

BMI HEALTHCARE STANDARD TERMS AND CONDITIONS – SUPPLY OF PRODUCTS AND/OR SERVICES

(reference 10-18)

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to the Contract.

Authorised Recipients: members of BMI's Group other than BMI and any third party to whom the Parties agree the Products and/or Services should be supplied.

BMI: shall have the same meaning as in the Commercial Terms (for the avoidance of doubt: BMI Healthcare Limited, whose registered company number is 02164270 and whose registered office as at the date of these Terms and Conditions is BMI Healthcare House, 3 Paris Garden, Southwark, London SE1 8ND).

BMI EDI System: the electronic data interchange system used by BMI for the purposes of supplier invoicing.

Business Day: 0800 – 1800 on a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Change of Control: has the meaning given in section 1124 of the Corporation Tax Act 2010.

Commencement Date: the date specified in the Commercial Terms or, if none, the earlier of:

- (a) the date on which the Supplier accepts the Commercial Terms; and
- (b) the Supplier doing any act consistent with fulfilling the Commercial Terms.

Commercial Terms: means the applicable commercial terms expressly agreed between BMI and the Supplier for the supply of specific Products and/or Services, to the extent the same are documented in writing (excluding email) in a document headed 'Commercial Terms'.

Confidential Information: has the meaning given in clause 17.1.

Consignment Delivery Date: has the meaning given in clause 4.2.

Consignment Product: has the meaning given in clause 4.1.

Consignment Product Replenishment Order: has the meaning given in clause 4.2.

Contract: these Terms and Conditions and, if any, the Commercial Terms and any schedules, appendices or annexes attached to the Commercial Terms, as may be varied from time to time in accordance with the Contract.

Contract Managers: means the contract managers for each of BMI and the Supplier, as initially set out in the Commercial Terms (if there are any) or as otherwise first advised between the Parties and who may be subsequently changed from time to time in accordance with clause 13.5.

Cost Reduction: has the meaning given in clause 10.5.

Data Controller: has the meaning set out in the Data Protection Legislation.

Data Protection Legislation: the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018, and any and all additional, supplementary or replacement applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the United Kingdom Information Commissioner.

Deliverables: all documents and materials developed by the Supplier as part of the Services.

Delivery: has the meaning given in clause 6 and **Deliver** and **Delivered** shall be construed accordingly.

Delivery Date: has the meaning given in clause 6.1 and clause 8.2.

Delivery Location: the location specified in an Order for delivery of those Products or the supply of those Services to which the Order relates.

Dispute: has the meaning given in clause 23.1.

Excess Products: has the meaning given in clause 6.5.

Force Majeure Event: an event beyond the control of a Party (or any person acting on its behalf), which by its nature could not have been foreseen by such Party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources (not attributable to any action or failure to act of the Supplier or any of its subcontractors) but excludes industrial dispute.

Good Clinical Practice: means the exercise of such standards, practices, methods and procedures conforming to the Law and that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical supplier providing products similar to the Products or clinical services the same or similar to the Services at the time the Products and/or Services are provided.

Good Industry Practice: means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of products similar to the Products and/or supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract, including in accordance with any codes of practice published by relevant trade associations.

Group: in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

holding company and **subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

Initial Term: has the meaning given in the Commercial Terms or, if not stated, the period of one year from the Commencement Date.

Insolvency Event: means any Party:

- (a) suspending, or threatening to suspend payment of its debts, being unable to pay its debts as they fall due, admitting inability to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) commencing negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or making a proposal for, or entering into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies, or the solvent reconstruction of that other Party;
- (c) having a petition filed, a notice given or a resolution passed or order made, for or in connection with the winding up of that Party other than for the sole purpose of a scheme for a solvent amalgamation of that Party with one or more other companies, or the solvent reconstruction of that Party,

or any event or proceeding with respect to a Party that has an effect equivalent or analogous to any of the events set out above.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

Law: means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any applicable European Union directive, regulation, decision or law;
- (c) any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972;

(d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales (or Scotland, as the case may be);

(e) requirements set by any regulatory body; and

(f) any applicable code of practice,

in each case, as applicable in England and Wales (or Scotland, as the case may be).

MHRA: means the Medicines and Healthcare products Regulatory Agency and/or any successor, replacement, or equivalent recognised industry body.

month: a calendar month.

Order: an order for Products and/or Services submitted by BMI in accordance with clause 3.

Order Number: the reference number to be applied to an Order or Consignment Stock Replenishment Request (if relevant) by the Supplier in accordance with clause 3.6.

Parties: means BMI and the Supplier and **Party** shall mean either of them.

Personal Data: has the meaning set out in the Data Protection Legislation and shall include the names and contact details of any BMI personnel provided to the Supplier under the Contract.

Prices: the prices of the Products as determined in accordance with clause 10.

Product Recall: means a recall of one or more Products supplied to BMI as directed or otherwise required by Law, the Supplier or the MHRA.

