

TERMS AND CONDITIONS FOR THE PROVISION OF IBGRL RESEARCH PRODUCTS

The Purchaser's attention is particularly drawn to the provisions of clause 8.

1 Definitions

1.1 In these Terms and Conditions, the following definitions shall apply:

"Agreement" means the agreement between NHSBT and the Purchaser for the provision of the Products, comprising these Terms and Conditions; the Order; and the Specification (where applicable);

"Bribery Act" means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department with respect to such legislation;

"Business Day" means a day (other than a Saturday, Sunday or public Holiday) when banks in London, UK are open for business;

"Commencement Date" has the meaning set out in clause 2.3;

"Confidential Information" means all information, data and material of any nature not in the public domain which either party may receive or obtain in connection with the operation of the Agreement and: (i) which comprises information which relates to any Donor or patient or his or her treatment or clinical or care history; (ii) which is designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); or (ii) which is a trade secret;

"CEDR" means the Centre for Effective Dispute Resolution – a London based mediation and alternative dispute resolution body;

"Data Protection Legislation" means all applicable data protection and privacy legislations and guidance including but not limited to Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR"), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance or codes practice issued by UK Information Commissioner's Office from time to time (all as amended, updated or re-enacted from time to time);

"Disclosing Party" has the meaning set out in clause 13.1;

"Donor" means the person from whose body the Material (or any part thereof) has come from;

"EIR" means the means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"Force Majeure Event" shall have the meaning set out in clause 19.1;

“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 company or organisation engaged in activities similar to the activities that the Purchaser, its staff, representatives, agents or sub-contractors will be carrying out in relation to this Agreement, including in accordance with any codes of practice published by relevant trade associations;

“Good Laboratory Practice” means the regulations and guidelines contained within the Good Laboratory Practice Regulations 1999;

“Information Disclosure Requirements” means the requirements to disclose information under:

- (a) the FOIA;
- (b) the EIR 2004; and
- (c) any applicable code of practice;

“Intellectual Property” means any and all patents, trademarks, service marks, domain names, registered designs, inventions, Know How, unregistered trademarks and service marks, trade and business names, including rights in any get up or trade dress, and all copyright in any item delivered to the Purchaser pursuant to the Agreement, or used by NHSBT in performance of the provision of the Products or otherwise used by NHSBT in connection with the Agreement or the Products as well as all confidential information, experience, drawings, or other technical information and information concerning anything done by NHSBT pursuant to or for the purposes of the Agreement;

“Intellectual Property Rights” means the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property throughout the world; any moral rights; any licence, right or interest of any kind arising out

of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding anywhere in the world;

“Know How” means all Confidential Information which is used or required to be used in or in connection with the Products existing in any form (including, but not limited to technical and clinical knowhow and that is comprised in or derived from engineering, chemical and other specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and diagrams, brochures, catalogues and other descriptions) and relating to the operation of any process and/or the provision of the Products;

“Law” means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any applicable judgment of a relevant court of law which is binding precedent in England and Wales; and
- (c) any applicable code of practice, in each case as applicable in England and Wales;
- (d) any applicable European Union Law transposed into UK law under the European Union (Withdrawal) Act 2018;

in each case as applicable in England and Wales;

“NHSBT” means NHS Blood and Transplant, a Special Health Authority established under SI 2005 No 2529 of 500 North Bristol Park, Filton, Bristol, BS34 7QH, and which organisation shall supply the Products to the Purchaser pursuant to the Agreement;

“NHSBT Employees” means all persons employed or engaged by NHSBT from time to time in connection with the provision of the Products;

“NHSBT Facility” means the premises from which the Products are supplied by NHSBT;

“Order” means the order placed by the Purchaser as set out in the Order Form, or as otherwise received by NHSBT in writing via email.

“Order Form” means a request form that is completed by the Purchaser in respect of the Purchaser’s order for the Products.

