**Olympus Ireland Terms and Conditions of Supply**
**General Terms**

## 1 Definitions and Interpretation

1.1 In this Contract, the following words and expressions have the following meanings:

"**Affiliate**" means any person or entity which, directly or indirectly, controls, or is controlled by, or is under common control with a Party. For the purpose of this definition the term "control" means effective management control including, without limitation, control through the power to elect a sufficient number of managing directors or appoint a sufficient number of senior managers or to exercise control through similar powers. A Party shall also be presumed to control another entity if it either owns fifty percent (50%) or more of the beneficial interest or voting power of such entity;

"**Applicable Law**" means any statute, statutory instrument, bye-law, order, directive, treaty, decree or law; and legally binding rule, policy, guidance or recommendation issued by any governmental or statutory body, which relates to this Contract;

"**Approved Purchase Order**" means a Purchase Order accepted or approved by Olympus in accordance with Clause 4.4 of the General Terms;

"**Authorised Users**" means any of the Clinical User's directors, officers, staff members, individual consultants and third party contractors authorised by the Clinical User in accordance with the Contract to access and use the relevant Software or Software Service strictly for clinical use within the ordinary course of business of the Clinical User at the Clinical Site;

"**Business Day**" means any day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

"**Clinical Site**" means the site to which the Products will be delivered, the Products, Software and/or Software Service will be installed and be in use (unless otherwise specifically agreed in writing with Olympus), and which must be a registered clinical site, as confirmed by Olympus;

"**Clinical User**" means the clinical user of the Products, Software, Software Service and/or Software Maintenance and INFOCUS SoftwareCare at the Clinical Site, which shall be the Purchaser unless stated otherwise in the Purchase Order or Quotation;

"**Confidential Information**" means

i) all information disclosed to the relevant Party by or on behalf of the other Party in connection with this Contract and which relates to the provisions of this Contract, the negotiations relating to this Contract or the subject matter of this Contract;

ii) know-how, secret processes and inventions disclosed to the relevant Party by or on behalf of the other Party in connection with this Contract; and

iii) all other information disclosed to the relevant Party by or on behalf of the other Party (whether before or after the date of this Contract) which is marked as or has been otherwise indicated to be confidential or which derives value to a Party from being confidential or which would be regarded as confidential by a reasonable business person,

and this definition shall apply as to information disclosed to the Clinical User, where required in respect of Clause 5 and Clause 9 of these General Terms;

"**Contract**" means the contract for supply entered into by Olympus and the Purchaser, which shall include these General Terms and the applicable Schedules in accordance with Clause 2 of these General Terms;

"**Data**" means all data (including personal data), information, applications and other content that the Purchaser (or Clinical User, as applicable) uploads to the Products, Software or Software Service or that Olympus publishes, stores or processes on behalf of the Purchaser (or Clinical User, as applicable) as part of the Products, Software, Software Maintenance and INFOCUS SoftwareCare, or Software Service, but shall not include any usage data;

"**Data Protection Protocol**" means the protocol in respect of any processing of personal data, as defined by the UK GDPR, by Olympus pursuant to the supply and support of the Products or Services by it, as applicable and available on request;

"**Date of Dispatch**" means the date Products are dispatched by Olympus as stated on the Delivery Note;

"**Delivery**" means the date and time at which the Products are unloaded at the Clinical Site;

"**Delivery Note**" means the documentation provided by Olympus and included with the Products at dispatch;

"**Documentation**" means user manuals, installation manuals and other documents, instructions or written statements relating to the Products, Software, Software Service or Software Maintenance and INFOCUS SoftwareCare supplied or made available by Olympus under this Contract;

"**Excluded Cause**" means any damage, injury, losses, claims, costs, errors or problems arising directly or indirectly from:

i) use, storage or any other handling of the Products not in accordance with or in conflict with the Documentation in respect of such Product;

ii) the circumstances described in Clauses 6.11(i) to 6.11.(v)of Schedule 2 (Purchase Terms for Olympus Warranty Products);

iii) use of the Software or Software Service with other software or equipment or materials not supplied or approved in writing by Olympus;

iv) the Purchaser's failure to use the Software or Software Service in accordance with Olympus' instructions;

v) the Purchaser's failure to implement industry standard firewalls and Virus detection software;

vi) operator error or omission or any failure by the Purchaser to download the latest Software updates provided by Olympus;

vii) lack of infrastructure maintenance by the Purchaser; or

viii) any alteration, modification or adjustment performed by persons other than Olympus or its authorised representatives;

"**Force Majeure Event**" means circumstances beyond the reasonable control of a Party, including acts of God, terrorism, war, civil unrest, strike, lock out or other industrial action(other than strikes, lock outs and labour disputes caused by the delaying Party, its employees or sub-contractors for which the delaying Party shall be responsible);

"**Good Industry Practice**" means the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management using what the industry would (at the relevant time) regard as generally accepted processes, techniques and materials;

"**Group Companies**" means, in relation to any person, any and all group undertakings (as such term is defined in Section 1161 of the Companies Act 2006 as amended) from time to time of that person;

"**Insolvency Event**" means where a Party (a) becomes unable to pay its debts; (b) enters into liquidation (except for the purposes of a solvent amalgamation or reconstruction); (c) applies for or obtains a moratorium; (d) makes an arrangement with its creditors; (e) has a receiver, administrator or administrative receiver appointed over all or any of its assets; (f) ceases or threatens to cease trading or is dissolved; (g) takes or suffers to be taken any similar action in consequence of a debt; or (h) is subject to any procedure equivalent to any of the preceding matters in any other jurisdiction;

"**Intellectual Property Rights**" means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know- how, registered trademarks, registered designs, models, unregistered design rights, unregistered trade-marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

"**Moral Rights**" means moral rights under the Copyright Designs and Patents Act 1988 (or equivalent or analogous rights under the laws of other jurisdictions);

"**Normal Working Hours**" means between 8.00am and 5.30pm on any Business Day;

"**OEM**" means original equipment manufacturer;

"**OEM Standard**" means the OEM standards in relation to a Product, as issued from time to time;

"**Olympus**" means KeyMed (Ireland) Limited with company number 68179;

"**Olympus Personnel**" any person employed or engaged by any Olympus Group Company or a subcontractor of Olympus who is wholly or partly engaged in the performance of Olympus' obligations under the Contract;

"**Olympus Warranty**" has the meaning given to it in Clause 6.1 of Schedule 2;

"**Olympus Warranty Products**" means those Olympus Products which benefit from an Olympus Warranty;

