



|                                      |   |
|--------------------------------------|---|
|                                      | [insert the date the parties signed this Agreement]   |
| <b>Expiry Date</b>                   | [Insert date]   |
| <b>Term</b>                          | [twelve] months from the Commencement Date  |
| <b>Extension Period</b>              | [insert period to be extended in weeks / months / years]  |
| <b>Purchase Order Number</b>         | [Insert]  |
| <b>Charges</b>                       | [Fixed Fee] <b>or</b> [Hourly Rate] <b>or</b> [As set out in Schedule 3]  |
| <b>Invoice Frequency</b>             | [Monthly] <b>or</b> [Quarterly] <b>or</b> [on completion of the Deliverables]   |
| <b>Specification of Deliverables</b> | [Describe Goods and/or Services] <b>or</b> [As set out in Schedule 2]   |
| <b>KPIs</b>                          | [Insert KPIs / service improvement plan here if relevant] <b>or</b> [As set out in Schedule 2] <b>or</b> [insert NOT USED]  |
| <b>[Data to be Processed]</b>        | [The Personal Data to be Processed by the Supplier as Data Processor pursuant to the Agreement is set out in Schedule 4]  |
| <b>TUPE</b>                          | TUPE is not applicable [if applicable, please contact the Procurement Team requesting a copy of the TUPE Schedule and insert as part of this Agreement]   |
| <b>Special terms</b>                 | <p><b>[NB: Any special terms to be pre-approved by the Midland Heart Legal Team]</b></p> <p>In the <b>Terms and Conditions</b>:</p> <p>[(a) Clause [NUMBER] deleted: The entire text of clause [NUMBER] is deleted and replaced with the words "Not used".]</p> <p>[(b) Clause [NUMBER] added: This clause is inserted into the <b>Terms and Conditions</b>: [NEW CLAUSE].]</p> <p>[(c) Clause [NUMBER] amended: This clause is amended to read as follows: [AMENDED CLAUSE IN FULL].]</p> <p>[(d) Schedule [ ] shall be amended: [Insert]]</p> |
| <b>Schedules</b>                     |   |
| <b>Schedule 1</b>                    | Definitions [NB: Please ensure that any new defined terms are capitalised as set out in Schedule1]  |
| <b>Schedule 2</b>                    | <p>Specification</p> <p><i>Part 1: Deliverables</i></p> <p><i>Part 2: KPIs / service improvement plan / Service Credits</i></p>   |

|                   |                      |
|-------------------|----------------------|
| <b>Schedule 3</b> | Charges              |
| <b>Schedule 4</b> | Data Processing      |
| <b>Schedule 5</b> | Exit Management Plan |

The Order Form and the Terms and Conditions will constitute the Agreement and is entered into on the date stated at the beginning of it.

Signed by [**name of authorised first** )  
**signatory**] )  
for and on behalf of ) .....  
**Midland Heart Ltd**

Authorised signatory

Signed by [**name of second authorised** )  
**signatory**] )  
for and on behalf of ) .....  
**Midland Heart Ltd**

Authorised signatory

Signed by [**name of authorised signatory**] )  
for and on behalf of )  
**[insert name of Supplier]** ) .....

Authorised signatory

## **Terms and Conditions**

### **1 Interpretation**

- 1.1 Should there be any inconsistency between the provisions of the Order Form and the Terms and Conditions, the Terms and Conditions will take precedence. In the event of any inconsistency of the Terms and Conditions, the conflict should be resolved according to the following descending order of priority: (a) the clauses of the Terms and Conditions, (b) Schedule 1, (c) Schedule 2, (d) Schedule 3 and (e) the schedules other than Schedules 1, 2 and 3.
- 1.2 Any reference to any legislation includes reference to updates or amendments to such legislation.

### **2 Commencement and duration**

- 2.1 The Agreement will be binding on the Commencement Date and continue for the Term unless it is otherwise extended in accordance with clause 2.2 or terminated in accordance with the Agreement.
- 2.2 Midland Heart may extend the Term to the Extension Period by written notice.

### **3 Supply of Deliverables**

#### **3.1 Services**

- 3.1.1 In return of Midland Heart's payment of the Charges, the Supplier will provide the Services in accordance with this Agreement.
- 3.1.2 In supplying the Services, the Supplier will: (a) co-operate with Midland Heart and comply with all Midland Heart's instructions; (b) perform the Services with all reasonable care, skill and diligence; (c) use Staff who are suitably skilled and experienced to perform tasks assigned to them; (d) ensure that the Services conform with all descriptions set out in the Specification; and comply with all Applicable Laws at the Supplier's cost.

