



assuring healthcare technology

1 Terms and Conditions

DATED: [Date] (the 'Agreement Date')

BETWEEN:

- (1) Safehand Consulting Limited of 182 Pontefract Road, Cudworth, Barnsley, S72 8BE, Company No 10012494 ('SCL'); and
- (2) [Company Name], [Address] ('Client').

Each a 'Party' and together the 'Parties'.

INTRODUCTION

- (A) SCL is able to provide certain services relating to health IT systems. These Services may include training services.
- (B) The Client requires such services and wishes to engage SCL to provide such services on the terms of this Agreement.

AGREED

2 Interpretation and Defined Terms in this Agreement

The defined terms in this Clause 1 apply in relation to interpretation of this Agreement.

- 2.1 'Agreement' this agreement and each Proposal concluded from time to time by reference to this Agreement
- 2.2 'Charges' the charges payable by the Client to SCL in consideration of SCL's performance of this Agreement set out in each Proposal
- 2.3 'Client Inputs' materials reasonably required to be supplied by Client to SCL (and where necessary procured by the Client from a third party) to carry out the Services (as may be outlined in Proposal)
- 2.4 'Documentation' (if any) the report and documents (and any training materials) supplied by SCL to the Client under a Proposal
- 2.5 'Manager' the person appointed by the Client from time to time in order to fulfil the role described in Clause 5.1
- 2.6 'Operating Environment' the environment and the hardware (together with operating system software and any applications software and any network infrastructure) upon which the Services will be provided (which may be specified in a Proposal)
- 2.7 'SCL Manager' the person appointed by SCL from time to time in order to fulfil the role described in Clause 5.1
- 2.8 'Services' all the services to be provided by SCL as set out in a Proposal
- 2.9 'Proposal' each proposal signed by SCL setting out various information relating to the Services and which are subject to this Agreement
- 2.10 'Staff' those individuals who perform SCL's obligations under this Agreement including (where the context permits) the SCL Manager
- 2.11 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 2.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3 Obligations in Outline

- 3.1 SCL will:
 - 3.1.1 supply the Services; and
 - 3.1.2 provide reasonable co-operation to the Client's third party contractors who may be engaged in the performance of related works and/or services.
- 3.2 The Client will subject to the remaining terms of this Agreement:
 - 3.2.1 provide the Operating Environment and make it available for use by SCL as reasonably required by SCL for the purposes of performing this Agreement;
 - 3.2.2 provide SCL promptly with all reasonable co-operation, access, information and input required by SCL to perform its obligations under this Agreement;
 - 3.2.3 pay the Charges; and
 - 3.2.4 manage the Client's third party contractors and use all reasonable endeavours to ensure that they provide SCL with all reasonable co-operation, information and input required by SCL to perform its obligations under this Agreement.

4 Price and Payment

- 4.1 All Charges are stated exclusive of VAT which shall be payable by the Client in addition to the Charges at the rate prescribed by law.
- 4.2 SCL will invoice the Client for the Charges and the Client will make payment of the invoices to SCL in accordance with the Proposal. To the extent that the Proposal does not specify the time for payment, invoices will be paid by the Client within 30 days of the invoice date.
- 4.3 If the Client fails to pay any Charges on the due date, SCL may, without prejudice to its other rights and remedies, charge the Client interest in respect of the sum overdue in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 from the due date for payment to the date of actual payment (both dates inclusive) and SCL will be entitled to reimbursement of all expenses (including legal fees) incurred with respect to collection of overdue Charges.
- 4.4 If the Client fails to comply with any of the terms of payment for more than 45 days after receipt of a written demand for payment, then throughout the period when any payment of Charges is due and unpaid SCL reserves the right to suspend performance of this Agreement without incurring any liability to the Client, and the Client shall remain liable to SCL for all existing and continuing Charges due under this Agreement.
- 4.5 All payments shall be made in UK sterling.
- 4.6 If work on the Services is suspended at the request of or delayed through any default of the Client for a continuous period of 30 (thirty) days, SCL shall be entitled to invoice the Client for Services already performed and any additional costs reasonably incurred by SCL.
- 4.7 Where any part of the Charges are not fixed charges and/or are charged on a time, expenses and materials basis SCL shall:
 - 4.7.1 keep up to date records of the information upon which such Charges are calculated; and
 - 4.7.2 provide copies of such information to the Client as reasonably requested.
- 4.8 The Client will be required to reimburse any reasonable travel and subsistence expenses incurred by SCL where such are incurred for the purpose of providing the Services and where such reimbursement has been specified on the Proposal.
- 4.9 If an onsite visit is cancelled by the Client within ten working days of the agreed visit date, SCL reserve the right to charge for any reasonable expenses incurred. If a visit is cancelled by the Client after the consultant has commenced travel, the full day will be charged at the agreed daily rate.