“Permitted Purpose” means Research Purposes only;

“Personal Data” has the meaning given to it in Data Protection Legislation;

“Price” means the price payable by the Purchaser to NHSBT in respect of the provision of the Products, in accordance with clause 4;

“Product(s)” means the IBGRL Research Products to be supplied by NHSBT to the Purchaser as set out in the Order or in the Specification (where applicable)

“Prohibited Act” means any of the following actions:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by NHSBT a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;

- (c) commit any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Agreement or any other contract with NHSBT; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud NHSBT;

“Purchaser” means the party who purchases Products from NHSBT pursuant to this Agreement and whose details are set out in the Order;

“Purchaser Default” has the meaning set out in clause 3.9;

“Purchaser Personnel” means all employees, agents, consultants and contractors of the Purchaser, including any sub-contractors and all personnel of such contractors or sub-contractors;

“Quotation” means the price for the Product communicated by NHSBT to the Purchaser (where applicable);

“Receiving Party” has the meaning set out in clause 13.1;

“Request for Information” shall have the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR 2004 or any applicable code of practice;

“Specification” means the specification for certain specific Products as provided by the Purchaser in writing to NHSBT (as and when applicable).

“Terms and Conditions” means these terms and conditions as may be amended from time to time in accordance with clause 17.1.

2 Basis of Agreement

- 2.1 The Quotation shall not constitute an offer by NHSBT, and is only valid, unless stated otherwise within the Quotation, for a period of ninety (90) Business Days from the date of issue.
- 2.2 The Order constitutes an offer by the Purchaser to purchase the Products in accordance with these Terms and Conditions.
- 2.3 Acceptance of these Terms and Conditions by the Purchaser shall constitute the Commencement Date of this Agreement.
- 2.4 These Terms and Conditions together with the Order constitute the entire agreement between the Parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of NHSBT (whether written or oral), which is not set out in the Agreement.
- 2.5 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 **Order of Precedence:** If there is any ambiguity or inconsistency in or between the documents comprising the Agreement, the priority of the documents is in accordance with the following sequence:
- (a) these Terms and Conditions;
 - (b) the Quotation (where applicable);
 - (c) Specification (where applicable);
 - (d) the Order; and
 - (e) any other document forming part of the Agreement and/or referred to in the Agreement.

3 Products

- 3.1 NHSBT shall supply the Products in accordance with the description of the Products on the price list or Specification (where applicable).
- 3.2 NHSBT shall use all reasonable endeavours to supply the Products in a timely manner. Time shall not be of the essence in the performance of supplying the Products.
- 3.3 NHSBT shall have the right to make any changes in supply of the Products which are necessary to comply with any applicable Law or safety requirement, or which do not materially affect the nature or quality of the Products, and NHSBT shall notify the Purchaser in any such event.
- 3.4 In the instance of specific Donor consent being modified or withdrawn after the Products have been provided to the Purchaser, NHSBT shall promptly inform the Purchaser and the Purchaser shall immediately cease use of the relevant Products and return any unused Products as instructed by NHSBT. If it is not possible to cease such use as the relevant Products have already been used or have been destroyed the data in regard to that Product must not be used. The Purchaser shall provide proof of action pursuant to this clause 3.4;
- 3.5 Under no circumstances shall NHSBT have any obligation to supply the identity of, or any information that in NHSBT's reasonable opinion might lead to the identification of the Donor(s).
- 3.6 Under no circumstances shall the Purchaser attempt to identify any Donor(s).
- 3.7 In relation to the receipt, storage and disposal of the Products, the Purchaser shall ensure it complies with all applicable laws and any relevant guidance and all ethical guidelines relating to the use, storage, transportation and disposal of the Products for research purposes laid down by any competent body or authority.

