

# Inspiration Healthcare Limited

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions set out in clause 12

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

**Contract:** the contract between Inspiration Healthcare and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods or Services or Goods and Services from Inspiration Healthcare.

**Deliverables:** the deliverables set out in the Order produced by Inspiration Healthcare for the Customer.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 18.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Inspiration Healthcare.

**Inspiration Healthcare:** Inspiration Healthcare Limited a company incorporated in England and Wales (company number: 04753818) whose registered office is at Unit 7/8 Commerce Park, Commerce Way, Croydon, England, CR0 4YL.

**Inspiration Healthcare Materials:** has the meaning given in clause 8.1(h).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from,

such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Inspiration Healthcare's quotation, as the case may be.

**Services:** the services, including the Deliverables, supplied by Inspiration Healthcare to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by Inspiration Healthcare to the Customer.

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

**Working Hours:** the period from 9.00 am to 4.00 pm on any Working Day.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax.

## 2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Inspiration Healthcare issues written acceptance of the Order, or takes action consistent with acceptance of the Order, at which point, and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Inspiration Healthcare and any descriptions of the Goods or illustrations or descriptions of the

Services contained in Inspiration Healthcare's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Inspiration Healthcare shall not constitute an offer, and is only valid for a period of twenty (20) Working Days from its date of issue or unless otherwise stated on the relevant quotation.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

### **3. Goods**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 Inspiration Healthcare reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Inspiration Healthcare shall notify the Customer in any such event.

### **4. Delivery of Goods**

- 4.1 Inspiration Healthcare shall ensure that:
  - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Inspiration Healthcare reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if Inspiration Healthcare requires the Customer to return any packaging materials to Inspiration Healthcare, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Inspiration Healthcare shall reasonably request. Returns of packaging materials shall be at Inspiration Healthcare's expense.

- 4.2 The Customer shall collect the Goods from Inspiration Healthcare 's premises at Unit 7/8 Commerce Park, Commerce Way, Croydon, England, CR0 4YL or such other location as may be agreed by Inspiration Healthcare prior to delivery (**Delivery Location**) within five (5) Working Days of Inspiration Healthcare notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Inspiration Healthcare shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Inspiration Healthcare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Inspiration Healthcare fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Inspiration Healthcare shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Inspiration Healthcare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within five (5) Working Days of Inspiration Healthcare notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Inspiration Healthcare 's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Working Day following the day on which Inspiration Healthcare notified the Customer that the Goods were ready; and
  - (b) Inspiration Healthcare shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If five (5) Working Days after the day on which Inspiration Healthcare notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, Inspiration Healthcare may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.8 Inspiration Healthcare may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Quality of Goods**

5.1 Inspiration Healthcare warrants that on delivery the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by Inspiration Healthcare.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to Inspiration Healthcare within ten (10) Working Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Inspiration Healthcare is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Inspiration Healthcare) returns such Goods to Inspiration Healthcare's place of business at the Customer's cost,

Inspiration Healthcare shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Inspiration Healthcare shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Inspiration Healthcare 's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Inspiration Healthcare following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Inspiration Healthcare;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, Inspiration Healthcare shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Inspiration Healthcare.

## **6. PRODUCT LIABILITY**

- 6.1 The Customer undertakes to maintain for seven (7) years appropriate following receipt of the Goods or Services or their onward supply (whichever is the later), up-to-date and accurate records to enable the immediate recall or withdrawal of any Goods or batches of Goods from the retail or wholesale markets. These records shall include accurate records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and email address). The Customer shall promptly provide Inspiration Healthcare with copies of such records if a recall or withdrawal is initiated.
- 6.2 The Customer shall, at Inspiration Healthcare's cost, give any assistance that Inspiration Healthcare shall reasonably require to recall, as a matter of urgency, Goods from the retail or wholesale market.
- 6.3 The Customer shall:
  - (a) take such action, institute such proceedings and give such information and assistance as Inspiration Healthcare may reasonably request to:
    - (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
    - (ii) enforce against any person (other than Inspiration Healthcare) the rights of the Customer in relation to the matter; and
  - (b) in connection with any proceedings related to the matter (other than against Inspiration Healthcare), use professional advisers nominated by Inspiration Healthcare and, if Inspiration Healthcare so requests, allow Inspiration Healthcare the exclusive conduct of the proceedings,

in each case on the basis that Inspiration Healthcare shall indemnify the Customer for all reasonable costs incurred as a result of any request or nomination by Inspiration Healthcare.

