

Term	[twelve] months from the Commencement Date
Extension Period	[insert period to be extended in weeks / months / years]
Purchase Order Number	[Insert]
Charges	[Fixed Fee] or [Hourly Rate] or [As set out in Schedule [2/3]]
Invoice Frequency	[Monthly] or [Quarterly] or [on completion of the Deliverables]
Specification of Deliverables	[Describe Goods and/or Services] or [As set out in Schedule [2]]
[Data to be Processed]	[The Personal Data to be Processed by the Supplier as Data Processor pursuant to the Agreement is set out in Schedule 4]
TUPE	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]
Special terms	<p>[NB: Any special terms to be pre-approved by the Midland Heart Legal Team]</p> <p>In the Terms and Conditions:</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 Terms and Conditions: [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>
Schedules	
Schedule 1	Definitions [NB: Please ensure that any new defined terms are capitalised as set out in Schedule1]
Schedule 2	<p>Specification:</p> <p>Part 1: Goods and/or Services</p> <p>Part 2: Service Level; Service Failure; Critical Service Failure; Service Credits</p>
Schedule 3	Charges
Schedule 4	Data Processing
Schedule 5	Delivery Plan
Schedule 6	Testing

Schedule 7	Business Continuity and Disaster Recovery
Schedule 8	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 Delivery Plan

3.1 Formation of Delivery Plan

- 3.1.1 The Supplier will prepare a Delivery Plan in relation to the Services. The Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as Midland Heart may require. The draft Delivery Plan will take account of all dependencies known to the Supplier.
- 3.1.2 The Supplier will submit the draft Delivery Plan to Midland Heart for Approval.
- 3.1.3 The Supplier will perform each of the Deliverables set out in the Delivery Plan by the relevant date for that Deliverable to ensure that each Milestone is Achieved on or before its Milestone Date.
- 3.1.4 The Supplier will monitor its performance against the Delivery Plan and Milestones (if any) and any other requirements of Midland Heart as set out in this Agreement and report to Midland Heart on such performance.

3.2 Control of Delivery Plan

- 3.2.1 Subject to clause 3.2.2, the Supplier will keep the Delivery Plan under review in accordance with Midland Heart's instructions and ensure that it is maintained and updated [monthly **or** quarterly] to reflect the then current state of the Services. Midland Heart can request any reasonable changes in each version of the Delivery Plan.
- 3.2.2 Changes to the Milestones (if any), Milestone Payments (if any) and Delay Payments (if any) must be agreed in writing by both Parties.
- 3.2.3 Time will be of the essence in relation to compliance with a date or Milestone Date and failure of the Supplier to comply will be a material Default unless the Parties expressly agree otherwise.

3.3 **Rectification of delay in Delivery**

3.3.1 If the Supplier becomes aware that there is, or reasonably likely to be, a Delay or anticipated Delay, it will:

- (a) notify Midland Heart as soon as possible and no later than within two Working Days from becoming aware of the Delay;
- (b) provide an explanation of the actual or anticipated impact of the Delay;
- (c) comply with Midland Heart's instructions to address the impact of the Delay;
- (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay.

3.3.2 If the Delay relates to a Milestone where a Delay Payment has been set out in the Delivery Plan, clause 3.4 will apply.

3.4 **Delay Payments**

3.4.1 Where Delay Payments have been included in the Delivery Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier will pay Midland Heart such Delay Payments and the following will apply:

- (a) the Supplier agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by Midland Heart as a result of the Supplier's failure to Achieve the corresponding Milestone;
- (b) Delay Payments will be Midland Heart's exclusive financial remedy for the Supplier's failure to Achieve a corresponding Milestone by its Milestone Date except where:
 - i Midland Heart is otherwise entitled to or does terminate this Agreement pursuant to clause 22.1; or
 - ii the Delay exceeds the period of [100] days beginning on the relevant Milestone Date;
- (c) the Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved;
- (d) no payment to the Supplier by Midland Heart or other act or omission of Midland Heart will affect Midland Heart's right to recover the Delay Payments or be deemed as a waiver of Midland Heart's right to recover such damages; and
- (e) Delay Payments will be excluded from any limitation on liability set out in clause 20.