Products: means those products set out in Schedule 2 of the Contract (and if there is no Schedule 2 shall mean the products of the Supplier in respect of which BMI may place an Order).

Prohibited Acts: means the Supplier:

- (a) offering, giving or agreeing to give any officer or employee of BMI any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with BMI or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with BMI, and/or
- (b) in connection with the Contract having paid or agreed to pay any commission other than the Price.

Rejected Products: has the meaning given in clause 5.5.

Replenishment: has the meaning given in clause 4.2.

Representatives: has the meaning given in clause 17.2.

Services: means those services, including any Deliverables, set out in Schedule 2 of the Contract (and if there is no Schedule 2 shall mean the services of the Supplier in respect of which BMI may place an Order).

Specified Delivery Date: the date specified in an Order for delivery of those Products or the supply of the Services to which the Order relates.

Supplier: has the meaning given in the Commercial Terms and if there are none, shall mean the supplier of the Products and/or Services.

Supplier Staff: means those employees and subcontractors employed or otherwise engaged by the Supplier in the Delivery of the Products and/or Services or otherwise attending BMI premises in connection with the Contract.

Term: the Initial Term and any extension thereto agreed in accordance with clause 2.4.

Terms and Conditions: means these terms and conditions (reference 10-18).

VAT: value added tax chargeable under English law for the time being and any similar, additional tax.

year: the twelve (12) month period starting on the Commencement Date and each subsequent consecutive twelve (12) month period.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules (if any) form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of the Contract and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of the Contract.
- 1.9 A reference to **writing** or **written** excludes faxes and e-mail except where expressly stated.
- 1.10 Any obligation in the Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 References to clauses and schedules are to the clauses and schedules of the Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. COMMENCEMENT AND TERM AND COMPLIANCE WITH LAW

- 2.1 The Contract shall commence on the Commencement Date.
- 2.2 For the avoidance of doubt, BMI does not accept, and hereby rejects, any terms offered or quoted by the Supplier, either before or after the Commencement Date.
- 2.3 The Contract shall remain in effect for the Term, unless it is terminated earlier in accordance with the terms of the Contract.
- 2.4 The Parties may at any time agree an extension to the Initial Term, such agreement to be recorded in writing.
- 2.5 Each Party warrants and represents that it shall perform its obligations hereunder in compliance with all applicable Law.
- 2.6 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits (including, without limitation, CQC registration if applicable) needed to supply the Products and Services and perform its obligations in accordance with the terms of the Contract.
- 2.7 If the Supplier is subject to CQC registration, it shall promptly notify BMI of any "requires improvement or inadequate" rating it receives from the CQC and provide BMI with details of remedial actions it is taking to improve such rating together with regular updates on such remedial action until such time as its rating improves.

3. THE ORDER PROCESS

- 3.1 During the Term, and on a non-exclusive basis, the Supplier shall sell and BMI shall purchase such Products and/or Services as BMI may order (or, in the case of Consignment Products, use) pursuant to the Contract. BMI shall not be obligated to purchase (or use) a minimum quantity of the Products or minimum level of Services or indeed any Products and/or Services.
- 3.2 The Supplier shall not, without the prior written approval of BMI's Contract Manager, enter into any agreement or arrangement with, or supply any Products (or products) or Services (or services) to, any individual BMI facilities. If the Supplier is contacted directly by an individual BMI facility to supply any Products (or products) or Services (or services) it shall notify BMI's Contract Manager.
- 3.3 Unless provided otherwise in the Contract, each Order for Products and/or Services by BMI shall be deemed to be an offer by BMI to buy Products and/or Services subject to the Contract and such offer shall be considered accepted when the Supplier either expressly gives notice of acceptance or fulfils the Order in accordance with clause 6.1 (and specifically the timescales set out therein).
- 3.4 The Supplier shall supply and Deliver all Products and Services for which BMI has issued, and the Supplier has accepted, an Order.
- 3.5 No terms or conditions endorsed upon, delivered with or contained in the Supplier quotation, acknowledgement

or acceptance of Order or Consignment Product Replenishment, specification or any other document shall form part of the Contract and the Supplier expressly waives any right which it otherwise might have to rely on such terms and conditions.

3.6 Upon assignment of an Order Number by BMI, the Supplier shall use such Order Number in all subsequent correspondence relating to the Order.

3.7 BMI may at any time prior to despatch of the Products or supply of the Services amend or cancel an Order by written notice (including by email or facsimile to such email or facsimile notified to BMI by the Supplier from time to time) to the Supplier without liability.

3.8 BMI may from time to time give the Supplier forecasts. Forecasts are non-binding on BMI and will not oblige BMI to order any Products or Services from the Supplier, however the Supplier shall at all times maintain sufficient stocks of Products and/or resources to enable it to meet BMI's forecasts or in the absence of a forecast, sufficient stocks and resources to meet the demand based upon historic demand in the past 12 months.

4. CONSIGNMENT PRODUCTS

4.1 From time to time the Parties may agree that an agreed quantity of Products may be retained at a BMI site for a specified period, such Products being **Consignment Products**. In the absence of such agreement, this clause 4 and associated provisions in the Contract (including those regarding Replenishment, Consignment Product Replenishment Order and Consignment Delivery Date) shall not apply.