- 3.8 The Purchaser shall use the Products in accordance with Good Industry Practice, Good Laboratory Practice (where applicable) or national equivalent and the highest standards of skill and care and shall use the Products only for the purpose of carrying out the Permitted Purpose.
- 3.9 If NHSBT's performance of any of its obligations is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligations as set out in the Agreement (in particular, as set out in these Terms and Conditions and the Specification (where applicable), ("**Purchaser Default**")):
- (a) NHSBT shall, without limiting its other rights or remedies, have the right to suspend supply of the Products until the Purchaser remedies the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations to the extent the Purchaser Default prevents or delays NHSBT's performance of any of its obligations;
 - (b) NHSBT shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from NHSBT's failure or delay to perform any of its obligations as set out in this clause **Error! Reference source not found.**; and
 - (c) the Purchaser shall reimburse NHSBT on written demand for any costs or losses sustained or incurred by NHSBT arising directly or indirectly from the Purchaser Default.
- 3.10 NHSBT shall only supply those Products detailed within the Order.
- 4 Price and Terms of Payment**
- 4.1 The Price payable for the Products shall be calculated on a cost per unit basis as set out in the Quotation or the relevant price list for the Products.
- 4.2 NHSBT shall invoice the Purchaser in accordance with the invoicing timetable set out in the Quotation. Where the Quotation does not specify an invoicing timetable or the Order was based on the relevant price list for the Products, NHSBT shall invoice the Purchaser on supply of the Products.
- 4.3 The Purchaser shall pay each invoice submitted by NHSBT within thirty (30) days of the date of the invoice by BACS, cheque or credit card and in Pounds Sterling and in full and cleared funds to a bank account nominated in writing by NHSBT. Time for payment shall be of the essence of the Agreement. NHSBT may require payment in advance of the supply of the Products at its sole discretion.
- 4.4 All amounts referred to in the Agreement are expressed net of any form of tax, levy or duty of any kind (including, without limitation, value added tax (VAT)) which may be chargeable and which shall be payable by the Purchaser in addition to the sum in question at the rate for the time being prescribed by Law on delivery by NHSBT to the Purchaser of a valid tax/VAT invoice.
- 4.5 If the Purchaser fails to pay any invoice submitted by NHSBT under the Agreement by the due date for payment, NHSBT shall be entitled (without prejudice to any other right or remedy it may have) to:
- (a) charge interest on any amount outstanding at the rate of three per cent (3%) per annum, above the annual base lending rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date for payment until actual payment of the invoice amount, whether before or after judgment. The Purchaser shall pay the interest with the overdue amount; and/or
 - (b) suspend provision of the Products until all outstanding sums are paid in full, and any

additional costs incurred by such suspension shall be paid by the Purchaser; and/or

- (c) terminate the Agreement pursuant to clause 11.3.

4.6 The Purchaser shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholdings.

5 Purchaser's Obligations

5.1 The Purchaser shall:

- (a) ensure the terms of the Order (and any information provided in the Order are complete and accurate;
- (b) fulfil all its obligations as set out in the Agreement, including, without limitation providing NHSBT with such information and as set out in these Terms and Conditions and in the Specification (where applicable), and as NHSBT may otherwise reasonably require in order to supply the Products, and ensure that such information is accurate in all material respects (including, without limitation, all information to be set out in the Order);
- (c) co-operate with NHSBT in all matters relating to the Products.

6 Warranties and Representations

6.1 The Purchaser warrants, represents and undertakes to NHSBT that:

- (a) it will use the Product for the Permitted Purpose only;
- (b) it will not use the Products for diagnostic or therapeutic use.
- (c) it has obtained all necessary approvals, consents, licences and permissions relating to this Agreement;

- (d) it has adequate systems and procedures in place to ensure the safe handling, accountability and disposal of all Products whether used or not and will provide NHSBT with a full indemnity on this basis;

- (e) it will comply with all relevant Law and comply with any laws, regulations and/or other governmental policy or guidance in any relevant jurisdiction;

- (f) it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Agreement;

- (g) it will obtain all necessary clearances, licences and consents in relation to the use of the Products in accordance with this Agreement. The Purchaser will provide NHSBT with copies of such clearances, licences and consents as is reasonably requested by NHSBT;

- (h) if any Purchaser Personnel has cause to visit any NHSBT Facility, the Purchaser shall ensure such Purchaser Personnel comply with any policies and procedures that may from time to time operate at any such NHSBT Facility;

- (i) The Purchaser acknowledges and agrees that any advice or recommendation provided by NHSBT whether in writing, orally, enclosed with the Products, delivered to the Purchaser or otherwise communicated to the Purchaser by any means as to storage, application or use of the Products shall be given as guideline only and shall not constitute a representation or warranty;

- (j) The Purchaser acknowledges and agrees that any written description of the Products is given by way of identification only and that such description shall not result in the supply of the Products to the Purchaser constituting sale by description.