5 Project Management

- 5.1 SCL shall appoint an SCL Manager and the Client shall appoint a Manager who shall each be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to this Agreement shall be sent through the SCL Manager and the Manager. The Manager and SCL Manager at the date of this Agreement will be as set out below. Each Party shall notify the other in writing promptly in the event of any proposed change to those appointments.
 - 5.1.1 The SCL Manager will be Adrian Stavert-Dobson;
 - 5.1.2 The Manager will be [Manager name].
- 5.2 Staff will require timely access to the Client Inputs, Operating Environment and the premises of the Client in order to provide the Services as set out in a Proposal. If Staff are not provided with timely access, then the Client acknowledges that this may impact on SCL's ability to provide the

Services to the appropriate standard and/or timescale/delivery dates. Where the Client does not provide such access in accordance with the Proposal or any project plan then:

- 5.2.1 (subject to Clause 5.3), the Client will pay any additional costs or expenses incurred by SCL, including lost travel time, travel costs and/or other costs which cannot be recovered by SCL as additional Charges; and
 - 5.2.2 SCL will not be responsible for any delay caused or contributed to by the Client not providing access.
- 5.3 The Client will grant to SCL a non-exclusive, royalty free licence to use the Client Inputs to the extent necessary for the purposes of SCL providing the Services and/or the Documentation (or will procure such a licence where such rights are owned by a third party).
- 5.4 Due to the nature of the Services (and that during the provision of the Services additional issues may become apparent) the Client acknowledges that any outline description of Client Inputs in the Proposal may not describe all of the Client Inputs that may be properly required to provide the Documentation.
- 5.5 For the avoidance of doubt Clause 5.2.1 will apply whether or not the Charges on the relevant Proposal are fixed.

6 Liabilities and Warranties

- 6.1 SCL will perform this Agreement using reasonable care and skill to be expected of a professional and competent supplier and in accordance with good industry practice.
- 6.2 SCL warrants that the Services will materially comply with the Proposal and will be fit for the purposes (if any) expressly set out in the Proposal, provided that SCL will not be responsible for any deficiency in the Services which is caused, directly or indirectly, by deficient, incorrect or misleading information or input from the Client or by any failure or shortcoming of the Operating Environment.
- 6.3 Time shall not be of the essence in relation to provision of the Services and/or the Documentation.
- 6.4 Both Parties warrant that they will resource performance of this Agreement using sufficient staff with appropriate skills and experience.
- 6.5 SCL warrants that it has lawful authority to enter into this Agreement and to supply the Services.
- 6.6 Except for the express warranties given in this Agreement, SCL gives no other warranties or representations with regard to the Services. Any further warranties or conditions, express or implied, statutory or otherwise are excluded from this Agreement to the maximum extent permitted by law.
- 6.7 The Client shall indemnify SCL and hold it harmless from all costs, claims expenses and liabilities suffered or incurred by SCL in consequence of or in connection with any loss of or damage to the property of or any death of or injury to, any officer, sub-contractor employee or agent of SCL occurring while such property, officer, sub-contractor employee or agent is on the premises of the Client in connection with the provision of the Services.
- 6.8 The Client warrants to SCL that it is the owner of the Operating Environment or has the authority of the owner of the Operating Environment to enter into this Agreement.
- 6.9 The Client will provide Staff with such safe and convenient access to the Client's premises as may reasonably be required for the purpose of performing the Services.