"**Operating Software**" means software to be supplied pre-installed on a Product or with a Product and that is necessary for operation of the Product;

"**Perpetual Software Licence**" has the meaning given to it in Clause 2.1 of Schedule 6;

"**Personnel**" means all employees and officers of the Purchaser and any Clinical User;

"**Placed Product**" means a Product provided by Olympus to the Purchaser on a lease basis under a Placement;

"**Placement**" means an arrangement where the Purchaser commits to purchasing consumable Products in exchange for a Placed Product;

"**Price"** means the price of the Products set out in the Quotation or, where there is no Quotation, the Approved Purchase Order;

"**Products**" means goods or items supplied by Olympus under this Contract;

"**Purchase Order**" means, where applicable, a purchase order for Products, Software, Software Service and/or Software Maintenance and INFOCUS SoftwareCare (as applicable), submitted by the Purchaser to Olympus;

"**Purchaser**" means the entity with which Olympus enters this Contract;

"**Quotation**" means, where applicable, a quotation issued by Olympus to the Purchaser in respect of the Products, Software, Software Service and/or Software Maintenance and INFOCUS SoftwareCare;

"**Rental"** has the meaning given to it in Clause 2.1 of Schedule 3;

"**Services**" means the equipment repair and/or maintenance services delivered by Olympus or an Olympus Group Company to the Purchaser (or Clinical User as applicable) in respect of the applicable Products either under a Services Contract or as part of the provision of the Products (for example, as part of a Rental);

"**Services Contract**" means the Olympus INFOCUS service contract for equipment repair services and/or maintenance which may be delivered by Olympus or an Olympus Group Company to the Purchaser (or Clinical User as applicable) in respect of the applicable

Products;

"**Software**" means software supplied by or on behalf of Olympus under this Contract, together with all updates and modifications made to that software by or on behalf of Olympus;

"**Software Licence**" has the meaning given to it in Clause 2.1 of Schedule 5;

"**Software Maintenance and INFOCUS SoftwareCare**" means those software maintenance and support services supplied by or on behalf of Olympus under this Contract in accordance with Schedule 8 (Software Maintenance and INFOCUS SoftwareCare);

"**Software Service**" means the SaaS service supplied by or on behalf of Olympus under this Contract, including all updates made to that service by or on behalf of Olympus;

"**Software Service Subscription**" has the meaning given to it in Clause 2.1 of Schedule 7;

"**UK GDPR**" means the UK law version of the General Data Protection Regulation ((EU) 2016/679);

"**Valid Request**" means a request submitted by the Purchaser to Olympus for Products, Software, Software Service and/or Software Maintenance and INFOCUS SoftwareCare and which satisfies the requirements of this Contract, enabling Olympus to prepare a corresponding Quotation;

"**Virus**" means any "back door", "time bomb", "Trojan Horse", "worm", "drop dead device", "virus" or other computer software routine intended or designed to:

i) disable, damage, erase, disrupt or impair the normal operation of; or

ii) provide unauthorised access to,

computer systems or any software or information stored on those computer systems; and

"**Website**" means the website located at https://www.olympus.co.uk/medical/en/Products-and-solutions/All-products/All-products.html.

1.2 References to:

i) one gender includes all genders and references to the singular include the plural and vice versa;

ii) a person shall include any company, partnership or unincorporated association (whether or not having separate legal personality); and

iii) a company shall include any company, corporation or any body corporate, wherever incorporated.

1.3 References to this Contract shall include the Schedules to it (including their Appendices), and references to clauses and schedules are to Clauses of, and Schedules to, this Contract. References to paragraphs and Parts are to paragraphs and Parts of the Schedules.

1.4 Headings shall be ignored in interpreting this Contract.

1.5 The words "includes" and "including" are to be construed without limitation.

1.6 Unless otherwise specified in this Contract, if a matter is subject to a Party's consent, the grant of that consent shall be in that Party's sole and absolute discretion.

1.7 References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

1.8 References to a provision of law include:

i) that provision of law as from time to time replaced, modified, re-enacted or consolidated whether before or after the date of this Contract; and

ii) any subordinate legislation made from time to time under that provision of law.

1.9 References to a "Party" or the "Parties" means the Purchaser and/or Olympus and their respective successors and permitted assigns. References to a "third party" or "third parties" shall not include the Group Companies of the Purchaser or Olympus.

1.10 References to these terms or any other agreement or document are to these terms or such other agreement as it may be varied, amended, supplemented, restated, renewed, novated or replaced from time to time.

1.11 If there is any conflict, apparent conflict or ambiguity in or between these General Terms and any Schedule, the terms of the Schedule shall take precedence.

**2 Application of parts of this Contract**

2.1 These General Terms apply to every Contract. In addition:

i) where the Purchaser is purchasing Products from Olympus (other than Olympus Warranty Products or Products received as part of a Placement or rented), Schedule 1 (General Purchase Terms) shall apply;

ii) where the Purchaser is purchasing Olympus Warranty Products from Olympus, Schedule 2 (Purchase Terms for Olympus Warranty Products) shall apply;

iii) where the Purchaser is renting Products from Olympus (other than as part of a Placement), Schedule 3 (Rental Terms) shall

apply;

iv) where the Purchaser is receiving Products from Olympus as part of a Placement, Schedule 4 (Placement Terms) shall apply;

v) where the Purchaser is obtaining a temporary Software licence from Olympus, Schedule 5 (Temporary Software Licence Terms) shall apply;

vi) where the Purchaser is obtaining a perpetual Software licence from Olympus, Schedule 6 (Perpetual Software Licence Terms) shall apply;

vii) where the Purchaser is obtaining a Software Service from Olympus, Schedule 7 (SaaS Terms) shall apply; and

viii) where the Purchaser is receiving Software Maintenance and INFOCUS SoftwareCare from Olympus, Schedule 8 (Software Maintenance and INFOCUS SoftwareCare) shall apply.

**3 Products, Software and Software Service**

3.1 The Products, Software and Software Service are as presented and described on the Website.

3.2 Olympus reserves the right to amend the presentation and description of the Products, Software and Software Service where updates are made to the Products, Software and Software Service or if required by any applicable statutory or regulatory requirement, and such will be amended on the Website.

**4 Order Requirements**

4.1 Upon receipt of a Valid Request from the Purchaser, Olympus shall issue a Quotation. A Quotation does not constitute an offer and shall be valid for the period indicated in the Quotation only.