4.2 Should BMI wish to use a Consignment Product, the provisions of this clause 4 shall apply in place of the general arrangements regarding offer and acceptance as set out in the Contract. Specifically, maintaining Consignment Products as agreed at a BMI location shall constitute an offer by the Supplier, which BMI shall be considered to have accepted by using a Consignment Product. On such use, BMI shall issue an order specifying the number and type of Consignment Product required (such order being a **Consignment Product Replenishment Order**) and the Supplier shall replenish the stock of Consignment Product at such BMI site by the date specified in the Consignment Product Replenishment Order or, if no such date is specified, within two Business Days of the Supplier's receipt of the same (such date or specified date being the **Consignment Delivery Date**), along with an invoice for the Consignment Product used by BMI (the replenishment of Consignment Products in accordance with this clause 4.2 being **Replenishment**).

4.3 Without prejudice to clause 5.1(e) and at no cost to BMI, the Supplier shall ensure that at all times, Consignment Products have a shelf-life of at least 2 (two) months before their use-by date. Should the Supplier identify certain Consignment Products require replacing in order to fulfil the Supplier's obligations under this clause 4.3, it shall liaise with BMI over the timing of such replacement and arrange for such replacement (at no cost to BMI), meeting BMI's reasonable requirements in relation to the same.

4.4 Title in Consignment Products shall pass on BMI's use of the same, but risk shall pass on delivery.

5. THE PRODUCTS

5.1 Title in all Products must be free and clear of charge or encumbrance. In addition, the Supplier warrants that the Products shall:

- (a) be new, unused and previously unsold at the time of Delivery or, in the case of Consignment Products, at the time of Replenishment;
- (b) (subject to clause 5.2) conform with the specification, description or sample on which they were originally offered to and accepted by BMI;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by BMI;
- (d) be free from defects in design, material and workmanship;
- (e) as at the Delivery Date (or Consignment Delivery Date in the case of Consignment Products), have a minimum shelf-life of 12 (twelve) months before their use-by date;
- (f) not infringe the Intellectual Property Rights of any third party; and
- (g) comply with the Law including, without limitation and where applicable, CE marking.

5.2 The Supplier shall not alter or substitute any of the Products without the prior written consent of BMI. Where such alteration or substitution is agreed, the altered or substituted Product(s) shall be, without limitation, of at least equal specification to the original Product(s), fit for all purposes to which the original Product(s) might reasonably have been used for and at no higher price, unless BMI otherwise agrees in writing in advance.

5.3 The Supplier shall ensure that the Products are properly packed, labelled and secured (including in compliance with any specific requirements of the Contract) in such manner as to enable them to reach their destination in good condition.

5.4 The Supplier shall comply with all applicable Law relating to the packing, packaging, marking, storage, handling, and delivery of the Products.

5.5 If any Products delivered to BMI do not comply with this clause 5, or are otherwise not in conformity with the terms of the Contract, then, without limiting any other right or remedy that BMI may have, BMI may reject those Products (such Products being **Rejected Products**) and (at its sole discretion):

- (a) rescind the Order; or
- (b) require the Supplier to repair or replace (at BMI's option) the Rejected Products at the Supplier's risk and expense within one (1)