4 Supply of Deliverables

4.1 Services

4.1.1 In return of Midland Heart's payment of the Charges, the Supplier will provide the Services in accordance with this Agreement.

4.1.2 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 its Staff will obey all lawful instructions and reasonable directions of Midland Heart (including, if so required by Midland Heart, the ICT Policy) and provide the Services to the reasonable satisfaction of Midland Heart; (e) ensure that the Services conform with all descriptions set out in the Specification; and (f) comply with all Applicable Laws at the Supplier's cost.

4.2 Goods

4.2.1 The Supplier warrants, represents and undertakes that the Goods will:

4.2.2 be free from all types of defects for 12 months after delivery;

(a) 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;

(b) comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

(c) correspond with their description (whether in the Specification or as agreed by Midland Heart).

4.2.3 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.

4.2.4 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.

4.2.5 Where Midland Heart has specified any Installation Works herein, delivery will include installation of the Goods by the Supplier's Staff at Midland Heart's premises or at such place as Midland Heart shall reasonably direct.

4.2.6 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.

4.2.7 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.

4.2.8 Title and risk in the Goods (including Goods delivered in instalments) will pass to Midland Heart on completion of delivery.

4.3 **Commitments**

4.3.1 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.

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

5 **Installation Works**

5.1 Where Midland Heart has specified Installation Works in the Delivery Plan and the Supplier has completed the Installation Works, it will notify Midland Heart in writing within two Working Days of completion. Following receipt of such notice, Midland Heart can inspect the Installation Works and will either:

5.1.1 accept the Installation Works, or

5.1.2 reject the Installation Works and provide reasons to the Supplier if the Installation Works do not meet the requirements set out in the Delivery Plan or Specification (as the case may be).

5.2 If Midland Heart rejects the Installation Works in accordance with clause 5.1.2, the Supplier will immediately rectify any defects. If within five Working Days of such rectification, the Installation Works still do not meet the requirements, Midland Heart can, at its option, (a) grant the Supplier a further five Working Days to rectify the defects; or (b) terminate the Agreement for material Default.

5.2.1 The Installation Works will be complete when the Supplier receives written notice by Midland Heart in accordance with clause 5.1. Even if Midland Heart has accepted the Installation Works in accordance with clause 5.1, the Supplier will remain solely responsible for ensuring that the Goods and the Installation Works conform to the Delivery Plan and/or Specification.

5.2.2 During the Term, the Supplier agrees to have all necessary licences, approvals and consents to enable it and the Supplier's Staff to carry out the Installation Works and will produce proof as such upon request by Midland Heart.

6 **Standards and quality**

6.1 The Supplier will at all times during the Term comply with the Standards (including but not limited to ISO/IEC 27001 and BS7799) and maintain, where applicable, accreditation with the relevant Standards' authorisation body.

6.2 The Supplier will develop, within 20 Working Days of the Commencement Date, quality plans that ensure that the Services are the subject of quality management

systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (**Quality Plans**).

6.3 The Supplier will seek Approval of the Quality Plans from Midland Heart before implementing them and acknowledges that Approval will not relieve the Supplier of its responsibility for ensuring that the Services are provided to the Standards.

6.4 Following the Approval by Midland Heart of the Quality Plans:

6.4.1 the Supplier will implement all Deliverables in accordance with the Quality Plans; and

6.4.2 any changes to the Quality Plans must be agreed in writing by both Parties.

7 **Testing**

The Parties will comply with the provisions of Schedule 6 regarding testing.

8 **Service Levels and Service Credits**

8.1 The Parties will comply with the provisions of the Specification set out at Schedule 2.

8.2 The Supplier will at all times during the Term provide the Services to meet or exceed the Service Levels.

8.3 The Supplier acknowledges that any Service Failure may have a material adverse impact on the business and operations of Midland Heart and it will pay Midland Heart Service Credits.