4.2 The submission of a Valid Request for a Quotation and/or a Purchase Order shall be subject to these General Terms. The submission of a Purchase Order constitutes an offer under these General Terms.

4.3 The Purchaser is responsible for ensuring that the correct details of the Purchaser, the Clinical User and the Clinical Site are included in the Valid Request and that the Quotation, any applicable specification, and the Purchase Order are complete and accurate.

4.4 No Purchase Order shall be deemed accepted by Olympus unless and until accepted or approved by Olympus.

4.5 These General Terms apply to the relationship between Olympus and the Purchaser to the exclusion of all other terms provided by any Party either prior to or subsequently to the placing of a Purchase Order.

**5 Clinical Users**

5.1 Olympus is an ethical and conscientious medical device manufacturer and repair service provider. Olympus supplies Products, Software, Software Service or Software Maintenance and INFOCUS SoftwareCare only to and for use by Clinical Users. The Purchaser agrees that, unless specified otherwise in accordance with Clause 4.3 of these General Terms, in the Purchase Order, the Clinical User of the Products, Software, Software Service or Software Maintenance and INFOCUS SoftwareCare subject to this Contract shall be the Purchaser and that the Products, Software, Software Service or Software Maintenance and INFOCUS SoftwareCare are strictly for clinical use by the Clinical User only at the Clinical Site.

5.2 To ensure full visibility of supply of Products, Software, Software Service and Software Maintenance and INFOCUS SoftwareCare, all Purchase Orders must clearly identify:

i) the Purchaser;

ii) the Clinical User, if different from the Purchaser; and

iii) the Clinical Site.

5.3 Olympus may, in its absolute discretion, decline any Purchase Order which does not comply with the requirements of Clause 5.1 or Clause 5.2 of these General Terms.

5.4 Notwithstanding the above, in the event that Olympus suspects or discovers that supply is not in accordance with Clause 5.1 or Clause 5.2 of these General Terms, it reserves the right to:

i) reject the Purchase Order, and any future requests made by the Purchaser either for or on its behalf or on another's behalf; and/or

ii) terminate the Contract in whole or in part immediately on notice to the Purchaser.

5.5 The Purchaser, if it is not the Clinical User, may procure the Products for the provision to the Clinical User only, but is strictly prohibited from reselling or otherwise providing the Products, Software, Software Service and Software Maintenance and INFOCUS SoftwareCare to any party.

5.6 For the avoidance of doubt, any and all actions or omissions of the Clinical User, if it is a different entity to the Purchaser, shall be deemed and regarded by Olympus to be the actions or omissions of the Purchaser. The Purchaser shall be wholly liable to Olympus in respect of any actions or omissions of the Clinical User, as if they were those of the Purchaser in accordance with these terms.

5.7 In the event that the Purchaser is not the Clinical User of the Products, the Purchaser will:

i) ensure and facilitate the direct communication from Olympus to the Clinical User, without interference, as regards the Products. The Purchaser shall, in these circumstances, be included and updated by Olympus about substantive communications for information where reasonable and practicable to do so, as determined by Olympus;

ii) ensure attendance by the Clinical User (and such other attendees as required by Olympus only, in its discretion) at training as recommended by and provided by Olympus, and at any periodic or recommended safety, quality or performance reviews;

iii) ensure that the Clinical User reports faults, issues, repair requirements, support requests, to Olympus within 24 hours of such events occurring; and

iv) inform Olympus in writing within 24 hours of the Purchaser being informed or discovering or becoming aware of any potential or actual misuse of the Products, or breach of these terms and obligations, regardless of the circumstances or cause, which would or may affect, compromise, damage or degrade the quality, integrity, performance or use of the Products (in Olympus' discretion and including but not limited to OEM Standard), particularly where this could potentially compromise patient safety.

5.8 Performance, usage, repair or other reports prepared by Olympus in respect of the Products will be provided or presented directly to the Clinical User by Olympus. Subject to the provisions of Clause 9.5 of these General Terms, and depending on any confidentiality or commercial sensitivities, provision of such reports to the Purchaser or any other party shall be in Olympus' discretion.

5.9 Any breach by the Purchaser of any of the conditions of Clauses 5.5 to 5.7 of these General Terms shall be deemed a material breach of this Contract.

**6 Delivery**

6.1 Where Products are to be delivered by Olympus under this Contract, Clause 6 of these General Terms shall apply.

6.2 Olympus shall deliver the Products to the Clinical Site, unless otherwise agreed in writing. Actual delivery is completed upon the unloading of the Products at the Clinical Site.

6.3 Any delivery dates provided by Olympus for the delivery of Products are estimates only. Olympus shall notify the Purchaser of the date on which it proposes to deliver any Products to the Clinical Site. Time shall not be of the essence in relation to delivery of any Products, and Olympus may, at its option, deliver the Products in instalments. Olympus shall not be liable for any costs incurred by the Purchaser resulting from delays in delivery, howsoever arising.

6.4 Olympus shall deliver Products to the Clinical Site (or other agreed delivery address) during Normal Working Hours. If delivery of any Products is required outside of Normal Working Hours, the Purchaser shall submit a request in writing to Olympus. Olympus shall not be obliged to deliver any Products outside of Normal Working Hours unless Olympus agrees in writing to do so and provided the Purchaser pays to Olympus any additional charges for such delivery that are agreed by the Parties.

6.5 Olympus shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide Olympus with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

6.6 Olympus shall ensure that each delivery of the Products is accompanied by a Delivery Note.

6.7 If the Purchaser (or, if applicable, the Clinical User or any representative at the Clinical Site or delivery site) refuses or fails to take delivery of the Products, Olympus shall be entitled to store the Products in such manner as it deems fit at the Purchaser's cost (including all costs of storage, insurance and redelivery of the Products) until the Purchaser takes or procures the taking of delivery or until re-supply of the Products to a third party or until disposal, in each case pursuant to Clause 6.8 of these General Terms.

6.8 If the Purchaser has failed to take or procure the taking of delivery or to arrange collection of the Products within twenty (20) Business Days after the date on which Olympus first attempted delivery, without prejudice to any other rights or remedies available to Olympus, Olympus shall be entitled to re-supply to a third party or otherwise dispose of the Products, in which case the Contract shall terminate automatically in respect of the applicable Products.

**7 Installation and commissioning**

7.1 Olympus shall install and commission the Product at the Clinical Site in accordance with Good Industry Practice.

7.2 The Purchaser shall, or shall procure that the Clinical User shall, provide appropriate access to the Clinical Site for Olympus to install the Product(s) at a time agreed between the relevant parties.