7 **Indemnity**

7.1 The Purchaser shall indemnify NHSBT against all liability howsoever arising from:

- (a) any use whatsoever made by the Purchaser of the Products other than explicitly granted under this Agreement (including, without prejudice to the foregoing generality, Purchaser's purchase, possession, handling, use, storage or disposal of the Products) incurred by the Purchaser or any third party always excluding however any liability in respect of defective Products arising directly from the fault or negligence of NHSBT or its employees or agents acting in the course of their employment with NHSBT. NHSBT's liability for negligence in respect of defective Products shall, unless NHSBT's negligence results in injury, or death, be limited to replacing any defective Products with Products which conform to the terms of this Agreement.
- (b) any modification, alteration or misuse of the Product by the Purchaser or any third party acting on behalf of the Purchaser;
- (c) any claims or actions brought by third parties alleging that the use, sale, or distribution of the Product by the Purchaser or any Product incorporating the Product infringes any patent, trademark, copyright, trade secret, or other intellectual property rights or such third parties.

8 **Limitation of Liability: The Purchaser's attention is particularly drawn to this clause**

8.1 Nothing in the Agreement shall in any way exclude or limit either Party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents and subcontractors; or
- (b) fraud or fraudulent misrepresentation.

8.2 Subject to clause 8.1:

- (a) NHSBT shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, goodwill, business opportunity or loss of or cost of restoration of data or any other indirect or consequential loss or damage arising under or in connection with the Agreement, and/or arising under or in connection with the Purchaser's use of the Products; and
- (b) NHSBT's total liability to the Purchaser in respect of all other losses arising under or in connection with the Agreement and/or arising under or in connection with the Purchaser's use of the Products, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed the Price paid by the Purchaser in respect of the Products.

8.3 The Purchaser shall at all times indemnify and keep indemnified NHSBT from and against all costs, losses, claims, demands, liabilities, expenses (including legal expenses), judgments, awards, orders, proceedings and findings of any nature sustained or incurred by or made against NHSBT, NHSBT Employees or NHSBT servants or agents to the extent caused by or contributed to by (whether directly or indirectly) the Purchaser's failure to comply with the Agreement or any other act or omission of the Purchaser including, without limitation, any costs and losses sustained or incurred by NHSBT pursuant to clause 3.9.

8.4 Except as otherwise set out in these Terms and Conditions, all conditions, warranties, terms and

undertaking express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including without limitation, as to quality, performance or fitness or suitability for purpose or use and non-infringement) in respect of the provision of the Products, to the fullest extent possible by Law are excluded from the Agreement.

9 Monitoring of Safety and Quality

9.1 NHSBT will operate systems designed for controlling and monitoring the safety and quality of the Products supplied. The components used to make the Products can be traced via audit.

10 Intellectual Property

10.1 All Intellectual Property Rights arising out of or in connection with the Products shall be owned by the Purchaser.

10.2 Nothing in this Agreement will result in the Purchaser acquiring any Intellectual Property Rights in the Products or the methods or Know How or other information used by NHSBT in providing the same or owned by NHSBT before or during the term of the Agreement.

10.3 The Purchaser shall not without NHSBT's prior written consent publish or disclose any information relating to the Products supplied by NHSBT to the Purchaser if to do so would result in disclosure of any Intellectual Property Rights belonging to or used by NHSBT.

11 Termination

11.1 This Agreement shall automatically terminate upon the fulfilment of all obligations by both Parties, including the delivery of the Products by NHSBT and the Purchaser's full payment for the Products.

11.2 Without limiting its other rights and remedies, either party may terminate the Agreement with

immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Agreement and (if such breach is remediable) fails to remedy that breach within thirty (30) Business Days of that party being notified in writing to do so; or

(b) the other party enters into liquidation, receivership or administrative receivership or otherwise becomes insolvent or ceases to trade or do business.

11.3 Without limiting its other rights and remedies, NHSBT may terminate the Agreement with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Agreement on the due date for payment and fails to pay all outstanding amounts within fifteen (15) Business Days of being notified in writing to do so.

12 Consequences of Termination

12.1 On termination of the Agreement for any reason:

(a) the Purchaser shall immediately pay to NHSBT all of NHSBT's outstanding unpaid invoices and interest and, in respect of Products provided, but for which no invoice has been submitted, NHSBT shall submit an invoice, which shall be payable by the Purchaser immediately upon receipt;

(b) all rights and licences granted by NHSBT to the Purchaser shall automatically cease and the Purchaser shall cease all and any use of NHSBT's Intellectual Property Rights and any Confidential Information;

(c) clauses which expressly or by implication survive termination or expiry shall continue in full force and effect;

- (d) the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of breach of the Agreement which existed at or before the date of expiry or termination.