7 Operating Environment

- 7.1 If, notwithstanding the Client's obligations in relation to the Operating Environment, SCL is required to carry out the Services on an Operating Environment which is unsuitable, inadequately maintained or otherwise deficient, SCL shall be obliged only to use reasonable endeavours to

provide the Services. SCL shall have no liability or responsibility beyond such reasonable endeavours irrespective of whether any installation is successful.

8 Confidentiality

- 8.1 Each Party will keep confidential and will ensure that its employees and sub-contractors keep confidential and will not use (except as required for performance of this Agreement) any information, documents or materials which are disclosed by the other Party in the course of performance of this Agreement and which are expressly identified as confidential or which ought reasonably to be regarded by the recipient as confidential.
- 8.2 Clause 8.1 shall not apply to information or knowledge which:
- 8.2.1 has become public knowledge otherwise than through any unauthorised disclosure;
 - 8.2.2 was already in the possession of the recipient from an independent third party without breach of any obligation of confidentiality;
 - 8.2.3 has been independently developed by the recipient; or
 - 8.2.4 is required to be disclosed by law or a regulatory body.

9 Rights to Documentation

- 9.1 Subject to payment in full of all sums due and owing, SCL will grant to the Client an irrevocable, non-exclusive, royalty-free licence to use the Documentation solely for the Client's own internal business purposes (which may include submission to the applicable standards body such as NHS Digital).
- 9.2 The Client retains all rights to the Client Inputs. SCL will have no liability for breach of warranty or this Agreement caused by Client Inputs.

10 Term and Termination

- 10.1 This Agreement will commence upon the signature of both Parties and will continue unless terminated by either Party in accordance with Clause 10.2.
- 10.2 Either Party may terminate this Agreement in writing as follows:
- 10.2.1 on 3 months written notice to the other Party;
 - 10.2.2 forthwith if the other Party commits a material breach of this Agreement which has not been remedied after 28 days written notice of the breach (such notice expressly referring to possible termination of this Agreement);
 - 10.2.3 forthwith if the other Party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other Party's undertaking or assets or there are reasonable grounds for anticipating the occurrence of any of these events within the foreseeable future.
- 10.3 Termination of this Agreement, however arising, will be without prejudice to the rights and duties of either Party accrued prior to termination. Those clauses of this Agreement which are expressly or impliedly intended to continue after termination shall continue in effect after termination. On termination under Clause 10.2.1, no further Proposals will be concluded, but any Proposal yet to

be completed will continue subject to the terms of this Agreement, unless terminated under Clauses 10.2.2 or 10.2.3.

11 Liability

- 11.1 Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall exclude or limit either Party's liability for the following:
- 11.1.1 death or personal injury resulting from negligence;
 - 11.1.2 fraud or statements made fraudulently;
 - 11.1.3 any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability.
- 11.2 Subject to the limitations set out in Clause 11.4, SCL's liability for a breach of this Agreement or negligence or any other claim in connection with this Agreement shall include liability for total failure of consideration given by SCL.
- 11.3 Save as provided in Clauses 11.1 and 11.2, SCL shall not be liable for any loss of profit, loss of business, loss of goodwill, loss of savings, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused (even if caused by SCL's negligence and/or breach of contract and even if SCL was advised that such loss would probably result).
- 11.4 Subject to Clauses 11.1 and 11.2, SCL's total liability for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by SCL's negligence and/or breach of contract) shall be limited for each event or series of linked events as follows:
- 11.4.1 in relation to liability arising out of a breach or negligence in connection with one or more Proposals to a maximum sum equal to the greater of (i) 150% of the Charges (including applicable VAT) actually paid by the Client to SCL during the last 12 months of the Agreement, or (ii) £20,000; or
 - 11.4.2 in relation to liability outside the scope of Clause 11.4.1 to £20,000.