7.3 To the extent that there is a delay in installation and/or commissioning, Olympus excludes all liability, howsoever arising, resulting from such delay, unless otherwise agreed in writing by Olympus and the Purchaser.

**8 General Payment Terms**

8.1 The Purchaser shall pay each invoice submitted by Olympus:

i) within thirty (30) days of the date of the invoice (or in accordance with any credit terms agreed by Olympus in writing); and

ii) in full and in cleared funds to a bank account nominated in writing by Olympus.

8.2 The amounts invoiced under this Contract are exclusive of all value added taxes, goods taxes or other sales taxes which may at any time be chargeable, which the Purchaser shall pay at the rate prevailing at the date of an invoice.

8.3 The Purchaser shall not be entitled by reason of any set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to Olympus.

8.4 If the Purchaser fails to pay any amounts due for payment under this Contract on or before the due date:

i) the Purchaser shall pay interest on such sum from the due date until the date of actual payment (whether before or after judgment) at the rate of 4% above the base rate of the Bank of England from time to time; and

ii) Olympus may determine, in its absolute discretion to (as applicable):

(a) terminate these terms and either cancel delivery or immediately retrieve the Products from the Clinical Site, as applicable; and/or

(b) suspend the Software Licence, Perpetual Software Licence, Software Service, and Software Maintenance and INFOCUS SoftwareCare. For the avoidance of doubt, during any such period of suspension all other provisions of the Contract shall continue to apply.

**9 Confidentiality**

9.1 Subject to Clause 9.2 of these General Terms, each Party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.

9.2 A Party may disclose Confidential Information if and to the extent:

i) required by law or order of the courts or by any regulatory or governmental body to which such Party is subject, provided that the receiving Party shall, where legally permitted, immediately provide the disclosing Party with written notice of any order so that the disclosing Party may timely move to quash such order if appropriate;

ii) disclosed on a necessary basis to the professional advisers, auditors and bankers of such Party;

iii) the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or

iv) the Party has the prior written approval of the other Party.

9.3 A Party shall not acquire any right, title or interest in or to the other Party's Confidential Information.

9.4 The restrictions contained in this Clause 9 of these General Terms shall continue to apply after the termination or expiry of this Contract (however arising) without limit in time.

9.5 In the event that the Purchaser is not the Clinical User of the Products, the Purchaser acknowledges that certain information, training, reports, communications etc. provided by Olympus is or may be commercially sensitive and/or confidential to Olympus. In such cases, Olympus may require that this information is provided only and directly to the Clinical User, without disclosure to and regardless of the legal status as owner of the Products of the Purchaser. The provisions of Clause 9.5 of these General Terms shall not interfere with any regulatory compliance or reporting requirements of the Clinical User. All such information shall be clearly marked or indicated as confidential to Olympus and the Purchaser shall be deemed to have breached the provisions of Clause 9 of these General Terms by receipt also of such information other than from Olympus.

**10 Intellectual Property**

10.1 All Intellectual Property Rights in Products, Software, Software Service and Documentation belong to Olympus or the applicable third-party owner of such rights. Nothing in this Contract shall operate to transfer ownership of any such Intellectual Property Rights to the Purchaser.

10.2 The Purchaser agrees not to remove, suppress or modify in any way any proprietary marking on any Product, Software, Software Service and/or Documentation (including any trademark or copyright notice).

10.3 The Parties agree that Olympus shall own all Intellectual Property Rights arising out of, or relating to the Purchaser's (or Clinical User's) use of the Products, Software, Software Maintenance and INFOCUS SoftwareCare, Software Service and Documentation (in each case excluding Data), including in relation to any know how, ideas, methods, processes or techniques which relate to any developments arising out of the provision of or in connection with the Products, Software, Software Service, Software Maintenance and INFOCUS SoftwareCare and/or Documentation for the purposes of Olympus' business from time to time, provided always that this information does not include Data. The Purchaser hereby assigns (or shall procure the assignment of) all such rights with full title guarantee and free from all encumbrances. In relation to future Intellectual Property Rights, the assignment under Clause 10.3 of these General Terms shall take effect as a present assignment of future Intellectual Property Rights. The Purchaser shall ensure that any Personnel unconditionally and irrevocably waive all Moral Rights accordingly.

10.4 Olympus acknowledges that all Intellectual Property Rights in Data are the sole property of the Purchaser and/or their respective third-party licensors.

10.5 The Purchaser grants or shall procure for Olympus a non-exclusive, non-transferrable, royalty-free licence to:

i) use and copy (and sub-license its Affiliates and subcontractors to use and copy) Data solely to the extent necessary for the purpose of Olympus fulfilling its obligations under this Contract; and

ii) use and copy (and sub-license its Affiliates and subcontractors to use and copy) Data that is not personal data for the purposes of: (a) improving the quality and reliability of the Products, Software, Software Service and Software Maintenance and INFOCUS SoftwareCare; and (b) maintaining the security and operational integrity of the Software, Software Maintenance and INFOCUS SoftwareCare and Software Service, including for security monitoring and incident management, managing the performance and stability of the Software, Software Maintenance and INFOCUS SoftwareCare and Software Service.

10.6 Olympus may collect (or have collected by its Affiliates or subcontractors) usage data relating to the Purchaser's (or Clinical User's, as applicable) use of the Products, Software Software Service, or Software Maintenance and INFOCUS SoftwareCare. Olympus will own all Intellectual Property Rights in and to such data and may use such data for any purpose (including providing the Products, Software, Software Maintenance and INFOCUS SoftwareCare or Software Service, auditing and improving the Products, Software, Software Maintenance and INFOCUS SoftwareCare or Software Service, or promoting or conducting research on Olympus products), provided that if Olympus provides such data to a third party other than its Affiliates it will aggregate such data so that the Purchaser cannot be identified as the source of such data.

10.7 The provisions of Clause 10 of these General Terms shall survive termination of this Contract, however arising.

**11 Clinical Sites**

11.1 Olympus shall and shall procure that all Olympus Personnel in attendance at any Clinical Site, comply with the Clinical Site's reasonable security and site procedures and health and safety requirements as notified by the Purchaser in advance in writing to Olympus from time to time.