8.4 A Service Credit will be Midland Heart's exclusive financial remedy for a Service Failure except where:

8.4.1 the Service Failure: (a) has arisen due to a wilful Default by the Supplier or any Supplier Staff; and (b) results in (i) the corruption or loss of any Midland Heart Data (in which case the remedies under clause 18.4.8 shall also be available), and/or (ii) Midland Heart being required to make a compensation payment to one or more third parties; and/or

8.4.2 Midland Heart is otherwise entitled to or does terminate this Agreement.

8.5 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.

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

9 **Critical Service Level Failure**

On the occurrence of a Critical Service Level Failure: (a) any Service Credits that would otherwise have accrued during the Term will not accrue; and (b) on written notice to the Supplier, Midland Heart will be entitled to a sum equal to any Charges which would otherwise have been due to the Supplier, provided that clause 9 will not affect Midland Heart's right to terminate this Agreement and/or to claim damages from the Supplier for material breach as a result of such Critical Service Level Failure.

10 **Business Continuity and Disaster Recovery**

The Parties agree to comply with the provisions of Schedule 7.

11 **Charges, Payment and Recovery of Sums Due**

- 11.1 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.
- 11.2 All amounts stated are exclusive of VAT which shall be charged at the relevant rate.
- 11.3 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.
- 11.4 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.
- 11.5 A dispute as to the amount invoiced will be resolved by the procedure at clause 25. 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.
- 11.6 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 17), but the Supplier will always be liable under this Agreement.
- 11.7 The Supplier will not be entitled to assert any credit, set-off or counterclaim against Midland Heart in order to justify withholding payment.

12 **Promoting tax compliance**

- 12.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier will:
- 12.1.1 notify Midland Heart in writing of such fact within five Working Days of its occurrence; and
- 12.1.2 immediately provide to Midland Heart: (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors; and (b) such other information in relation to the Occasion of Tax Non-Compliance as Midland Heart may reasonably require.

13 **Maintenance of the ICT Environment**

- 13.1 The Supplier will create and maintain a rolling schedule of planned maintenance to the ICT Environment (**Maintenance Schedule**).
- 13.2 The Supplier will provide to Midland Heart a draft Maintenance Schedule for Approval within such period of time and in accordance with any other instructions of Midland Heart.
- 13.3 Once the Maintenance Schedule has been Approved, the Supplier will only start such planned maintenance (**Permitted Maintenance**) in accordance with the Maintenance Schedule.

- 13.4 The Supplier will give as much notice as is reasonably practicable to Midland Heart before carrying out any Emergency Maintenance.
- 13.5 The Supplier will carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Goods and Services has developed a fault, on reasonable notice to Midland Heart. Any such maintenance will be carried out to avoid or minimise disruption to the ICT Environment and the Goods and Services.
- 14 **Midland Heart Remedies For Default**
- 14.1 **Remedies**
- 14.1.1 Without affecting any other right or remedy of Midland Heart, if the Supplier commits any Default of this Agreement then Midland Heart can (whether or not any part of the Goods and/or Services have been delivered) do any of the following:
- (a) at Midland Heart's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Goods and/or Services;
 - (b) carry out, at the Supplier's expense, any work necessary to make the Goods and/or Services comply with this Agreement; or
 - (c) instruct the Supplier to comply with the Rectification Plan Process; or
 - (d) terminate the Agreement in accordance with clause 22.1.
- 14.2 **Rectification Plan Process**
- 14.2.1 Where Midland Heart has instructed the Supplier to comply with the Rectification Plan Process pursuant to clause 14.1.1(c):
- (a) the Supplier will submit a draft Rectification Plan to Midland Heart for review within 10 Working Days from the date of Midland Heart's instructions.
 - (b) The draft Rectification Plan will set out: (i) details of the Default, including a root cause analysis; (ii) the actual or anticipated effect of the Default; and (iii) the steps which the Supplier proposes to take to rectify the Default and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 14.2.2 The Supplier will immediately provide to Midland Heart any further documentation that Midland Heart requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause, either Party may refer the matter to be determined by an expert in accordance with clause 25.
- 14.2.3 Midland Heart may reject the draft Rectification Plan if it: (a) is insufficiently detailed to be capable of proper evaluation; (b) will take too long to complete; (c) will not prevent reoccurrence of the Default; and/or (d) will rectify the Default but in a manner which is unacceptable to Midland Heart.