- Business Day of being requested to do so;
or
- (c) require the Supplier to repay the price of the Rejected Products in full; and
 - (d) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Rejected Products.
- 5.6 The Supplier shall collect all Rejected Products and Excess Products at its expense within seventy-two (72) hours of being notified of the same. Failure to collect any Products within such time (or such other time as may be agreed in writing with BMI) shall entitle BMI to charge the Supplier for storage of such Products.
- 5.7 BMI's rights and remedies under this clause 5 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.
- 5.8 If the Supplier fails to promptly repair or replace Rejected Products in accordance with clause 5.5(b), BMI may, without affecting its rights under clause 5.5(d), obtain substitute products from a third party supplier, or have the Rejected Products repaired by a third party, and the Supplier shall reimburse BMI in full for the costs it incurs in doing so.
- 5.9 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by or to the Supplier or by the MHRA or any other regulatory or other body in relation to the Products, the Supplier shall promptly provide the BMI Contract Manager with a copy of such reports, notices, alerts or other communications, and take all reasonable efforts to minimise the impact of any quality, performance and/or safety issues and advise BMI of the status of any remedial efforts, including efforts to prevent recurrence, being undertaken.
- 5.10 Upon receipt of any such reports, notices, alerts or other communications pursuant to clause 5.9, BMI shall be entitled to request such further information as it may require from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request, ensuring candour in any response and supplying all material and relevant information.
- 5.11 The Parties agree to cooperate with each other in the event of a Product Recall and/or MHRA-issued alert in relation to the Products. Each Party agrees to maintain suitable records such as associated Order Numbers and the quantities Delivered and batch traceability information where appropriate in respect of all sales of the Products which are the subject of a Product Recall.
- 5.12 The Supplier hereby indemnifies BMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BMI arising out of or in connection with:
- (a) any breach of this clause 5;
 - (b) any Product Recall or MHRA-issued alert in respect of the Products;
 - (c) where applicable, contacting patients, advising, screening, testing, treating, retreating or otherwise providing healthcare to patients which is required in relation to the Products;
 - (d) where applicable, any revision surgery required in relation to the Products including, without limitation, reasonable anaesthetist or consultant fees;
 - (e) any claim made against BMI for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products; and
 - (f) any claim made against BMI, the Secretary of State or any NHS commissioners by a third party by virtue of section 2 of the Consumer Protection Act 1987 in respect of the use of defective Products by BMI or any of its sub-contractors.
- 6. DELIVERY**
- 6.1 Unless otherwise stated in the applicable Commercial Terms, the Supplier shall deliver each Order to the Delivery Location on the Specified Delivery Date or, where there is no Specified Delivery Date, within two (2) Business Days of the Supplier's receipt of each Order (such date being the **Delivery Date**), and time shall be of the essence for all deliveries and delivery of Consignment Product Replenishment Orders made under the Contract.
- 6.2 Unless otherwise stipulated by BMI in the Order, deliveries (and Replenishments) shall only be accepted by BMI during a Business Day.
- 6.3 Delivery of an Order (or Consignment Product Replenishment Order) shall be complete on the completion of unloading of the same at the Delivery Location and BMI signing to confirm receipt of the Products. Any signature for receipt of the Products shall not constitute acceptance of such Products.
- 6.4 BMI shall not be deemed to have accepted any Products until it has had five (5) Business Days to inspect them following Delivery. BMI's acceptance of the Products is without prejudice to the Supplier's obligations in clause 5 and BMI's rights and remedies under the Contract and in Law in the event of a breach thereof.
- 6.5 If Products are delivered to BMI in excess of the quantities ordered (such Products being **Excess Products**), BMI shall not be bound to pay for such Excess Products and such Excess Products shall remain at the Supplier's risk and the provisions of clause 5.6 shall apply.
- 6.6 Each Delivery shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order (or Consignment Product Replenishment Order) and the type and quantity of Products included in the same, including the code numbers of the Products and instructions for use.

- 7. TITLE AND RISK**
- Unless otherwise stated in the Contract, the title and risk in the Products and/or the Deliverables shall pass to BMI on Delivery.
- 8. SUPPLY OF SERVICES**
- 8.1 The Supplier shall from the Specified Delivery Date or such other date agreed by the Parties and for the duration of this Contract provide the Services to BMI at the Delivery Location in accordance with the terms of the Contract.
- 8.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by BMI (such date being the **Delivery Date**), and time shall be of the essence for the provision of the Services under the Contract.
- 8.3 In providing the Services, the Supplier shall:
- (a) perform the Services with the best care, skill and diligence in accordance with Good Industry Practice and Good Clinical Practice;
 - (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (c) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose;
 - (d) provide such equipment and such other items as are required to provide the Services;
 - (e) ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (f) observe all health and safety rules and regulations and any other security requirements that apply at BMI's premises; and
 - (g) not do or omit to do anything which may cause BMI to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 8.4 The Supplier hereby indemnifies BMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BMI arising out of or in connection with any claim made against BMI, the Secretary of State or any NHS commissioners by a third party by virtue of section 2 of the Consumer Protection Act 1987 in respect of the use of defective Products by the Supplier and/or the Supplier Staff in the provision of the Services.
- 8.5 The Supplier warrants that the provision of the Services and/or Deliverables shall not infringe the Intellectual Property Rights of any third party and the Supplier hereby indemnifies BMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BMI arising out of or in connection with any claim made against BMI for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Services and/or Deliverables.
- 8.6 The Supplier shall meet or exceed the level of performance required for any service level specified in the Order and shall provide such performance data and other information as BMI may reasonably request at such times as BMI may reasonably require evidencing performance of the service levels.
- 8.7 If the Supplier fails to meet any service level specified in the Order, then, without prejudice to BMI's rights under the Contract or in law, the Supplier shall promptly:
- (a) investigate the underlying causes of the failure to meet the service level;
 - (b) prepare and deliver to BMI a report identifying the service failure and, where possible, its causes;
 - (c) use all reasonable efforts to minimise the impact of the service failure and prevent it from recurring; and
 - (d) correct the service failure and begin meeting the service levels.
- 8.8 If the Supplier fails to meet any service level, BMI shall become entitled to such service credits specified in the Order corresponding to the relevant service failure and the Supplier shall deduct the applicable service credit from the Prices payable to the Supplier or (if requested by BMI) pay the service credit to BMI.
- 8.9 The Supplier acknowledges and agrees that payment of any service credit by the Supplier is a price adjustment and not an estimate of the loss or damage that may be suffered by BMI and is without prejudice to any entitlement BMI may have to recover losses from the Supplier.
- 9. REMEDIES**
- 9.1 If an Order is not delivered or Replenishment is not made, or the Supplier fails to perform the Services, in accordance with the Contract, then, without limiting any other right or remedy BMI may have, BMI may:
- (a) refuse to take any subsequent attempted delivery of the Order or Replenishment or accept any subsequent performance of the Services;
 - (b) obtain substitute products and/or services from another supplier and recover from the Supplier any costs and expenses reasonably incurred by BMI in obtaining such substitute products and/or services; and

- (c) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order and/or provide the Services on the Delivery Date or the Replenishment on the Consignment Delivery Date,

provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by BMI's failure to comply with its obligations under the Contract.