11.2 The Purchaser shall permit access to (or shall procure the permission of access to) Olympus and Olympus Personnel to Clinical Sites as reasonably required in connection with this Contract. Olympus agrees and acknowledges that:

i) it shall not carry out any alterations to any Clinical Site without the prior written consent of the Purchaser;

ii) neither it nor any Olympus Personnel shall at any time ever be entitled to exclusive possession of any Clinical Site;

iii) no relationship of landlord and tenant shall be created by the arrangements under this Contract and Olympus shall not be capable of acquiring security of tenure in relation to its occupation or use of a Clinical Site; and

iv) Olympus shall promptly vacate all Clinical Sites upon the expiry or termination of this Contract and shall make good any damage caused by its occupation, use or vacation of a Clinical Site to the reasonable satisfaction of the Purchaser.

**12 Liability**

12.1 Subject to Clauses 12.2, 12.3 and 12.4 of these General Terms, Olympus' maximum aggregate liability arising out of or in connection with this Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence and also including any liability arising from a breach of, or a failure to perform or defect or delay in performance of Olympus' obligations under this Contract will be limited to one hundred percent (100%) of the total amounts paid or payable to Olympus under this Contract in the contract year in which the liability arose.

12.2 Neither Party will have any liability to the other Party for:

i) any indirect or consequential loss or damage;

ii) loss of profit or loss of opportunity; or

iii) loss of or corruption of data,

which arises out of or in connection with this Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of its obligations under this Contract, subject always to Clause 12.4 of these General Terms.

12.3 Subject to Clause 12.4 of these General Terms, Olympus, shall not be liable to the Purchaser for any loss the Purchaser suffers in connection with this Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence, as a result of an Excluded Cause.

12.4 Nothing in this Contract will operate to exclude or restrict a Party's liability (if any) to the other for:

i) death or personal injury resulting from negligence;

ii) fraud or fraudulent misrepresentation;

iii) the Purchaser's obligation to pay amounts payable to Olympus in accordance with the Contract;

iv) the Purchaser's breach of its obligations under Clause 9 of these General Terms;

v) in the case of the Purchaser's liability, damage to the Products;

vi) liability under any indemnity given by the Purchaser; or

vii) any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

12.5 Nothing in Clause 12 of these General Terms will prevent or restrict the right of a Party to seek injunctive relief or specific performance or other discretionary remedies of the court.

12.6 Except as expressly stated in this Contract, all warranties, terms and conditions, whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law.

**13 Notices**

13.1 Any notice will be in writing, in the English language marked for the attention of the specified representative of the Party to be given the notice and:

i) sent by pre-paid first-class post to that Party's address specified on the Purchase Order or as otherwise notified by the Party; or

ii) delivered to or left at (but not, in either case, by post) that Party's address specified on the Purchase Order or as otherwise notified by the Party.

13.2 Any notice given in accordance with Clause 13 of these General Terms will be deemed to have been served:

i) if given as set out in Clause 13.1(i) of these General Terms, at 9:00am on the first Business Day after the date of posting; and

ii) if given as set out in Clause 13.1(ii) of these General Terms, at the time the notice is delivered to or left at that Party's address,

provided that if a notice is deemed to be served before 9.00 am on a Business Day it will be deemed to be served at 9.00 am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00 pm on a Business Day it will be deemed to be served at 9.00 am on the following Business Day.

**14 Force Majeure**

14.1 A Party shall have no liability for any delay in performance or any non-performance of any obligation under this Contract, save for any payment obligation which shall continue in full force and effect, to the extent that such delay or non-performance is due to a Force Majeure Event. The time for performance of the relevant obligation shall be extended to the extent that the delay or non-performance is due to a Force Majeure Event.

14.2 If Olympus is prevented for a period of more than three (3) consecutive months from performing substantially all its obligations under this Contract, then either Party may terminate this Contract immediately by serving written notice on the other Party.

**15 Termination**

15.1 Either Party may terminate this Contract in whole or in part at any time on written notice, either immediately or following such notice period as it shall see fit:

i) if the other Party:

(a) is in material breach of this Contract, and such breach is irremediable; or

(b) commits any remediable material breach of this Contract and fails to remedy such breach within a period of twenty (20) Business Days from the service on it of a notice specifying the material breach and requiring it to be remedied (or, having so remedied, subsequently commits a similar breach within the next twenty (20) Business Days); or

(c) undergoes an Insolvency Event; and

ii) in any other circumstances where this Contract expressly grants the relevant Party a right to terminate this Contract.

15.2 Olympus may terminate this Contract in whole or in part at any time by giving written notice to the Purchaser if the Purchaser fails to make payment and, following receipt of a notice from Olympus in relation to such failure, does not remedy this breach within thirty (30) calendar days from the date of receipt of the notice.

15.3 If applicable, the Purchaser or Olympus may terminate this Contract in whole or in part for convenience on the terms stated on the Quotation.

**16 Consequences of termination**

16.1 On termination of the Contract or any part of this Contract for any reason:

i) the Purchaser shall grant Olympus reasonable access, on prior written notice, to the Clinical Sites and the Purchaser's IT systems for the purposes of deactivating any licences permitted under the Software Licence or Software Service Subscription in respect of any terminated Software Licence or Software Service Subscription;

ii) all licences and access rights granted in respect of any terminated Software Licence or Software Service Subscription shall immediately terminate and the Purchaser shall immediately cease all use of any terminated Software Licence or Software Service and/or the Documentation;

iii) each Party shall otherwise return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party; and

iv) without prejudice to any other rights or remedies of Olympus, the Purchaser shall pay to Olympus on demand any and all sums due but unpaid under this Contract or, where part of this Contract has been terminated, under the applicable part, at the date of such demand, together with any applicable interest.

**17 Records and Audit**

17.1 The Purchaser is obliged to inform and update Olympus in writing of the location of the Products within the Clinical Site at regular intervals, including but not limited to, prior to any Clinical Site attendance by Olympus.

17.2 The Purchaser will permit (and will procure that its subcontractors permit) Olympus (or a third-party auditor appointed by Olympus), to have access on reasonable notice to relevant records and information as may be required in order to (i) investigate suspected breaches, and/or (iii) verify that that the Purchaser is complying with its obligations under this Contract.

17.3 The Purchaser will provide Olympus and its auditors with all reasonable co-operation, access, and assistance in relation to each audit.

**18 Data protection**

18.1 To the extent that Olympus processes personal data on behalf of the Purchaser and/or the Clinical User, as applicable, then the relevant Parties, by submitting the Purchase Order, and Olympus, agree that the provisions set out in paragraphs (a) to (h) of Article 28(3) of the UK GDPR are incorporated into these terms, with Purchaser and/or Clinical User, as applicable, regarded as "**controller**" and Olympus as "**processor**" and Clause 18 of these General Terms shall apply. So far as Olympus has potential access to personal data, either:

i) the applicable Data Processing Protocol in accordance with Article 28 UK GDPR shall apply and is deemed entered into by Olympus and the controller, as applicable, by an Approved Purchase Order; or

ii) the relevant parties shall enter into a data processing agreement in accordance with Article 28 of UK GDPR prior to the processing of any personal data by Olympus.