14.2.4 Midland Heart will notify the Supplier in writing if it consents to the draft Rectification Plan as soon as reasonably practicable. If Midland Heart rejects the draft Rectification Plan, Midland Heart will give reasons for its decision in writing and the Supplier will prepare a revised Rectification Plan. The Supplier will submit the revised draft of the Rectification Plan to Midland Heart for review within **five** Working Days of Midland Heart's written notice rejecting the first draft.

14.2.5 If Midland Heart consents to the Rectification Plan, the Supplier will immediately start work on the actions set out in the Rectification Plan.

15 **Assignment and sub-contracting**

15.1 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).

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

15.3 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.

16 **Intellectual Property Rights**

16.1 Each Party will retain all Pre-existing Intellectual Property in any materials, Midland Heart Data, Goods (including but not limited to hardware) or Software provided to the other Party for the purposes of this Agreement.

16.2 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.

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

16.4 Where the Intellectual Property Rights in any materials still belong to the Supplier due to the operation of law pursuant to clause 16.3, the Supplier will grant Midland Heart a perpetual Supplier Intellectual Property Licence.

16.5 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.

17 **Confidentiality**

17.1 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.

17.2 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.

18 **Security**

18.1 The Supplier will comply with Midland Heart's ICT Policy and will ensure that the Security Management Plan produced by the Supplier fully complies with the ICT Policy.

18.2 Midland Heart will notify the Supplier in writing of any changes or proposed changes to the ICT Policy.

18.3 **Malicious Software**

18.3.1 The Supplier will throughout the Term use the latest versions of anti-virus and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

18.3.2 Notwithstanding clause 18.3.1, if Malicious Software causes loss of operational efficiency or loss or corruption of Midland Heart Data, the Parties will assist each other to mitigate any losses and to restore the Goods and/or Services to its desired operating efficiency.

18.3.3 Any cost arising out of the actions of the Parties taken in accordance with clause 18.3.2 will be borne as follows:

(a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or Midland Heart Data (whilst under the Supplier's control); and

(b) by Midland Heart if the Malicious Software originates from Midland Heart Software or Midland Heart Data (whilst it was under Midland Heart's control).

18.4 **Protection of Midland Heart Data**

18.4.1 The Supplier will not delete or remove any proprietary notices contained within or relating to the Midland Heart Data.

18.4.2 The Supplier will not store, copy, disclose, or use the Midland Heart Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise Approved by Midland Heart.

18.4.3 To the extent that Midland Heart Data is held and/or processed by the Supplier, the Supplier will supply that Midland Heart Data to Midland Heart as requested by Midland Heart and in the format requested by Midland Heart writing.

18.4.4 The Supplier will take responsibility for preserving the integrity of Midland Heart Data and preventing the corruption or loss of Midland Heart Data.

18.4.5 The Supplier will perform secure back-ups of all Midland Heart Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Supplier will ensure that such back-ups are available to Midland Heart at all times upon request and are delivered to Midland Heart at no less than six monthly intervals.

18.4.6 The Supplier will ensure that any system on which the Supplier holds any Midland Heart Data, including back-up data, is a secure system that

complies with Midland Heart's ICT Policy and the Security Management Plan.

- 18.4.7 If at any time the Supplier suspects that the Midland Heart Data is corrupted, lost or sufficiently degraded, then the Supplier will notify Midland Heart immediately and inform Midland Heart of the remedial action the Supplier proposes to take.
- 18.4.8 If the Midland Heart Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, Midland Heart may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Midland Heart Data to the extent and in accordance with the requirements set out in the Business Continuity and Disaster Recovery Plan and the Supplier will do so as soon as practicable but not later than five Working Days from the date of receipt of Midland Heart's notice; and/or
 - (b) itself restore or procure the restoration of Midland Heart Data, and will be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements set out in the Business Continuity and Disaster Recovery Plan.