#### **3.2 Goods**

- 3.2.1 The Supplier warrants, represents and undertakes that the Goods will:
- (a) be free from all types of defects for 12 months after delivery;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose stated by the Supplier or made known to the Supplier by Midland Heart;
  - (c) comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
  - (d) correspond with their description (whether in the Specification or as agreed by Midland Heart).

- 3.2.2 The Supplier will ensure that: (a) the Goods are properly packed and secured so they can reach their destination in good condition; and (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order Form, the Purchase Order Number (if provided), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods yet to be delivered.
- 3.2.3 The Supplier will deliver the Goods: (a) on the date and location specified in the relevant Order Form or, if no date is specified, then within 10 days of the date of the Order Form; and (b) during Midland Heart's normal hours of business, or as instructed by Midland Heart.
- 3.2.4 Delivery of the Goods will be completed when they are at the delivery location notified by Midland Heart or as specified in the Order Form.
- 3.2.5 The Supplier will not deliver the Goods in instalments without Midland Heart's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately to reflect quantities of Goods received by Midland Heart.
- 3.2.6 Title and risk in the Goods (including Goods delivered in instalments) will pass to Midland Heart on completion of delivery.

### 3.3 **Commitments**

The Supplier warrants, represents and undertakes that: (a) the Deliverables will comply with all statutory requirements and regulations, including all relevant ISO quality standards; (b) all statements made by the Supplier about the Deliverables are correct and can be relied upon; and (c) neither the sale and supply of any of the Deliverables, nor its proper use by Midland Heart, will breach any person's property rights, including Intellectual Property Rights.

- 3.4 Midland Heart can request a change to the scope of the Deliverables upon written notice to the Supplier.

## 4 **Charges, Payment and Recovery of Sums Due**

- 4.1 The Charges for the Deliverables will be as set out in the relevant Order Form or Schedule 3 of the Agreement. The Supplier cannot pass on any third party costs or increase in costs to Midland Heart without Midland Heart's prior written consent and the parties agree that the Charges shall be inclusive of such costs.
- 4.2 All amounts stated are exclusive of VAT which shall be charged at the relevant rate.
- 4.3 The Supplier will invoice Midland Heart as stated in the Order Form with such invoice, including supporting information required by Midland Heart including the Purchase Order Number.
- 4.4 In consideration of the supply of the Deliverables by the Supplier, Midland Heart will pay the Supplier the invoiced amounts no later than 30 calendar days after receipt and verifying that the invoice is valid and undisputed. Midland Heart may, without prejudice to

any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

4.5 A dispute as to the amount invoiced will be resolved by the procedure at clause 15. If Midland Heart fails to make an undisputed payment due to the Supplier upon request, Midland Heart will pay interest at 0% a year above the Bank of England's base rate from time to time on the overdue undisputed amount from the relevant due date until payment of the overdue undisputed amount.

4.6 The Supplier will ensure that any contract it enters into with a sub-contractor contain substantially the same clauses as set out in this Agreement (including but not limited to clause 8), but the Supplier will always be liable under this Agreement.

4.7 The Supplier will not be entitled to assert any credit, set-off or counterclaim against Midland Heart in order to justify withholding payment.

## **5 KPIs and Service Credits**

5.1 The Supplier agrees to meet the KPIs and where it fails to, it will pay Service Credits to Midland Heart.

5.2 Midland Heart can terminate this Agreement by giving three months notice if the Supplier does not pay the Service Credits when requested by Midland Heart.

5.3 Midland Heart can terminate the Agreement for Persistent Breach by the Supplier.

## **6 Assignment and sub-contracting**

6.1 Neither Party can assign any of its rights and obligations under this Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

6.2 Midland Heart can subcontract any of its rights and obligations under the Agreement.

6.3 The Supplier cannot subcontract any of its rights and obligations under the Agreement without the prior written consent of Midland Heart. If Midland Heart consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

## **7 Intellectual Property Rights**

7.1 Each Party will retain all Pre-existing Intellectual Property in any materials provided to the other Party for the purposes of this Agreement.