18.2 Pursuant to the Purchase Order, the controller (or by the Purchaser on its behalf) appoints Olympus as a processor to process its personal data solely as necessary to perform its obligations under this Contract. The subject-matter, duration, nature and purpose of the processing and type of personal data and categories of data subjects are as determined by the Products and this Contract. The controller (or the Purchaser on its behalf) agrees that Olympus shall be allowed to engage other processors ("**subprocessor(s)**") to process the personal data on its behalf (but shall remain responsible for such processing). Olympus shall keep an updated list of its relevant subprocessors which will be available upon request.

18.3 All devices must be wiped of any personal data prior to sending to Olympus. If personal data has not been wiped, it shall be assumed that Olympus, without any liability to the controller or any other party, is authorised by the controller to delete or wipe all data stored on the device.

18.4 If the Purchaser is not the Clinical User, the Purchaser shall procure that the Clinical User complies with Clause 18 of these General Terms and that the Clinical User enters into a data processing agreement or data processing protocol directly with Olympus.

**19 Anti-bribery**

19.1 Each Party warrants and represents that:

i) it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

(a) offered, given, accepted or agreed to give or accept 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 Contract or for showing or not showing favour or disfavour to any person in relation to this Contract; or

(b) in connection with this Contract paid, accepted or agreed to pay or accept any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) are set out in this Contract; and

ii) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

19.2 If either Party or their officers, employees or agents (or anyone acting 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 relevant Party in relation to this Contract, the Party which has not committed the Prohibited Act or such offence shall be entitled:

i) to terminate this Contract and recover from the other Party the amount of any loss resulting from the termination;

ii) to recover from the other Party the amount or value of any gift, consideration or commission concerned; and

iii) to recover from the other Party 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 Any termination under Clause 19.2(i) of these General Terms shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues.

**20 Publicity**

20.1 Neither Party shall make any announcement, either written or otherwise, in relation to the existence of or subject matter of this Contract, except with the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, except as required by law.

**21 Survival**

21.1 The expiry or termination of this Contract (for whatever reason) shall not terminate any provision which is expressly or by implication provided to come into or continue in force after expiry or termination and shall be without prejudice to the accrued rights and liabilities and other remedies of the Parties to this Contract. In particular, the Purchaser shall remain liable to pay all remaining outstanding payments under the Contract.

**22 Variations**

22.1 Olympus reserves the right to amend the General Terms and the terms of any Schedule from time to time, subject to prior publication of updates by Olympus.dt

**23 Relationship of the Parties**

23.1 The relationship of Olympus (and any Olympus employees, agents and subcontractors) to the Purchaser will be that of independent contractor and nothing in this Contract shall render it (nor any Olympus employees, agents or subcontractors) an employee, worker, agent or partner of the Purchaser and accordingly they shall not hold themselves out as such. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

**24 Assignment / subcontracting**

24.1 The Purchaser shall not assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under this Contract.

24.2 Olympus may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract, subject to written notification to the Purchaser.

**25 Severance**

25.1 If any provision in this Contract shall be held to be illegal, invalid or unenforceable, in whole or in part, the Parties shall seek to agree

any deletions or modifications necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

25.2 To the extent that the Parties do not agree to delete or modify the provision, in whole or in part, under Clause 25.1 of these General Terms then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Contract and the legality, validity and enforceability of the remainder of this Contract shall, subject to any deletion or modification made under Clause 25.1 of these General Terms, not be affected.

**26 Waiver**

26.1 No failure of either Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Contract (each a "**Right**") shall operate as a waiver of that Right.

26.2 Any exercise of any Right shall be without prejudice to any other rights or remedies and shall not preclude any other or further exercise of that Right or the exercise of any other Right.

**27 Third party rights**

27.1 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Contract, except to the extent set out in Clause 27.2 of these General Terms.

27.2 Each of Olympus' Group Companies may enforce and rely on this Contract to the same extent as if it were a Party.

27.3 This Contract may be terminated, and any term may be amended or waived in accordance with the terms of this Contract without the consent of any person described in Clause 27.2 of these General Terms.

**28 Waste Electrical and Electronic Equipment**

28.1 In accordance with the UK Waste Electrical and Electronic Equipment (WEEE) Regulations and the Waste Electrical and Electronic Equipment (WEEE) Directive (2012/19/EU), upon written request by the Purchaser, Olympus can provide a licensed carrier to collect, from the Clinical Site, and recycle Products which are electrical and electronic equipment.

**29 Entire agreement**

29.1 This Contract and any document expressly referenced in this Contract constitute the entire agreement and understanding between the Parties relating to its subject matter and supersede any other agreement or understanding (written or oral) between the Parties relating to the same.

29.2 No terms or conditions endorsed upon or otherwise submitted by the Purchaser to Olympus, will form part of the Contract and the Purchaser waives any right which it otherwise might have to rely on such terms and conditions.

29.3 Each Party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether innocently or negligently) by any other party or any other person except as expressly set out in this Contract in respect of which its sole remedy shall be for breach of contract.

29.4 Nothing in Clause 29 of these General Terms, shall operate or be construed to exclude or limit any liability of any party for fraud, including fraudulent misrepresentation.

**30 Governing law and jurisdiction**

30.1 This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by Irish law.

30.2 The Parties irrevocably agree that the courts of the Republic of Ireland are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract and that accordingly any proceedings arising out of or in connection with this Contract shall be brought in such courts.

## Schedule 1

## General Purchase Terms

**1 Products**

1.1 The Purchaser agrees to purchase, and Olympus agrees to supply, the Products in accordance with the terms of this Schedule 1.

1.2 In respect of any arrangement for a volume commitment of Products over a defined term, the submission of a Purchase Order by the Purchaser in respect of the first instalment of such volume commitment, shall be deemed to be a commitment by the Purchaser to purchase the entire volume commitment of such Products as set out in the Quotation.

**2 Price and Payment Terms**

2.1 The Purchaser shall pay Olympus the Price in accordance with Clause 2 of this Schedule 1 and Clause 8 of the General Terms.