9.2 BMI's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. PRICES

10.1 Subject to clause 10.5, the Prices for the Products and/or Services shall be the prices set out in the relevant Schedule of the Contract and the Supplier warrants that these are complete and accurate. For the avoidance of doubt, the Prices shall apply throughout the Term.

10.2 The Prices are exclusive of amounts in respect of VAT. BMI shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of the Products and/or Services.

10.3 The Prices are inclusive of the costs of packaging, containers, shipping, delivery, insurance, storage, Intellectual Property Rights licence fees and/or royalties, carriage of the Products, all costs and expenses incurred by the Supplier in connection with the Services, and any other similar expenses.

10.4 The Supplier shall use all reasonable endeavours during the Term to reduce its manufacturing, supply, and other costs for the provision of the Products and/or Services, including implementing cost savings initiatives, seeking more competitive supplies of raw materials and equipment and opportunities to improve the Services and reduce the Prices.

- 10.5 The Supplier agrees that if at any time during the Term:
- (a) it sells any Product to a comparable customer for less than the Price then in force for that Product, or
 - (b) it identifies any savings (taking into account current market pricing for comparable services, service quality, cost-to-serve and other relevant factors and efficiency indicators as well as price),

it shall reduce the relevant Price to match the lower price for so long as the lower price is available (but for no longer) and/or the saving and shall refund BMI the difference between the Price and the lower price and/or saving in respect of its purchases of the Product after the Supplier began charging the lower price and/or saving (such difference being a Cost Reduction). For the purposes of this clause, "comparable" means a customer that purchases products or supplies services in substantially similar volumes as BMI on broadly similar terms and conditions.

10.6 The Supplier shall provide all such evidence as BMI may reasonably request in order to verify:

- (a) invoices submitted by the Supplier; and
- (b) Cost Reductions achieved by the Supplier (including the dates on which Cost Reductions were achieved).

In addition, the Supplier shall, on request, allow BMI to inspect and take copies of (or extracts from) all relevant records and materials of the Supplier relating to the supply of the Products and/or Services as may be reasonably required in order to verify such matters.

11. TERMS OF PAYMENT

11.1 In respect of the Products, the Supplier shall invoice BMI (via the BMI EDI System, except where BMI has otherwise notified the Supplier) for each Order (or use of a Consignment Product) within fourteen (14) days of Delivery or, in the case of a Consignment Product, its use by BMI). In respect of the Services, the Supplier shall invoice BMI (via the BMI EDI System, except where BMI has otherwise notified the Supplier) monthly in arrears, such invoice including such supporting information sufficient for BMI to verify the satisfactory and proper performance of the Services. Each invoice shall quote the relevant Order Numbers where available. A user guide for the BMI EDI System shall be made available to the Supplier on request.

11.2 BMI shall pay any part of an invoice which is not in dispute in accordance with clause 11.4 within sixty (60) days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.

11.3 If a Party fails to make any undisputed payment due to the other under the Contract by the due date for payment (the **due date**), then, without limiting the other Party's remedies, the non-defaulting Party shall notify the defaulting Party of the non-payment in writing. If the defaulting Party does not pay the outstanding amount within 14 days of such notice, then the non-defaulting Party may charge interest on the overdue amount at the rate of two per cent (2%) per annum above Barclays Bank plc's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest (if claimed) together with the overdue amount. This clause shall not apply to payments that the defaulting Party disputes in good faith.

11.4 If BMI disputes any invoice or other statement of monies due, BMI shall notify the Supplier in writing and the provisions of clause 23 shall apply. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. The Supplier's obligations to supply the Products and/or Services shall not be affected by any payment dispute or by any late payment by BMI.

11.5 BMI may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Supplier against any amounts payable by it to the Supplier.

11.6 All payments payable to the Supplier or BMI under the Contract shall become due within sixty (60) days of its termination. This clause 11.6 is without prejudice to any right to claim for interest under the law or under the Contract.

12. SUPPLIER STAFF

12.1 BMI may on written notice to the Supplier require the Supplier to remove immediately any of the Supplier Staff from BMI premises who have, in BMI's reasonable opinion, been negligent or incompetent or behaved in an inappropriate way, including any failure to observe any health and safety rules and regulations, BMI's business conduct policy, or any security requirements that apply at any of BMI's premises.

