Commencement Date each subsequent 12-month period.

Documentation: (a) the documents made available to the Client by Health Diagnostics online via such other web address(es) notified by Health Diagnostics to the Client from time to time and (b) the document set out in Section 3, which set out a description of the Products & Services

and the user instructions for the Products & Services.

End User Software Licence Agreement: the terms and conditions applicable to Authorised Users, as set out in Section 5 and updated by Health Diagnostics from time to time.

Implementation Services: the agreed set-up services to be provided by Health Diagnostics in preparation of the Client receiving the Products & Services pursuant to this Agreement.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered

or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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, including any modifications thereof and the right to sue for and recover damages for past infringements.

Licence Charge: the licence charge payable by the Client to Health Diagnostics for the User Subscriptions, as set out in Section 7.

Modified Products & Services: any Products & Services developed by Health Diagnostics for the Client as part of the Agreement and / or modified by Health Diagnostics under this Agreement.

Normal Business Hours: 8.45am to 5.00 pm local UK time, each Business Day.

Products & Services: the subscription products and services provided by Health Diagnostics to the Client under this Agreement via www.healthdiagnostics.co.uk or any other website notified to the Client by Health Diagnostics from time to time, as more particularly described in the Agreement Particulars.

Representatives: in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

Service Credits: the service credits available to the Client as a result of a breach of the relevant Service Levels, as set out in Section 6.

Service Levels: the service levels in relation to certain aspects of the Products & Services, as set out in Section 6.

Service User / Patient: the individual receiving the health check as a part of the relevant programme.

Software: the online and installed versions of software applications provided by Health Diagnostics (or its third-party licensors) as part of the Products & Services.

Support Services: Health Diagnostics' support in relation to the Products & Services as made available in Section 3 or such other document as may be notified to the Client from time to time.

Trading Partner Agreement: the Agreement (to be) entered into between Health Diagnostics and the relevant provider(s) / practice(s) in relation to the transfer of certain personal data, pursuant to this Agreement.

User Subscriptions: the user subscriptions purchased by the Client pursuant to clause 8.1 which entitle Authorised Users to access and use the Products & Services and the Documentation in accordance with this Agreement.

Virus: anything or any device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality,

integrity, or availability and the term **Vulnerabilities** shall be interpreted accordingly.

30.2 Clause, section and paragraph headings shall not affect the interpretation of this Agreement.

30.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

30.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

30.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

30.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

30.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

30.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

30.9 A reference to **writing** or **written** excludes fax but not email.

30.10 The words **include**, **includes**, **including** and **included** shall be construed as being followed by the words **without limitation**.

30.11 References to clauses and sections are to the clauses and sections of this Agreement; references to paragraphs are to paragraphs of the relevant section to this Agreement.