2.2 Olympus will issue an invoice to the Purchaser for an amount equal to the Price upon:

i) Delivery of the Products in respect of Purchasers with approved credit accounts; or

ii) Receipt of a Purchase Order for all other accounts which do not have approved credit, and delivery will not be made unless and until payment of the Price and any other amounts due to Olympus in respect of the Products is paid in full.

2.3 Olympus reserves the right to withhold any delivery if all or any part of the amounts it has invoiced in respect of the Products remain unpaid.

**3 Title and Risk**

3.1 Risk in the Products passes to the Purchaser on Delivery.

3.2 Title to the Products shall transfer from Olympus to the Purchaser on receipt by Olympus of full payment for the Products.

3.3 Until such time as title passes to the Purchaser:

i) the Clinical User shall be entitled to use the Products; and

ii) the Purchaser shall:

(a) hold the Products as Olympus' fiduciary agent and bailee;

(b) ensure the Products are properly stored and protected; and

(c) not create any encumbrance over any of the Products; and

iii) where the Products have been delivered to the Clinical Site, Olympus shall be entitled to enter into the Clinical Site, or such other site at which the Products are kept and recover such Products.

**4 Defects**

4.1 On Delivery, and for a period of 12 months thereafter, the Products shall:

i) conform in all material respects with their description;

ii) be free from material defects in design, material and workmanship; and

iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

iv) be fit for the purpose held out by Olympus.

4.2 Subject to Clause 4.1 of Schedule 1, if the Purchaser gives notice in writing to Olympus that some or all of the Products do not comply with the statement set out in Clause 4.1 of Schedule 1, Olympus shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full, subject to:

i) Olympus being given a reasonable opportunity of examining such Products; and

4.3 the Purchaser (if requested) returning such Products to Olympus (at the Olympus' cost if so requested, otherwise such Products should be disposed of by the Purchaser on Olympus' instruction and cost) Olympus shall not be liable for the Products' failure to comply with the warranty set out in Clause 4.1 of Schedule 1 if:

i) the Purchaser makes any further use of such Products after giving notice in accordance with Clause 4.2 of Schedule 1;

ii) any party other than Olympus alters or repairs such Products at any time;

iii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

iv) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

4.5 This Clause 4 of Schedule 1 shall apply to any replaced part of or replaced Products supplied by Olympus.

**5 Pre-installed Operating Software**

5.1 The Purchaser acknowledges (and shall ensure that the Clinical User acknowledges) that any Operating Software is licensed not sold. The Operating Software is owned by an Olympus Group Company or a third-party licensor.

5.2 Unless it is identified by the Quotation or the Approved Purchase Order that the Purchaser or Clinical User (as applicable) will obtain a direct licence from the third party licensor of the Operating Software or that a separate software licence agreement applies for the Purchaser's or Clinical User´s (as applicable) use of the Operating Software, Olympus grants (or shall procure the grant) to the Purchaser or the Clinical User (as applicable) a non-exclusive, revocable, fully-paid up, royalty-free, worldwide licence from the date of actual delivery of the Operating Software to use (and to permit Authorised Users to use) the Operating Software on the Products for the clinical use by the Clinical User, including for back-up and disaster recovery purposes.

## Schedule 2

## Purchase Terms for Olympus Warranty Products

**1 Definitions**

1.1 In this Schedule, "**Products**" shall be deemed to refer to "**Olympus Warranty Products**" only.

1.2 In this Schedule, the following words and expressions have the following meanings:

"**Olympus Authorised Service Centre**" means KeyMed House, Stock Road, Southend on Sea SS2 5QH or such other authorised service centres as required by Olympus to provide support in delivering the Olympus Warranty;

"**Olympus Field Service Engineer**" means an Olympus engineer who may attend the Clinical Site to provide repair, maintenance and support;

"**Warranty Period**" has the meaning given to it in Clause 6.4 of Schedule 2; and

"**Warranty Services**" means the services which may be provided by Olympus in support of the Olympus Warranty, subject to the terms of this Schedule, as further detailed in Appendix 1 to this Schedule 2.

**2 Products**

2.1 The Purchaser agrees to purchase, and Olympus agrees to supply, the Products in accordance with the terms of this Schedule 2.

**3 Price and Payment Terms**

3.1 The Purchaser shall pay Olympus the Price in accordance with Clause 3 of Schedule 2 and Clause 8 of the General Terms.

3.2 Olympus will issue an invoice to the Purchaser for an amount equal to the Price upon:

i) Delivery of the Products in respect of Purchasers with approved credit accounts; or

ii) Receipt of a Purchase Order for all other accounts which do not have approved credit, and Delivery will not be made unless and until payment of the Price and any other amounts due to Olympus in respect of the Products is paid in full.

3.3 Olympus reserves the right to withhold any delivery if all or any part of the amounts it has invoiced in of the Products remain unpaid.

**4 Title and Risk**

4.1 Risk in the Products passes to the Purchaser on Delivery.

4.2 Title to the Products shall transfer from Olympus to the Purchaser on receipt by Olympus of full payment for the Products.

4.3 Until such time as title passes to the Purchaser:

i) the Clinical User shall be entitled to use the Products; and

ii) the Purchaser shall:

(a) hold the Products as Olympus' fiduciary agent and bailee;

(b) ensure the Products are properly stored and protected; and

(c) not create any encumbrance over any of the Products; and

iii) where the Products have been delivered to the Clinical Site, Olympus shall be entitled to enter into the Clinical Site, or such other site at which the Products are kept and recover such Products.

**5 Defects**

5.1 On Delivery, and for a period of 12 months thereafter, the Products shall:

i) conform in all material respects with their description;

ii) be free from material defects in design, material and workmanship; and

iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

iv) be fit for the purpose held out by Olympus.

5.2 Subject to Clause 5.1 of Schedule 2, if the Purchaser gives notice in writing to Olympus that some or all of the Products do not comply with the statement set out in Clause 5.1 of Schedule 2, Olympus shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full, subject to:

i) Olympus being given a reasonable opportunity of examining such Products; and

ii) the Purchaser (if requested) returning such Products to Olympus (at Olympus' cost if so requested, otherwise such

Products should be disposed of by the Purchaser on Olympus' instruction and cost).

5.3 Olympus shall not be liable for the Products' failure to comply with the warranty set out in Clause 5.1 of Schedule 2 if:

i) the Purchaser makes any further use of such Products after giving notice in accordance with Clause 5.2 of Schedule 2;

ii) any party other than Olympus alters or repairs such Products at any time;

iii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

iv) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.5 This Clause 5 of Schedule 2 shall apply to any replaced part of or replaced Products supplied by Olympus.