7.2 Midland Heart will grant the Supplier a Midland Heart Intellectual Property Licence and the Supplier will grant Midland Heart the Supplier Historic Intellectual Property Licence.

7.3 All Intellectual Property Rights in any materials created or developed or arising from the Deliverables under the Agreement will belong to Midland Heart.

7.4 Where the Intellectual Property Rights in any materials still belong to the Supplier due to the operation of law pursuant to clause 7.3, the Supplier will grant Midland Heart the Supplier Intellectual Property Licence.

7.5 The Supplier will indemnify, and keep indemnified, Midland Heart in full against all costs, expenses, damages and losses (whether direct or indirect), awarded against or incurred or paid by Midland Heart as a result of or in connection with any claim made against Midland Heart for actual or alleged infringement of a third party's Intellectual Property Rights.

## 8 **Confidentiality**

8.1 Each Party undertakes that it will not during the Term and for a period of six years after termination of the Agreement, disclose to any person any Confidential Information, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.2 No Party will use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

## 9 **Data Protection**

9.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

9.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, Midland Heart is the controller and the Supplier is the processor. The Data Processing Schedule to this Agreement sets out the requirements placed on both Parties with regard to their obligations in relation to this.

9.3 The Supplier will:

9.3.1 process personal data on the basis of Midland Heart's instructions unless an Applicable Law requires it to do something different, in which case the Supplier will immediately tell Midland Heart before such processing;

9.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

9.3.3 ensure that all personnel who have access to and/or process personal data keep the personal data confidential;

9.3.4 not transfer any personal data outside of the UK or the European Economic Area without appropriate safeguards in place, as defined by the European Commission or ICO in the UK as applicable;

9.3.5 assist Midland Heart in responding to any request from a data subject without undue delay;

9.3.6 notify Midland Heart immediately within 24 hours when there is an actual or suspected personal data breach;

9.3.7 delete or return personal data and copies thereof to Midland Heart on termination or expiry of the Agreement unless required by Applicable Law to store the personal data;

9.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and allow for and contribute to audits, including

inspections, conducted by Midland Heart or Midland Heart's appointed auditor;  
and

9.3.9 immediately inform Midland Heart within 24 hours if, the Supplier believes Midland Heart's instruction infringes the Data Protection Legislation.

9.4 Where the Supplier engages another sub-processor or contractor (**Sub-Processor**) to carry out processing activities in relation to the shared data, the Data Processor must ensure that it enters into a data sharing agreement with the Sub-Processor which contains substantially the same data protection obligations as set out in this Agreement. Where the Sub-Processor fails to fulfil its data protection obligations, the Data Processor shall remain fully liable to the Midland Heart for the performance of that other processor and any resulting damages suffered by the Midland Heart.

9.5 The Supplier will indemnify and keep indemnified Midland Heart in respect of all data protection losses or damages suffered or incurred by, awarded against or agreed to be paid by, Midland Heart arising from or in connection with:

9.5.1 any breach by the Supplier of any of its obligations under this Agreement; and

9.5.2 the Supplier acting outside or contrary to the lawful processing instructions of Midland Heart in respect of the processing of personal data.

## 10 **Liability**

10.1 Nothing in the Agreement will be construed to limit or exclude:

10.1.1 either Party's liability for death or personal injury, fraud or fraudulent misrepresentation or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other matter which, by law, may not be excluded or limited; and

10.1.2 the Supplier's liability for the indemnities at clauses 7.5 (Intellectual Property Rights), 9.5 (Data Protection), 14.2 (Prevention of Fraud and Corruption) and 16.4 (Modern Slavery) and if applicable, in the TUPE Schedule of this Agreement.

10.2 Subject always to clause 10.1:

10.2.1 the total liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Deliverables, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to 200% of the Charges paid or payable to the Supplier;

10.2.2 the total liability of Midland Heart in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to the value of the Charges paid or payable to the Supplier;



10.2.3 except in the case of claims arising under clauses 7.5 and 14.2, in no event will either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and or
- (f) indirect, special or consequential loss or damage.

10.3 During the Term of this Agreement, the Supplier will maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £2,000,000, public liability insurance at an amount not less than £10,000,000, products liability insurance at an amount not less than £10,000,000 and employers liability at an amount not less than £10,000,000 to cover the liabilities that may arise under or in connection with this Agreement, and will produce details of cover and insurance certificate to Midland Heart on request.