19 **Data Protection**

- 19.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 19.2 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.
- 19.3 The Supplier will:
- 19.3.1 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;
 - 19.3.2 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;
 - 19.3.3 ensure that all personnel who have access to and/or process personal data keep the personal data confidential;
 - 19.3.4 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;
 - 19.3.5 assist Midland Heart in responding to any request from a data subject without undue delay;
 - 19.3.6 notify Midland Heart immediately within 24 hours when there is an actual or suspected personal data breach;

- 19.3.7 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;
 - 19.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for and contribute to audits, including inspections, conducted by Midland Heart or Midland Heart's appointed auditor; and
 - 19.3.9 immediately inform Midland Heart within 24 hours if, the Supplier believes Midland Heart's instruction infringes the Data Protection Legislation.
- 19.4 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.
- 19.5 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:
- 19.5.1 any breach by the Supplier of any of its obligations under this Agreement; and
 - 19.5.2 the Supplier acting outside or contrary to the lawful processing instructions of Midland Heart in respect of the processing of personal data.

20 **Liability**

- 20.1 Nothing in the Agreement will be construed to limit or exclude:
- 20.1.1 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
 - 20.1.2 the Supplier's liability for the indemnities at clauses 16.5 (Intellectual Property Rights), 19.5 (Data Protection) and 24.2 (Prevention of Fraud and Corruption) and 26.4 (Modern Slavery) and if applicable, in the TUPE Schedule of this Agreement;
- 20.2 Subject always to clause 20.1:
- 20.2.1 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;
 - 20.2.2 the total liability of Midland Heart in respect of for 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;

- 20.2.3 except in the case of claims arising under clauses 16.5 and 24.2, 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.
- 20.3 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.
- 21 **Force Majeure**
- 21.1 Provided it has complied with clause 21.3, 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.
- 21.2 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.
- 21.3 The Affected Party will:
- 21.3.1 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
 - 21.3.2 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).

21.4 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.

22 Termination

22.1 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.

22.2 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:

22.2.1 the other Party commits a material breach and fails to remedy it within 45 days after being notified in writing to do so;

22.2.2 the other Party breaches any provisions of clause 19; or

22.2.3 an Insolvency Event occurs to the other Party.

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

22.4 Subject to clause 11.5, 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.

22.5 Despite any other right or remedy Midland Heart may have, if Midland Heart terminates the Agreement pursuant to clauses 8.5, 8.6, 22.1, 22.2 or 22.3, the Supplier will pay a pro-rata refund of any Charges prepaid by Midland Heart under the Agreement.

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

22.6.1 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;

22.6.2 assist Midland Heart and any incoming supplier of the Deliverables in accordance with clause 23; and

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

22.7 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, 3, 4, 5, 6, 7, 8, 9, 12, 14, 15.1, 17, 18, 19, 20, 21, 21.1, 23, 24.2, 25, 26, 27 and 29.

23 Exit and Service Transfer

23.1 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.

23.2 Midland Heart will pay the Transitional Services Charges for the Transitional Assistance Services, except in circumstances where Midland Heart has terminated pursuant to clauses 8.5, 8.6, 22.1, 22.2 or 22.3.

24 Prevention of Fraud and Corruption

24.1 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.

24.2 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 24.

25 Dispute Resolution

25.1 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.

25.2 On service of the Dispute Notice, the Parties will attempt in good faith to resolve the Dispute in the following order of stages:

Escalation point of contact	Number of days to resolve	Procedure
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 Centre for Effective Dispute Resolution. To initiate the mediation, a Party must serve notice in writing (Alternative Dispute Resolution Notice) 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 29

25.3 The commencement of mediation will not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 29.

26 **Modern Slavery Act 2015**

26.1 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.

26.2 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.

26.3 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.

26.4 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.

27 **General**

27.1 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.

27.2 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.

27.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

27.4 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.

27.5 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.

27.6 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.

27.7 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.

28 **Notices**

28.1 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 28.3, 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.

28.2 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.

28.3 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 28.1.

29 **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.