12.2 The Supplier Staff are the Supplier's sole responsibility. To the maximum extent permissible by Law, BMI accepts no responsibility for any acts or omissions of the Supplier Staff under the Contract whether on BMI premises or not, including but not limited to driving offences or parking offences.

12.3 The Supplier shall ensure that the Supplier Staff undergo appropriate Disclosure and Barring Service (or Disclosure Scotland) checks where appropriate and provide to BMI upon request appropriate assurances that such checks have been undertaken and are valid.

12.4 All the Supplier Staff will immediately report to their BMI contact and sign in and out (providing details of the visitor's name, company and BMI contact name) on arrival and departure at the reception point at BMI's premises.

12.5 The Supplier shall, and shall procure that the Supplier Staff shall, observe all health and safety rules and regulations, BMI's business conduct policy, and any other security requirements that apply at any of BMI's premises. BMI reserves the right to refuse the Supplier Staff access to BMI's premises, which shall only be given to the extent necessary for the performance of the Contract.

12.6 Any Supplier Staff are to be of clean and tidy appearance and shall, if appropriate, wear the uniform provided by the Supplier.

12.7 All the Supplier Staff will visibly display the appropriate identification of the Supplier and BMI when on BMI premises. Failure to do this may result in the Supplier Staff member or members not displaying appropriate identification being asked to leave BMI premises.

12.8 For the avoidance of doubt, the Supplier's non-compliance with the provisions of this clause 12 shall not affect the Delivery Date or Consignment Delivery Date.

12.9 The Supplier shall supply the required levels of support at its own expense required in order to enable the successful fulfilment of the Contract and Orders, and ongoing compliance thereto.

13. CONTRACT MANAGERS

13.1 For the purpose of the Contract, each Party shall appoint a Contract Manager as the primary point of contact with the other Party.

13.2 The Contract Managers agree to respond promptly to any issues or requirements referred to them by the other Party relating to the performance of any obligation under the Contract and shall seek to resolve any problems arising as quickly as possible.

13.3 The Contract Managers shall use their reasonable endeavours to meet as often as specified in the Commercial Terms and, in any event, at least once per year to discuss matters relating to the Contract and to monitor and review the performance of the Contract.

13.4 The meetings referred to in clause 13.3 above shall include discussions of the following:

- (a) the performance of any obligations hereunder;
- (b) any issues with such performance;
- (c) any major incidents;
- (d) any performance improvement opportunities, track their progress, and develop any relevant service improvement plans;
- (e) customer satisfaction;
- (f) initiating any service, process or compliance review;
- (g) future known business changes of either BMI or the Supplier that may or may not affect the performance of the Contract; and
- (h) any other business that the Parties agree can properly be addressed at the meeting.

13.5 Each Party shall notify the other in writing as soon as reasonably practicable in the event of a change of Contract Manager and shall provide details of the new Contract Manager. BMI may object to an individual proposed by the Supplier as the new Supplier Contract Manager in the event BMI, acting reasonably, considers the proposed individual lacks the seniority and/or experience to fulfil their role as set out in the Contract. In such circumstances, the Supplier shall identify an alternative individual with the requisite seniority and experience as the Supplier Contract Manager.

14. INSURANCE

14.1 During the Contract and for a period of six years thereafter, unless otherwise agreed in writing with BMI, the Supplier shall put in place and/or maintain in force, at its own cost and with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability, product liability and professional indemnity in accordance with Good Industry Practice with a minimum cover per claim of the greater of:

- (a) £10,000,000 (ten million pounds) and
- (b) any sum as required by Law.