## 11 **Force Majeure**

11.1 Provided it has complied with clause 11.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement (and in the case of Midland Heart this will also apply where it is prevented, hindered or delayed from requiring or receiving the benefit of the Deliverables) by a Force Majeure Event (the **Affected Party**), the Affected Party will not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations (including, in the case of Midland Heart being prevented, hindered or delayed from requiring or receiving the benefit of the Deliverables, an obligation to make payment). The time for performance of such obligations will be extended accordingly.

11.2 The associated obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. Where the Supplier is subject to the Force Majeure Event, Midland Heart's obligation to pay will be similarly suspended.

11.3 The Affected Party will:

- 11.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement (or in the case of Midland Heart to require or receive the benefit of the Deliverables); and
- 11.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations (and receipt of the benefit of the Deliverables as the case may be).

11.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations (and in the case of Midland Heart the requirement for or receipt of the benefit of the Deliverables) for a continuous period of more than six weeks, the Party not affected by the Force Majeure Event may terminate this Agreement by giving two weeks' written notice to the Affected Party.

## 12 **Termination**

12.1 Midland Heart can terminate the Agreement at any time before the Term or Extension Period (as relevant) by giving the Supplier not less than 30 days' written notice.

12.2 Without affecting any other right or remedy available to it, either Party may terminate the Agreement in whole or in part by written notice to the other Party with immediate effect if:

12.2.1 the other Party commits a material breach and fails to remedy it within 30 days after being notified in writing to do so;

12.2.2 the other Party breaches any provisions of clause 9; or

12.2.3 an Insolvency Event occurs to the other Party.

12.3 If Midland Heart has any serious concerns about a Change of Control of the Supplier, it can terminate the Agreement with immediate effect.

12.4 Subject to clause 4.5, if Midland Heart has not paid any undisputed invoices within 90 days of them falling due, then the Supplier can terminate the Agreement by written notice.

12.5 Despite any other right or remedy Midland Heart may have, if Midland Heart terminates the Agreement pursuant to clauses 5.2, 5.3, 12.1, 12.2 or 12.3, the Supplier will pay a pro-rata refund of any Charges prepaid by Midland Heart under the Agreement.

12.6 Upon termination or expiry of the Agreement, the Supplier will:

12.6.1 unless otherwise agreed in writing, continue to provide the Deliverables set out in the Order Form until completion which may occur after termination or expiry of the Agreement;

12.6.2 assist Midland Heart and any incoming supplier of the Deliverables in accordance with clause 13; and

12.6.3 return all requested documents, information and data to Midland Heart as soon as reasonably practicable.

12.7 Termination or expiry of this Agreement will not affect any rights accrued by the Parties up to the date of termination or expiry and the following clauses will continue in force: clauses 2, 5, 7, 8, 9, 10, 11, 12, 13, 14.2, 15, 16, 17 and 19.

## 13 **Exit and Service Transfer**

13.1 In the event of the termination or expiry of this Agreement for any reason the Supplier will provide the Transitional Assistance Services to Midland Heart in accordance with the Exit Management Plan. The Supplier will co-operate with Midland Heart and/or the

Replacement Supplier to facilitate the smooth migration of the Deliverables from the Supplier to Midland Heart or the Replacement Supplier.

- 13.2 Midland Heart will pay the Transitional Services Charges for the Transitional Assistance Services, except in circumstances where Midland Heart has terminated pursuant to clauses 5.2, 5.3, 12.2 or 12.3.

#### 14 **Prevention of Fraud and Corruption**

- 14.1 The Supplier will (a) not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreement; (b) take all reasonable steps to prevent fraud by the Staff; and (c) notify Midland Heart immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 14.2 The Supplier will indemnify Midland Heart in full against all liabilities, costs, expenses, damages and losses suffered or incurred by Midland Heart arising out of, or in connection with, any breach by the Supplier of its obligations under this clause 14.