30 **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:

Agreement means the:

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

Alternative Dispute Resolution Notice has the meaning set out in clause 25.2;

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;

Achieve means in respect of a Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and **Achieved** and **Achievement** will be construed accordingly;

Affected Party has the meaning set out in clause 21.1;

Approval means the prior written consent of Midland Heart and **Approve** and **Approved** will be construed accordingly;

Business Continuity and Disaster Recovery Plan means the plan prepared pursuant to clause 10 as may be amended from time to time;

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;

Critical Service Level Failure means any instance of critical service level failure set out in the Order Form or Part 2 of Schedule 2;

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;

Default means any breach of the obligations of the Supplier (including but not limited to including abandonment of the Agreement in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its sub-contractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Agreement and in respect of which the Supplier is liable to the Midland Heart;

Delay means:

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Delivery Plan;

Delay Payments means the amounts payable by the Supplier to Midland Heart in respect of a delay in respect of a Milestone as specified in the Delivery Plan;

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;

Delivery Plan means the plan agreed by the Parties before the Commencement Date and as set out in the Order Form or Schedule 5;

Dispute has the meaning set out in clause 25.1;

Dispute Notice has the meaning set out in clause 25.1;

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A Social Security Administration Act 1992;

Emergency Maintenance means ad hoc and unplanned maintenance provided by the Supplier where:

- (a) Midland Heart reasonably suspects that the ICT Environment or the Goods and/or Services, or any part of the ICT Environment or the

Goods and/or Services, has or may have developed a fault, and notifies the Supplier of the same; or

- (b) the Supplier reasonably suspects that the ICT Environment or the Goods and/or Services, or any part the ICT Environment or the Goods and/or Services, has or may have developed a fault;

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

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 8;

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;

General Anti-Abuse Rule means the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

Goods means the goods to be supplied by the Supplier to Midland Heart under the Agreement and as detailed in the Order Form or Part 1 of Schedule 2;

Halifax Abuse Principle means the principle explained in the CJEU Case C-255/02 Halifax and others;

HMRC means Her Majesty's Revenue and Customs;

ICO means the Information Commissioner's Office;

ICT Environment means the Midland Heart System and the Supplier System;

ICT Policy means Midland Heart's information and communication technologies policy;

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;

Installation Works means the process of installing a software application in Midland Heart or Midland Heart's nominated hosting environment. Installation will include all

necessary works specified by Midland Heart from readying the application for Midland Heart testing to promotion to a live production environment;

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;

Losses means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** will be interpreted accordingly;

Maintenance Schedule has the meaning set out in clause 13.1;

Malicious Software means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

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

Midland Heart Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of Midland Heart's Confidential Information, and which:
 - i are supplied to the Supplier by or on behalf of Midland Heart; or
 - ii the Supplier is required to generate, process, store or transmit pursuant to the Agreement; or
- (b) any personal data for which Midland Heart is the Controller;

Midland Heart Intellectual Property Licence means a royalty-free, revocable, non-exclusive, non-perpetual, non-sublicensable and non-transferable licence to use any materials, Midland Heart Software or Midland Heart Data 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;

Midland Heart Software means any software identified as such in the Agreement together with all other software which is owned by or licensed to Midland Heart and which is or will be used by the Supplier for the purposes of providing the Goods and/or Services;

Midland Heart System means Midland Heart's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by

Midland Heart or the Supplier in connection with the Agreement which is owned by or licensed to Midland Heart by a third party and which interfaces with the Supplier System or which is necessary for Midland Heart to receive the Goods and/or Services;

Milestone means an event or task described in the Delivery Plan which, if applicable, must be completed by the relevant Milestone Date;

Milestone Date means the target date set out against the relevant Milestone in the Delivery Plan by which the Milestone must be Achieved;

Milestone Payment means the payment due for the relevant Milestone in the Delivery Plan as set out in Schedule 5;

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - i a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion;

Open Source Software means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other Intellectual Property Rights in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

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;

Permitted Maintenance has the meaning set out in clause 13.3;

Persistent Breach means 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;

Quality Plans has the meaning given in clause 6.2;

Rectification Plan means the rectification plan pursuant to the Rectification Plan Process;

Rectification Plan Process means the process set out in clause 14.2;

Relevant Tax Authority means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;

Replacement Goods and/or Services means any goods and/or services which are substantially similar to any of the Goods and/or Services and which Midland Heart receives in substitution for any of the Goods and/or Services following the termination or expiry of the Agreement, whether those services are provided by Midland Heart internally or by any third party (including but not limited to any Replacement Supplier);