- 14.2 On BMI's written request, the Supplier shall provide BMI with copies of the insurance policy certificates and details of the cover provided and evidence that any premia on them are fully paid.
- 14.3 The Supplier shall ensure that any subcontractors (where such subcontracting is permitted under clause 16) also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.
- 14.4 The amount of any insurance cover shall not relieve the Supplier of any liabilities under the Contract and it shall be the Supplier's responsibility to determine the amount of insurance that will be adequate to enable it to satisfy its potential liabilities under the Contract. Accordingly, the Supplier shall be liable to make good any shortfall if the proceeds of any indemnity cover or insurance arrangement is insufficient to cover the settlement of any claim.
- 15. LIMITATION OF LIABILITY**
- 15.1 Nothing in the Contract shall limit or exclude the liability of either Party for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any indemnities given under the Contract; or
 - (d) damage to property caused by the Products; or
 - (e) any other liability that cannot by law be excluded or limited.
- 15.2 Subject to clause 15.1, neither Party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for: (i) any loss of goodwill; (ii) loss of business; (iii) loss of business opportunity; or (iv) any special, indirect or consequential damage or loss that arises under or in connection with the Contract.
- 15.3 Subject to clause 15.1, BMI's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the amount unpaid on invoices for the Products or Services to which such liability directly relates, and, where claimed, any interest due on such amount pursuant to clause 11.3.
- 16. ASSIGNMENT AND SUBCONTRACTING**
- 16.1 The Supplier may not assign or transfer or subcontract any of its rights, benefits or obligations under the Contract without the prior written consent of BMI. Where consent for subcontracting is provided, the Supplier shall remain liable for any acts or omissions of each subcontractor as if they were the acts or omissions of the Supplier.
- 16.2 BMI may assign, transfer or subcontract any of its rights, benefits or obligations under the Contract at any time and shall give written notice of the same to the Supplier within a reasonable period of such event occurring.
- 17. CONFIDENTIALITY**
- 17.1 The recipient Party undertakes that it shall not at any time disclose to any third Party any confidential information disclosed to it by the disclosing Party concerning the business or affairs of the disclosing Party or of any member of its Group, including information relating to the disclosing Party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (the **Confidential Information**) including, without limitation, Confidential Information disclosed before the date of this Contract.
- 17.2 The recipient Party may disclose the disclosing Party's Confidential Information:
- (a) to its employees, officers, agents, consultants or subcontractors (the **Representatives**) who need to know such information for the purposes of performing the Contract. Each Party shall procure that its Representatives to whom it discloses the other Party's confidential information comply with this clause 17; and
 - (b) as may be required by law, court order or any governmental or regulatory authority or by the rules of a recognised stock or securities exchange, including the Johannesburg Securities Exchange.
- 17.3 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in the Contract are granted to the other Party or to be implied from the Contract. In particular, no licence is hereby granted directly or indirectly under any Intellectual Property Right held, made, obtained or licensable by the disclosing Party now or in the future.
- 17.4 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 17.5 Neither Party shall make any press announcements or publicise the Contract or its contents in any way without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 17.6 The Supplier shall not be permitted to market and publicise its connection with BMI's brand or use BMI's name, logos and trademarks whether in accordance with the Contract or otherwise unless expressly permitted by BMI.
- 17.7 Each Party hereby indemnifies the other against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with a breach of this clause 17.

18. DATA PROTECTION

- 18.1 The Parties agree that each shall be a Data Controller in relation to Personal Data of permanent or temporary employees or sub-contractors of BMI (or of individuals otherwise engaged by BMI) shared under the Contract.
- 18.2 Each Party shall comply at all times with the Data Protection Legislation and each shall reasonably co-operate with the other Party to facilitate or enable their compliance with the Data Protection Legislation. Neither Party will perform its obligations under the Contract in such a way as to cause the other Party to breach any of its obligations under the Data Protection Legislation. Each Party shall immediately notify the other in the event that it becomes aware of any breach of the Data Protection Legislation, where such breach is or may in any way be related in connection with the Contract.
- 18.3 Where the Supplier, in the course of supplying the Products or delivering the Services, acts as a Data Processor on behalf of BMI or acts as a Data Controller for Personal Data in addition to that described in clause 18.1, the provisions of Schedule 3 of the Contract will apply and the Supplier shall comply at all times with such provisions.
- 18.4 The Supplier hereby indemnifies BMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by BMI arising out of or in connection with any breach by the Supplier of this clause 18.

19. ANTI-BRIBERY AND ANTI-SLAVERY

- 19.1 The Supplier warrants and represents that:
- (a) it has not committed any offence under the Bribery Act 2010 or carried out a Prohibited Act; and
 - (b) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 19.2 If the Supplier or any Supplier Staff (or anyone on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with BMI, BMI shall be entitled to terminate the Contract and recover from the Supplier the amount of loss arising from such termination and any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010.
- 19.3 In performing its obligations under the Contract, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and use Good Industry

Practice to ensure that there is no slavery or human trafficking in its supply chains; and

- (b) have and maintain throughout the term of this Contract its own policies and procedures to ensure its compliance; and
 - (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - (d) include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 19.
- 19.4 The Supplier represents and warrants that:
- (a) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery or human trafficking; and
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking.
- 19.5 The Supplier shall implement due diligence procedures for its direct subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 19.6 The Supplier shall notify BMI as soon as it becomes aware of:
- (a) any breach, or potential breach, of this clause 19; or
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 19.7 The Supplier shall:
- (a) maintain a complete set of records to demonstrate its compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and its obligations under this clause 19; and
 - (b) permit BMI and its third party representatives, on reasonable notice on Business Days, but without notice in case of any reasonably suspected breach of this clause 19.7(b), to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 19.
- 19.8 The Supplier hereby indemnifies BMI against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties

and legal and other professional costs and expenses) suffered or incurred by BMI arising out of or in connection with any breach of this clause 19.

20. CHANGE OF CONTROL

The Supplier shall notify BMI of any Change of Control within five (5) Business Days of such Change of Control occurring.

21. TERMINATION AND FORCE MAJEURE

21.1 BMI may at any time terminate the Contract by giving the Supplier not less than thirty (30) days' notice in writing.

21.2 In any of the circumstances in these Terms and Conditions in which a party may terminate the Contract, where both Products and Services are supplied, that Party may terminate the Contract in respect of the Products, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

21.3 BMI shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Supplier if:

- (a) the Supplier undergoes a Change of Control; or
- (b) the Supplier commits a breach of clause 18 (Data Protection) or Schedule 3 where such Schedule is applicable to the Contract.