#### 15 **Dispute Resolution**

- 15.1 If a dispute arises out of or in connection with this Agreement (**Dispute**) then unless permitted otherwise in the Agreement, either Party will give to the other written notice of the Dispute setting out its nature and full particulars (**Dispute Notice**), together with supporting documents.
- 15.2 On service of the Dispute Notice, the Parties will attempt in good faith to resolve the Dispute in the following order of stages:

| <b>Escalation point of contact</b>                                     | <b>Number of days to resolve</b>  | <b>Procedure</b>  |
|--|---|---|
| 1. Supplier's Contract Lead and Midland Heart's Contract Lead          | Within 30 days of the Dispute Notice  | Meet to attempt to resolve the Dispute  |
| 2. Director of the Supplier and the relevant Director of Midland Heart | Within 14 days of the Dispute Notice being referred   | If unresolved, meet to attempt to resolve the Dispute   |
| 3. Mediation   | Mediation will start not later than 14 days after the date of the Alternative Dispute Resolution Notice | If unresolved, the Parties will settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the Centre for Effective Dispute Resolution. To initiate the mediation, a Party must serve notice in writing ( <b>Alternative Dispute</b> |

|                      |   |  |
|----------------------|---|--|
|                      |   | <b>Resolution Notice)</b> to the other Party to the Dispute, requesting a mediation. A copy of the Alternative Dispute Resolution Notice should be sent to the Centre for Effective Dispute Resolution |
| 4. Court Proceedings | Within 28 days after service of the Alternative Dispute Resolution Notice, or either Party fails or ceases to participate in the mediation before the 28 day period expires, or the mediation terminates before 28 day period expires | If the Dispute is not resolved within specified timeframe, the Dispute may be finally resolved by the courts of England and Wales in accordance with clause 19   |

15.3 The commencement of mediation will not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 19.

#### 16 **Modern Slavery Act 2015**

16.1 The Supplier and its sub-contractors agree to use reasonable endeavours to ensure that its employees or agents and/or supply chain will, at all times act in a way which is compliant with the Modern Slavery Act 2015.

16.2 Midland Heart reserves the right to carry out spot checks on the Supplier's supply chain. The Supplier and its supply chain must produce, on an annual basis, statements and current policies about modern slavery which comply with the principles of the Modern Slavery Act 2015.

16.3 Midland Heart reserves the right, upon reasonable notice, to audit this at any time during the Agreement. In the event that Midland Heart considers that the Supplier is not in compliance with the Modern Slavery Act 2015 the Supplier must take all such appropriate remedial actions as requested by Midland Heart to address any areas of concern.

16.4 The Supplier will indemnify and keep indemnified Midland Heart against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Supplier of its obligations under the Modern Slavery Act 2015.

#### 17 **General**

17.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

- 17.2 Unless expressly stated in this Agreement, a person not party to the Agreement will have no right to enforce any of its provisions without the prior written agreement of the Parties.
- 17.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 17.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. Both Parties agree that they have not entered into the Agreement based on any representation that is not expressly incorporated into the Agreement.
- 17.5 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy under the Agreement or by law will not constitute a waiver or prevent any further exercise of that or any other right or remedy.
- 17.6 The Agreement does not constitute or imply any partnership or other relationship between the Parties other than the contractual relationship under this Agreement. Neither Party has the authority to make any commitments on the other Party's behalf.
- 17.7 If any provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but will not affect the validity and enforceability of the rest of this Agreement.
- 18 **Notices**
- 18.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or subject to clause 18.3, e-mail to the address of the relevant Party set out in the Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 18.2 Notices served as personal delivery or first class recorded shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. Notices served as email shall be deemed delivered when sent unless an error message is received.
- 18.3 Notices may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 18.1.

19 **Governing Law and Jurisdiction**

The Agreement is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties irrevocably submit.

20 **Brexit**

Brexit, nor changes any in the GBP exchange rate due to Brexit will impact on either Party's obligations under this Agreement, or allow either Party to seek termination. Both Parties agree that Brexit is not a Force Majeure Event.

## Schedule 1

### Definitions

1 Where a term is not already defined in the Agreement, the following terms shall have the following meanings:

**Affected Party** has the meaning set out in clause 11.1;

**Agreement** means the:

- (a) Terms and Conditions; and
- (b) Order Form;

**Alternative Dispute Resolution Notice** has the meaning set out in clause 15.2;

**Applicable Law(s)** means any law, statute, declaration, decree, directive, legislative enactment, order, statutory instrument, subordinate legislation, ordinance, regulation, rule, by-law, binding restriction, binding code of practice, or directive/requirement of any semi-governmental or regulatory body, each as amended, consolidated or re-enacted from time to time, with which a person is bound to comply;