13 Confidentiality

13.1 Both parties recognise the commercial importance of the other's Confidential Information. The party receiving Confidential Information ("**Receiving Party**") will treat it as secret and confidential and will not use it for its own benefit or for the benefit of any other party or for any purpose other than those required or permitted by the Agreement. The Receiving Party will not disclose any part of the Confidential Information to any third party without the express prior written consent of the party making the Confidential Information available ("**Disclosing Party**"), other than to such of the Receiving Party's employees or consultants who reasonably require such disclosure and who are bound by similar confidentiality provisions.

13.2 The provisions contained in clause 13.1 shall not apply:

- (a) to any information, which is in or enters the public domain other than as a result of a breach of the Agreement or where the Receiving Party receives the information from a third party which is not under any obligation of confidence to the Disclosing Party; or
- (b) where the information has been developed by the Receiving Party independently of the disclosure; or
- (c) to any information, which is required to be disclosed by Law, any governmental or regulatory authority or by a court of competent jurisdiction; or

- (d) to any information, which is required to be disclosed to enable NHSBT to comply with its transparency obligations and government policy as may apply from time to time to public sector bodies; or

- (e) to information already known by the Receiving Party prior to the Commencement Date, the prior knowledge of which the Receiving Party can evidence by written records.

13.3 Each Party shall apply to the Confidential Information of the other Party no less security measures and degree of care as it applies to its own Confidential Information, but in no event less than a reasonable degree of care.

13.4 Upon termination of the Agreement or upon the Disclosing Party's written request, the Receiving Party will return all the Confidential Information supplied to the Receiving Party by the Disclosing Party within twenty-eight (28) Business Days of such request. Each Party may retain copies of Confidential Information to the extent specified in the Specification, where applicable, or to the extent that it is required to hold such information to ensure legal compliance with its obligations under the Agreement, including regulatory compliance.

14 Publicity

14.1 The Purchaser shall not advertise, publish or use NHSBT's name in any way, including without limitation use of NHSBT's name in the Purchaser's own marketing and promotional material.

15 Title and Risk

15.1 Risk in the Products will pass to Purchaser on delivery.

15.2 Notwithstanding delivery, title in the Products delivered to Purchaser pursuant to this Agreement will pass to Purchaser when full

payment of the invoice relating to the same has been received by NHSBT.

16 **Data Protection**

16.1 The Parties shall comply with all applicable requirements of the Data Protection Legislation.

16.2 This Clause 16 is in addition to, and does not relieve, remove or replace, either Party's obligations under the Data Protection Legislation.

16.3 Neither Party shall transfer any Personal Data of the other Party outside of the European Economic Area without the prior written consent of the other Party.

17 **Variation**

17.1 No variation of the Agreement, including the introduction of any additional terms and conditions, will be effective unless it is agreed in writing and signed by both Parties.

18 **Assignment**

18.1 Neither Party may assign or otherwise transfer all or any part of its duties or obligations under the Agreement to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except in the case of a statutory reorganisation of all or part of NHSBT.

19 **Force Majeure**

19.1 Force Majeure means any event beyond the reasonable control of the Party seeking to rely on such event including (but without limitation) any one or more of the following: industrial action taken by any person, firm or organisation; war, civil war (whether declared or undeclared), armed conflict or terrorism, civil commotion; nuclear, chemical or biological contamination of NHSBT's premises; pressure waves caused by devices travelling at supersonic speeds; strikes or industrial action or lock outs; riot, fire, flood, storm, pandemic or earthquake or other natural

disasters; unavailability of public utilities and/or access to transport networks; government requisition or impoundment; compliance with any local law or government order, rule, regulation or direction that was not in the contemplation of the Parties on the Commencement Date; a failure in supply chain due to circumstances beyond a Party's reasonable control ("**Force Majeure Event**").

19.2 The Party affected by a Force Majeure Event will as soon as it is reasonably practicable give full particulars in writing to the other Party, and shall take all reasonable steps to mitigate the effect of such Force Majeure Event.