- 6.4 The Customer shall not initiate any proceedings, including a product recall, without the prior approval of Inspiration Healthcare or if required to do so by law or by a regulatory authority in any relevant jurisdiction.

## **7. Title and risk**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.

- 7.2 Title to the Goods shall not pass to the Customer until Inspiration Healthcare receives payment in full (in cash or cleared funds) for:

- (a) the Goods; and
- (b) any other goods that Inspiration Healthcare has supplied to the Customer in respect of which payment has become due.

- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Inspiration Healthcare's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Inspiration Healthcare's behalf from the date of delivery;
- (d) notify Inspiration Healthcare immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
- (e) give Inspiration Healthcare such information as it may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2, or Inspiration Healthcare reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Inspiration Healthcare may have, Inspiration Healthcare may at any time require

the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. Supply of Services**

- 8.1 Inspiration Healthcare shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 Inspiration Healthcare shall use its reasonable endeavours to meet any performance dates agreed for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 Inspiration Healthcare reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Inspiration Healthcare shall notify the Customer in any such event.
- 8.4 Inspiration Healthcare warrants to the Customer that the Services will be provided using reasonable care and skill.

## **9. Customer's obligations**

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
  - (b) co-operate with Inspiration Healthcare in all matters relating to the Services;
  - (c) provide Inspiration Healthcare, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Inspiration Healthcare to provide the Services;
  - (d) provide Inspiration Healthcare with such information and materials as Inspiration Healthcare may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) prepare the Customer's premises for the supply of the Services;
  - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Inspiration Healthcare (**Inspiration Healthcare Materials**) at the Customer's premises in safe custody at its own risk, maintain Inspiration Healthcare Materials in good condition until returned to Inspiration Healthcare, and not dispose of or use Inspiration Healthcare Materials other than in accordance with Inspiration Healthcare's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

9.2 If Inspiration Healthcare 's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Inspiration Healthcare shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Inspiration Healthcare 's performance of any of its obligations;
- (b) Inspiration Healthcare shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Inspiration Healthcare's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse Inspiration Healthcare on written demand for any costs or losses sustained or incurred by Inspiration Healthcare arising directly or indirectly from the Customer Default.

## **10. Charges and payment**

10.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in Inspiration Healthcare 's published price list as at the date of delivery; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

10.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with Inspiration Healthcare's daily fee rates, as set out in its current price list at the date of the Contract OR the Order];
- (b) Inspiration Healthcare's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Working Days;
- (c) Inspiration Healthcare shall be entitled to charge an overtime rate of [150]% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) Inspiration Healthcare shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Inspiration Healthcare engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Inspiration Healthcare for the performance of the Services, and for the cost of any materials.

10.3 Inspiration Healthcare reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Inspiration Healthcare that is due to:
  - (i) any factor beyond the control of Inspiration Healthcare (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Inspiration Healthcare adequate or accurate information or instructions in respect of the Goods.

10.4 In respect of Goods, Inspiration Healthcare may invoice the Customer on or at any time after completion of delivery. In respect of Services, Inspiration Healthcare

shall invoice the Customer monthly in arrears on or following completion of the Services.

- 10.5 Unless otherwise agreed, the Customer shall pay each invoice submitted by Inspiration Healthcare:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Inspiration Healthcare, and

time for payment shall be of the essence of the Contract.

- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Inspiration Healthcare to the Customer, the Customer shall, on receipt of a valid VAT invoice from Inspiration Healthcare, pay to Inspiration Healthcare such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 10.7 If the Customer fails to make a payment due to Inspiration Healthcare under the Contract by the due date, then, without limiting Inspiration Healthcare 's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **11. Intellectual property rights**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Inspiration Healthcare.
- 11.2 Inspiration Healthcare grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify (subject to Inspiration Healthcare's prior written consent) the Deliverables (excluding materials provided

by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4 The Customer grants Inspiration Healthcare a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Inspiration Healthcare for the term of the Contract for the purpose of providing the Services to the Customer.