**Brexit** means the earlier of (i) the point at which the United Kingdom is no longer bound to comply with the terms of the treaties of the European Union; or (ii) the point at which any phased transition arrangement agreed between the United Kingdom and the European Union leading to the withdrawal of the United Kingdom from the European Union commences;

**Charges** means the charges for the Deliverables as set out in the relevant Order Form or Schedule 3;

**Commencement Date** means the date set out in the Order Form;

**Commercially Sensitive Information** means the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business which the Supplier has indicated in writing to Midland Heart that, if disclosed by Midland Heart, would cause the Supplier significant commercial disadvantage or material financial loss;

**Confidential Information** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;

**Control** has the meaning given in section 1124 Corporation Tax Act 2010, and the expression **Change of Control** shall be construed accordingly;

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures** as defined in the Data Protection Legislation;

**Data Protection Legislation** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and

regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

**Deliverables** means the Goods and/or Services to be supplied by the Supplier to the Midland Heart as set out in the relevant Order Form or Schedule 2;

**Dispute** has the meaning set out in clause 15.1;

**Dispute Notice** has the meaning set out in clause 15.1;

**Exit Management Plan** means the plan for the provision of the Transitional Assistance Services in the event of the expiry or termination of this Agreement, agreed between the Parties before the Commencement Date set out in Schedule 5;

**Expiry Date** means date for expiry of the Agreement as set out in the Order Form;

**Extension Period(s)** means the extension period set out in the Order Form;

**Force Majeure Event** means any circumstance not within a Party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party); and (h) interruption or failure of utility service;

**Goods** means the goods to be supplied by the Supplier to Midland Heart under the Agreement and as detailed in the Order Form or Schedule 2;

**ICO** means the Information Commissioner's Office;

**Insolvency Event** means becoming insolvent or unable to pay debts within the meaning of section 123 of the Insolvency Act 1986, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction;

**Intellectual Property Rights** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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, rights in computer software, 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, rights under licences and consents in relation to any of them, 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;

**ISO** means International Organization for Standardization;

**KPIs** means the key performance indicators as set out in the Order Form and/or Schedule 2;

**Midland Heart's Contract Lead** means the person named in the Order Form;

**Midland Heart Intellectual Property Licence** means a royalty-free, revocable, non-exclusive, non-perpetual, non-sublicensable and non-transferable licence to use any materials for the sole purpose of enabling the Supplier to perform its obligations to Midland Heart under the Agreement until termination or expiry of the same;

**Order Form** means the accompanying order form between Midland Heart and the Supplier for the supply of the Deliverables;

**Party** means the Supplier or Midland Heart (as appropriate) and **Parties** shall mean both of them;

**Persistent Breach** means a failure to meet 3 KPIs in a rolling three month period and/or a contractual breach of the Agreement;

**Pre-existing Intellectual Property** means any Intellectual Property Rights which:

- (a) in the case of Midland Heart, are owned by or licensed to Midland Heart:
  - i prior to the date of this Agreement; or
  - ii after the date of this Agreement otherwise than by or pursuant to the terms of this Agreement; and
- (b) in the case of the Supplier is identified in writing as being owned by or licensed to the Supplier on delivery of the same to Midland Heart;

**Purchase Order Number** means Midland Heart's unique number relating to the supply of the Deliverables as set out in the Order Form and as stated on all invoices supplied by the Supplier;

**Replacement Services** means any goods or services which are identical or substantially similar to any of the Deliverables and which Midland Heart receives in substitution for any of the Deliverables following the termination or expiry of this Agreement, whether those goods or services are provided by Midland Heart internally or by any Replacement Supplier;

**Replacement Supplier** means any third party supplier of Replacement Services appointed by Midland Heart from time to time;



**Services** means the services to be supplied by the Supplier to Midland Heart under the Agreement and as detailed in the Order Form or Schedule 2;

**Service Credits** means a reduction in the Charges payable by Midland Heart pursuant to this Agreement;

**Specification** means the specification for the Deliverables (including as to quantity, description and quality) as specified in the Agreement;

**Staff** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;

**Sub-Processor** has the meaning set out in clause 9.4;

**subsidiary** and **holding company** shall have the meanings given to them by section 1159 of the Companies Act 2006 except that in addition, for the purposes of sections 1159(1)(b) and (c), a company (X) shall be treated as a member of another company (Y) if any or all of the shares in company (Y) are held by a person (or its nominee) by way of security or are held by a person acting on behalf of company (X) or any of its subsidiaries;