21.4 Either Party shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the other Party if:

- (a) the other Party fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or
- (b) the other Party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after receipt of notice in writing requiring it to do so; or
- (c) the other Party commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- (d) the other Party experiences an Insolvency Event; or
- (e) any Force Majeure Event prevents the other Party from performing its obligations under the Contract for any continuous period of three months; or
- (f) there is a breach of clause 19.

21.5 Neither Party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under the Contract so long as, and to the extent to which, the fulfilment of such obligation is

prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

21.6 Termination of the Contract shall not prejudice any of the Parties' rights and remedies which have accrued as at termination, including those relating to payment as set out in the Contract.

22. EFFECT OF TERMINATION

22.1 Upon request by BMI, the Supplier shall, following termination or expiry of the Contract, fully co-operate with and assist BMI free of charge in order to ensure that such termination and its consequences cause the minimum disruption to BMI's business and affairs and the performance of its responsibilities. The Supplier will take all reasonable steps to mitigate any costs which BMI or its Group may incur as a result of termination or expiry of the Contract.

22.2 On expiry or early termination of the Contract, the Supplier shall ensure that it immediately completes any accepted Order which is unfulfilled at expiry or the date of termination unless BMI amends or cancels the Order under clause 3.7, and the Supplier undertakes within 10 Business Days of such termination or expiry to:

- (a) return all property in its possession or under its control that belongs to BMI;
- (b) deliver to BMI all Deliverables whether or not then complete;
- (c) return all Confidential Information in its possession together with all copies thereof; and
- (d) at BMI's request, return or shred or incinerate all documents and other materials in its possession, custody or control and/or irretrievably delete the same if stored on electronic magnetic media and certify to BMI that this has been done.

23. DISPUTE RESOLUTION

23.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in the Contract, the Parties shall follow the dispute resolution procedure set out in this clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the Contract Managers shall attempt in good faith to resolve the Dispute.
- (b) if the Dispute is not resolved within 30 days of the service of the Dispute Notice, then either Party may commence litigation.

23.2 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.

- 23.3 For the avoidance of doubt, the Supplier shall continue to comply with its obligations under the Contract and without delay or disruption while the Dispute is being resolved pursuant to this clause.
- 23.4 Neither Party shall be prevented from or delayed in seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this clause 23, and this clause 23 shall not apply in respect of any circumstances where such remedies are sought.
- 24. SURVIVAL OF OBLIGATIONS**
- On termination of the Contract, clause 1 (*Interpretation*), clause 5 (*The Products*), clause 6 (*Delivery*), clause 14 (*Insurance*), clause 15 (*Limitation of Liability*), clause 17 (*Confidentiality*), clause 18 (*Data Protection*), clause 22 (*Effect of Termination*), clause 24 (*Survival of Obligations*) and clause 31 (*Governing law and jurisdiction*) shall survive and continue in full force and effect.
- 25. SEVERANCE**
- If any provision or part of any provision of the Contract is found by a court or other administrative body with competent jurisdiction to be invalid, illegal or otherwise unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable. This will not affect the validity and/or enforceability of the remaining part of that provision or of other provisions.
- 26. FURTHER ASSURANCE**
- Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to the Contract and the transactions contemplated by it.
- 27. VARIATION AND WAIVER**
- 27.1 Any variation of the Contract shall be in writing and signed by or on behalf of the Parties.
- 27.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 28. NOTICES**
- 28.1 Any notice relating to the Contract shall be in writing and shall be sufficiently given to or served on the relevant Party if it is delivered by hand or is sent in a prepaid first class letter by recorded delivery addressed for the attention of the Company Secretary of the relevant Party at its registered office and shall be deemed to have been delivered two Business Days after despatch.
- 28.2 Any notice relating to the Contract to be provided by the Supplier should also be sent to company.secretary@bmihealthcare.co.uk by email.
- 28.3 The provisions of this clause 28 shall not apply to the service of any process in any legal action or proceedings.
- 28.4 A notice required to be given under the Contract shall not be validly served if sent by e-mail, save to the extent set out in clause 28.2.
- 29. ENTIRE AGREEMENT**
- 29.1 The Contract constitutes the whole agreement and understanding of the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 29.2 Each Party acknowledges that, in entering into the Contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract.
- 30. RIGHTS OF THIRD PARTIES**
- 30.1 The Supplier agrees that when supplying Products and/or Services to any Authorised Recipient, BMI shall purchase such Products and/or Services expressly as agent for such Authorised Recipient.
- 30.2 The provisions of the Contract confer benefits on Authorised Recipients and members of BMI's Group other than BMI (each a "Third Party") and are intended to be enforceable by each Third Party by virtue of the Contracts (Rights of Third Parties) Act 1999. Notwithstanding the preceding, the Contract may be varied in any way and at any time, or terminated, without the consent of any Third Party.
- 30.3 Except as provided in clause 30.2, no term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 31. GOVERNING LAW AND JURISDICTION**
- 31.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 31.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).