## **12. Data protection**

- 12.1 The following definitions apply in this clause 12:
  - (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
  - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).
  - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
  - (d) **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Inspiration Healthcare is the Processor.
- 12.4 Without prejudice to the generality of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Inspiration Healthcare for the duration and purposes of the Contract.
- 12.5 Without prejudice to the generality of clause 12.2, Inspiration Healthcare shall, in relation to any Personal Data processed in connection with the performance by Inspiration Healthcare of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless Inspiration Healthcare is required by Domestic Law to otherwise process that Personal Data. Where Inspiration Healthcare is relying on Domestic Law as the basis for processing Personal Data, Inspiration Healthcare shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Inspiration Healthcare from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or Inspiration Healthcare has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) Inspiration Healthcare complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) Inspiration Healthcare complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach

notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach; and
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data.

12.6 The Customer consents to Inspiration Healthcare appointing third-party processors of Personal Data under the Contract in order to fulfil its obligations thereunder incorporating terms which are substantially similar to those set out in this clause 12 and in either case which Inspiration Healthcare confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.

### **13. Limitation of liability**

13.1 The limits and exclusions in this clause reflect the insurance cover Inspiration Healthcare has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

13.4 Subject to clause 13.3, Inspiration Healthcare 's total liability to the Customer shall not exceed the invoiced price of the Goods and/or Services to which the claim relates.

13.5 This clause 13.5 sets out specific heads of excluded loss [and exceptions from them]:

- (a) Subject to clause 13.3 and clause 13.4, clause 13.5(c) identifies the kinds of loss that are not excluded. Subject to that, clause 13.5(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:

- (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.
- (c) The following types of loss and specific loss are not excluded:
- (i) sums paid by the Customer to Inspiration Healthcare pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract; and
  - (ii) losses incurred by the Customer directly arising out of or in connection with any third party claim against the Customer which has been caused solely by the act or omission of Inspiration Healthcare.

13.6 Inspiration Healthcare has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.7 This clause 12 shall survive termination of the Contract.

#### **14. Returns**

Goods delivered in error may be returned to Inspiration Healthcare provided that they are returned within fourteen (14) days of delivery in unused, unopened, good re-saleable condition to Inspiration Healthcare Limited, Unit 7/8 Commerce Park, Commerce Way, Croydon, England, CR0 4YL, UK.

#### **15. Termination**

15.1 Without affecting any other right or remedy available to it, Inspiration Healthcare may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment

- (b) the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified in writing to do so;
- (c) The Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (d) The Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

15.2 Without affecting any other right or remedy available to it, Inspiration Healthcare may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Inspiration Healthcare if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(f), or Inspiration Healthcare reasonably believes that the Customer is about to become subject to any of them.

## **16. Consequences of termination**

16.1 On termination of the Contract:

- (a) the Customer shall immediately pay to Inspiration Healthcare all of Inspiration Healthcare 's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, Inspiration Healthcare shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Inspiration Healthcare Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Inspiration Healthcare may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

**17. Confidentiality**

17.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 17.2.

17.2 Each party may disclose the other party’s confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party’s rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party’s confidential information comply with this clause 17; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 No party shall use any other party’s confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

**18. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for eight (8) weeks, the party not affected may terminate the Contract by giving [30] days’ written notice to the affected party.

**19. General**

**19.1 Assignment and other dealings**

- (a) Inspiration Healthcare may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract.

- (b) The Customer shall not assign, transfer, charge, subcontract, delegate or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Inspiration Healthcare.

## **19.2 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by next working day commercial delivery service, at its registered office (if a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in accordance with this clause.
- (b) Any notice shall be deemed to have been received; if delivered by hand, at the time the notice is left at the proper address; if sent by next Working Day commercial delivery service, on the date and at the time that the courier's delivery receipt is signed.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**19.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## **19.4 Waiver.**

- (a) Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**19.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## **19.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.

- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

**19.7 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**19.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**19.9 Compliance with Laws and Regulations.**

- (a) The Customer shall be responsible for obtaining any necessary import licences or permits necessary for the delivery of the Goods to the Customer. The Customer shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods.
- (b) The Customer warrants to Inspiration Healthcare that it has informed Inspiration Healthcare of all laws and regulations affecting the manufacture, sale, packaging and labelling of Goods which are in force within the territory in which the Goods will be delivered (or any part of it) at the date of the Order and shall give Inspiration Healthcare as much advance notice as reasonably possible of any prospective changes in such laws and regulations up to and including the date of delivery.

**19.10 Governing law and Jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.