Replacement Supplier means any third party supplier of Replacement Goods and/or Services appointed by Midland Heart from time to time;

Satisfaction Certificate means the certificate granted by Midland Heart when the Supplier has Achieved a Milestone or a Test;

Security Management Plan means the Supplier's security management plan provided by the Supplier to Midland Heart before the Commencement Date and as updated 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 Part 1 of Schedule 2;

Service Credits means a reduction in the Charges attributable to a Service Failure as set out in Part 2 of Schedule 2;

Service Failure means a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels as set out in Part 2 of Schedule 2;

Service Levels means the service levels to which the Services are to be provided, as set out in Part 2 of Schedule 2;

Software means the Midland Heart Software and the Supplier Software;

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

Standards means any:

- (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; and

- (b) relevant Government codes of practice and guidance applicable from time to time;

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 19.4;

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 Equipment means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from Midland Heart) in the performance of its obligations under the Agreement;

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 (including Supplier Software and Third Party Software); 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);

Supplier Software means any software which is proprietary to the Supplier (or an affiliate of the Supplier) and identified at the Commencement Date together with all other such software which is not identified at the date of the Agreement but which is or will be used by the Supplier or any sub-contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for Midland Heart to receive the benefit of and/or make use of the Services in order for Midland Heart to receive the benefit of and/or make use of the Services);

Supplier System means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Midland Heart System);

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;

Test and Testing means any tests required to be carried out pursuant to the Agreement as set out in the Test Strategy Plan or elsewhere in the Agreement and **Tested** will be construed accordingly;

Test Issue means any variance or non-conformity of the Deliverables from their requirements as set out in the Agreement;

Test Strategy Plan means a plan agreed by the Parties before the Commencement Date:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the achievement of Milestones;

Third Party Software means any software identified as such in the Agreement together with all other software which is proprietary to any third party (other than an affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);

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 8;

Transitional Assistance Services means the services to be provided by the Supplier to Midland Heart pursuant to clause 23 (Exit and Service Transfer) in order to facilitate the transfer of the Deliverables 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

[Part 1: Goods and/or Services

Part 2: Service Level; Service Failure; Critical Service Failure; Service Credits]

Schedule 3

Charges

- *Insert details of the Charges due for the 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 the 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 3rd 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

Delivery Plan

[Drafting note: Midland Heart to populate Delivery Plan with input from Supplier]

The Delivery Plan is set out below:

<i>Milestone</i>	<i>Deliverables</i>	<i>Duration</i>	<i>Milestone Date</i>	<i>Midland Heart's responsibilities</i>	<i>Milestone Payments</i>	<i>Delay Payments</i>
<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>

Schedule 6

Testing

[Drafting note: Parties to populate Testing Schedule as appropriate]

[Key principles for the Parties to consider.

- *Insert details of the different Testing activities to be undertaken, including the preparation and agreement of the Testing Strategy Plan;*
- *Insert details for a Test success criteria;*
- *Insert a procedure for Testing;*
- *Insert what steps to take when a Test Issue arises, including how to document and resolve such Test Issues;*
- *If applicable, insert details on how Testing quality will be audited; and/or*
- *Insert details surrounding when and how a Satisfaction Certificate will be issued.]*

Schedule 7

Business Continuity and Disaster Recovery

[Key principles for the Parties to consider:

- *Insert timescales for the Supplier to prepare a written Business Continuity and Disaster Recovery Plan, including the requirement for the Supplier to follow agreed processes and arrangements in order to ensure business continuity and the recovery of Services in the event of a disaster;*
- *If applicable, insert details surrounding any Approvals to be given for the Business Continuity and Disaster Recovery Plan;*
- *Insert details of the principles and processes to be included in a Business Continuity and Disaster Recovery Plan;*
- *Insert requirements to test and steps to follow when testing the Business Continuity and Disaster Recovery Plan;*
- *If applicable, insert provisions to allow for a review of the Business Continuity and Disaster Recovery Plan by the Parties; and/or*
- *Insert details surrounding the circumstances in which the Business Continuity and Disaster Recovery Plan may be invoked.]*

Schedule 8

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 on 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 on 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.]*