19.3 If a Force Majeure Event persists for a period of one hundred and twenty (120) Business Days, then either party shall have the right to terminate the Agreement upon written notice to the other.

20 **Notices**

20.1 Any notice to be given under the Agreement will be delivered personally, sent by email or sent by first class recorded delivery post (airmail if overseas). The address for service of each party is the address set out in the Order or such other address as either party may previously have notified to the other party in writing. A notice will be deemed to have been served:

(a) if personally delivered, at the time of delivery;

(b) if sent by email, at the time of sending (it is the responsibility of each Party to ensure that their designated email address remains current and to notify the other Party in writing of any changes); and

(c) if posted, at the expiration of 48 hours or (in the case of airmail seven (7) Business Days) after the envelope containing the same was delivered into the custody of the postal authorities.

20.2 In proving such service it will be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line and that the correct transmission report was received from the facsimile machine sending the notice or that the email was received with an acknowledgement of receipt, as the case may be.

21 Dispute Resolution

21.1 The Parties agree that should any dispute arise between them in relation to this Agreement, they shall meet as soon as practicable and negotiate in good faith with a view to resolving the dispute.

21.2 If the Parties are unable to settle any dispute by negotiation within twenty-eight (28) Business Days, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

21.3 To initiate a mediation a Party must give notice in writing to the other Party, requesting a mediation in accordance with this Clause 21.

21.4 Nothing in this Clause 21 shall prevent either Party from applying for urgent injunctive relief to restrain any actual or potential breach of this Agreement.

22 Prevention of Bribery

22.1 The Purchaser:

(a) shall not, and shall procure that any Purchaser Personnel shall not, in connection with these Terms and Conditions commit a Prohibited Act;

(b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person

working for or engaged by NHSBT, or that an agreement has been reached to that effect, in connection with the entry into the Agreement, excluding any arrangement for which full details have been disclosed in writing to NHSBT before entry into the Agreement.

22.2 The Purchaser shall:

(a) if requested, provide NHSBT with any reasonable assistance, at NHSBT's reasonable cost, to enable NHSBT to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) within ten (10) Business Days of receiving a request from NHSBT, certify to NHSBT in writing (such certification to be signed by an officer of the Purchaser) compliance with this clause 22 by the Purchaser and all persons associated with it or other persons who are purchasing goods or services in connection with the Agreement. The Purchaser shall provide such supporting evidence of compliance as NHSBT may reasonably request.

22.3 If any breach of clause 22.1 is suspected or known, the Purchaser must notify NHSBT immediately.

22.4 If the Purchaser notifies NHSBT that it suspects or knows that there may be or has been a breach of clause 22.1, the Purchaser must respond promptly to NHSBT's enquiries, co-operate with any investigation, and allow NHSBT to audit books, records and any other relevant documentation.

22.5 NHSBT may terminate the Agreement by written notice with immediate effect if the Purchaser or Purchaser Personnel (in all cases whether or not acting with the Purchaser's knowledge) breaches clause 22.1.

22.6 Notwithstanding clause 21 (Dispute Resolution), any dispute relating to:

- (a) the interpretation of clause 21; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by NHSBT and its decision shall be final and conclusive.

22.7 Any termination under clause 22.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to NHSBT.

23 Law and Jurisdiction

23.1 The Agreement and any disputes or claims 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 the law of England and Wales.

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

23.3 Nothing in this clause 23 shall limit the right of NHSBT to take proceedings against the Purchaser in any other courts of competent jurisdiction, nor shall the taking of proceedings in

any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such jurisdiction.

24 General

24.1 **Severance:** If and in so far as any part or provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed not to be or never to have been or formed a part of, the Agreement and the remaining provisions of the Agreement shall continue in full force and effect.

24.2 **No partnership or agency:** Nothing in the Agreement and no action taken by the parties pursuant to the Agreement shall constitute, or be deemed to constitute between the parties a partnership, association, joint venture or other co-operative entity nor constitute either party the agent of the other for any purpose and accordingly the Purchaser will not be authorised to bind NHSBT.

24.3 **Waiver:** The failure of either party to exercise or enforce any right conferred on that party by the Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

24.4 **Third parties:** A person who is not party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.