12 Change Control

- 12.1 Any request to change the scope of the Agreement shall be processed in accordance with the Change Control Procedure set out below:-
- 12.2 SCL and the Client shall discuss any changes proposed by the other ('Change') and such discussion shall result in either:
- 12.2.1 a written request for a Change by the Client; or
 - 12.2.2 a written recommendation for a Change by SCL
 - 12.2.3 or, if neither the Client nor SCL should wish to submit a request or recommendation, the proposal for the Change will not proceed.
- 12.3 Where a written request for a Change is received from the Client, SCL shall, unless otherwise agreed, submit a Change Request Form ('CRF') (in the format set out in the Proposal) to the Client

within the period agreed between the Parties or, if no such period is agreed, within 15 (fifteen) Working Days from the date of receipt of such request for a Change.

- 12.4 A written recommendation for a change by SCL shall be submitted as a CRF direct to the Client at the time of such recommendation.
- 12.5 For each CRF submitted, the Client shall, within a reasonable time:
- 12.5.1 allocate a sequential number to the CRF;
 - 12.5.2 evaluate the CRF, and as appropriate either:
 - 1. *request further information; or*
 - 2. *approve the CRF; or*
 - 3. *notify SCL of the rejection of the CRF; and*
- if approved, arrange for two copies of the approved CRF to be signed for and on behalf of the Client and SCL. The signing of the CRF will signify acceptance of a Change by both the Client and SCL.
- 12.6 Once signed by the Client and SCL in accordance with Clause 12.5, the Change shall be immediately effective and the Client and SCL shall perform their respective obligations on the basis of the agreed amendment.

13 General

- 13.1 Any failure or delay by either Party in the performance of its obligations pursuant to this Agreement which is due to a force majeure event will not be deemed a default of this Agreement or a ground for termination provided that the affected Party notifies the other within 5 days of becoming aware of such an event. If the force majeure event continues for a period exceeding 60 days, the affected Party shall have the right to terminate to this Agreement immediately or written notice to the other Party.
- 13.2 The Client undertakes that, during the period beginning on the date of this Agreement and ending 12 months after the date of this Agreement, it will not, directly or indirectly, employ, engage or entice away (or solicit or in any other way seek to employ, engage, or entice away) any person who is an officer, manager or employee of SCL.
- 13.3 Each Party acknowledges that this Agreement (including the Proposal) contains the whole agreement between the Parties in respect of its subject matter and supersedes all prior arrangements, agreements and understandings between them relating to the subject matter. Any conditions of purchase or similar terms set out in a purchase order by the Client shall be of no effect.
- 13.4 The Client shall not assign or transfer any of its rights or obligations under this Agreement. SCL will be free to use subcontractors to undertake any part or the whole of this Agreement in line with good industry practice.
- 13.5 Any notice required or permitted to be given by either Party to the other under this Agreement shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 13.6 The Parties agree that nothing in this Agreement shall be construed as conferring any benefit on a third party and accordingly the Contract (Rights of Third Parties) Act 1999 is hereby expressly excluded from applying to this Agreement.
- 13.7 The terms set out in the proposal shall take effect immediately upon your signing of this proposal and returning it to us. If we are instructed to start work before receiving a signed copy of this proposal, or we receive from you a Purchase Order for the work, we will treat that as acceptance

of all the terms of this agreement unless we hear from you to the contrary within 14 days of you giving us that instruction.

- 13.8 No addition to, or modification of, any provision of this Agreement will be binding unless made in writing and signed by duly authorised representatives of the Parties.
- 13.9 This Agreement is governed by English law and the Parties submit to the exclusive jurisdiction of the English courts.