**Supplier's Contract Lead** means the person named in the Order Form;

**Supplier Historic Intellectual Property Licence** means a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use (a) any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Agreement; and (b) any Intellectual Property Rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Deliverables, including any modifications to or derivative versions of any such Intellectual Property Rights, which Midland Heart reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Deliverables provided;

**Supplier Intellectual Property Licence** means the present assignment of future rights and immediately upon coming into existence, all such Intellectual Property Rights (with full title guarantee and free from all third party rights);

**Term** means the term set out in the Order Form from the Commencement Date as such period may be extended in accordance with clause 2.2 or terminated in accordance with the Terms and Conditions;

**Terms and Conditions** means the main body context together with the Schedules;

**Transitional Services Charges** means the charges payable by Midland Heart to the Supplier for the provision of the Transitional Assistance Services, which will be calculated in accordance with Schedule 5;

**Transitional Assistance Services** means the services to be provided by the Supplier to Midland Heart pursuant to clause 13 (Exit and Service Transfer) in order to facilitate the transfer of the Services to Midland Heart or a Replacement Supplier;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**UK Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**VAT** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

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

## **Schedule 2**

### **Specification**

***Midland Heart / Supplier to insert details of Specification***

### Schedule 3

#### Charges

**[Key principles for the Parties to consider:**

- *Insert details of the Charges due for Goods and/or Services;*
- *If applicable, insert details of reimbursable costs and/or expenses;*
- *Insert details of invoicing procedure and method/frequency of payment;*
- *Insert details of circumstances in which the Charges can be adjusted;*
- *Ensure the Parties comply with the Procurement Policy Note 02/20: supplier relief due to coronavirus (COVID-19); and/or*
- *If applicable, insert provisions to allow for a review of Charges by the Parties.]*

## Schedule 4

### Data Processing

The Parties acknowledge that for the purposes of the Data Protection Legislation, Midland Heart is the controller and the Supplier is the processor. The only processing that the Supplier is authorised to do, unless otherwise notified by Midland Heart in writing, is listed in the following table by Midland Heart and may not be determined by the Supplier.

| Description   | Details  |
|---|--|
| Subject matter of the processing  | Receipt, storage and utilisation of relevant personal data to enable delivery of [INSERT DETAILS].                         |
| Duration of the processing  | [DURATION] or [For the duration of this this Agreement].   |
| Nature and purposes of the processing   | The receipt, organisation, storage, retrieval, consultation, use of personal data in order to facilitate [INSERT DETAILS]. |
| Type of personal data   | [INSERT DETAILS]. [e.g. Names, addresses, telephone numbers, dates of birth, job titles]                                   |
| Categories of data subject  | [INSERT DETAILS].  |
| How the data will be exchanged between the parties?   | (e.g) secured portal, encrypted e-mail etc.  |
| Details of the 3 <sup>rd</sup> party with whom the Data Processor will or may share the shared data with? |  |

|  |   |
|--|---|
| How will the Data Processor dispose of the shared data at the end of this Agreement?                                       | (e.g.) Non-reversible ISO27001 compliant disk format/deletion |
| How will the Shared Data be kept secure by the Data Processor? – Please include the Technical and Organisational measures. | (I.e.) Access restrictions, training, ISO complied etc.       |
| Where will the data processor be processing the personal data (Including the host storage location)                        |   |
| How long will the Shared Data be retained for by the Data Processor?- Provide your Data Retention Policy/Procedure         |   |
| Data back up and disaster recovery plan/ policy in place?  |   |
| Data Processor's ICO Registration details and Data Protection Officer/ authorised Data Protection contact                  |   |

## Schedule 5

### Exit Management Plan

***[Key principles for the Parties to consider:***

- *Insert details regarding the obligations of each Party during the Term (and any Extension Period) to facilitate exit;*
- *Insert obligations on the Supplier to assist Midland Heart with any re-tendering activity;*
- *Insert details of the obligations of the Supplier to provide Transitional Assistance Services, including a time frame for the Supplier to provide a more detailed Exit Management Plan and a proposed methodology for achieving an orderly transition;*
- *Insert details surrounding the obligations of Midland Heart to pay Transitional Service Charges (if any); and/or*
- *Insert the proposed methodology and details of any personnel or assets to be transferred back.]*