**6 The Olympus Warranty**

6.1 The Olympus Warranty will be provided for the benefit and support of the Clinical User, and is not transferrable or assignable, other than as set out in this Schedule. It is distinct from the legal sale and purchase relationship between Olympus and the Purchaser.

6.2 Subject to the terms of Clause 6 of Schedule 2, if the Products are damaged during the Warranty Period, Olympus will repair such Products and return them to OEM Standard, or (as determined by Olympus) replace such Products with a like or similar new device (the "**Olympus Warranty**").

6.3 The Olympus Warranty is in addition to the obligations contained in Clause 5 of Schedule 2 and does not affect those statutory rights.

6.4 The Olympus Warranty in respect of an Olympus Warranty Product is valid from the Date of Dispatch for a period as stated at: https://download.aws.olympus.eu/medical/legal/olympuswarrantyproducts.pdf (the "**Warranty Period**").

6.5 The Olympus Warranty is provided subject to the Products remaining:

i) in clinical use;

ii) by the Clinical User only; and

iii) at the Clinical Site; and

throughout the Warranty Period.

6.6 The provision of the Olympus Warranty shall be supported by the Warranty Services, and strictly subject to the following provisions:

i) the frequency, content and extent of the Olympus Warranty, with regard to the utilisation and delivery of any or all of the supports detailed in Appendix 1 to Schedule 2, shall be solely determined by Olympus, considering the Clinical User, experience with Olympus products, processes and requirements, Clinical Site facilities, Clinical User staff turnover and review of repair requirements;

ii) Warranty Services are carried out during Normal Working Hours only;

iii) as applicable, Olympus will determine whether the Warranty Services are carried out at an Olympus Authorised Service Centre or at the Clinical Site by an Olympus Field Service Engineer; and

iv) if carried out at the Clinical Site, the Purchaser shall provide, or shall procure the provision of, sufficient and compliant working space and provisions as required and communicated by Olympus, including but not limited to:

(a) a work bench space of not less than 160cmx60cm;

(b) sufficient illumination;

(c) access to electrical power supply and water; and

(d) required equipment such as monitors, video processors, light sources, suction pumps etc.

v) Olympus shall not be responsible for any delays in providing the Olympus Warranty which are caused by the Purchaser's failure to deliver these conditions.

6.7 It is the Purchaser's responsibility to ensure, or to procure, that Olympus is notified of the location and condition of the Products during the Warranty Period, and that such Products are available for Olympus to assess at the Clinical Site.

6.8 Subject to Clause 6.9 of Schedule 2, if:

i) the legal or beneficiary ownership of any Products is transferred by the Purchaser to a third party during the Warranty Period; and/or

ii) there is a change to the Clinical User and/or the Clinical Site,

without the prior written consent of Olympus then, notwithstanding any warranty relating to such Products that is implied and cannot be excluded by Applicable Law, the Olympus Warranty shall be automatically invalidated upon the occurrence of such event.

6.9 Notwithstanding Clause 6.8 of Schedule 2, and subject to Clause 6.10 of Schedule 2, in the event of a transfer of ownership of any Products by the Purchaser to a third party during the Warranty Period, where such Products remain:

i) in clinical use;

ii) by the Clinical User only;

iii) at the Clinical Site,

Olympus reserves the right, at its sole and absolute discretion, to continue to provide the Olympus Warranty in respect of such Products for the remainder of the Warranty Period.

6.10 The Purchaser shall notify Olympus in writing of any transfer of ownership of such Products no later than twenty (20) Business Days before such transfer is due to take effect.

6.11 In addition to Clause 6.8 of Schedule 2, Olympus may (in its absolute discretion) decide to invalidate the Olympus Warranty in the event of:

i) use of incompatible reprocessing chemicals, processes and equipment and/or use of the Products not in accordance with Olympus' Instructions For Use;

ii) damage arising from the unverified reprocessing chemicals, processes and equipment which affects the functionality of the Products;

iii) damage arising from the negligence of any party other than Olympus;

iv) maintenance, repair, handling or services conducted by a third party;

v) incorrect or negligent packaging of Products by any party other than Olympus.

and the Products will not receive the Olympus Warranty cover in respect of damage to the Products caused by the circumstances set out in Clauses 6.11(i) to 6.11(v) of Schedule 2.

6.12 In the event that Olympus exercises its rights under Clause 6.11 of Schedule 2, Olympus:

i) reserves the right to withhold the Products if it reasonably believes or suspects that the Products present a patient- or product-safety issue or concern, and to communicate such to the Clinical User; and

ii) may charge the Purchaser for the costs of repair of any such damage, subject to Olympus' chargeable repair service rates and terms.

**7 Notification**

7.1 If, during a routine maintenance, inspection or repair by Olympus of Products under the Olympus Warranty, Olympus has reason to believe or suspect, or identifies, that, in its opinion, a Product has:

i) an actual or potential patient or product safety or adequate use issue; or

ii) an undetermined issue that requires further investigation,

then Olympus reserves the right to directly contact the Purchaser and/or the Clinical User of the Products and take such action as it deems necessary to address the issue identified or suspected. This will include, but not be limited to, withholding the Products submitted for service, maintenance or repair.

**8 Pre-installed Operating Software**

8.1 The Purchaser acknowledges (and shall ensure that the Clinical User acknowledges) that any Operating Software is licensed not sold. The Operating Software is owned by an Olympus Group Company or a third-party licensor.

8.2 Unless it is identified by the Quotation or the Approved Purchase Order that the Purchaser or Clinical User (as applicable) will obtain a direct licence from the third party licensor of the Operating Software or that a separate software licence agreement applies for the Purchaser's or Clinical User´s (as applicable) use of the Operating Software, Olympus grants (or shall procure the grant) to the Purchaser or the Clinical User (as applicable) a non-exclusive, revocable, fully-paid up, royalty-free, worldwide licence from the date of actual delivery of the Operating Software to use (and to permit Authorised Users to use) the Operating Software on the Products for the clinical use by the Clinical User, including for back-up and disaster recovery purposes.

**Appendix 1 to Schedule 2**
**Products under the Olympus Warranty**

During the Warranty Period, Olympus may, strictly subject to Clause 6 of Schedule 2, provide the following Warranty Services in respect of the Products:

**1 Preventative Inspection**

i) Clinical Site visit by Olympus Field Service Engineer in accordance with applicable regulations and/or device's instructions for use to conduct:

ii) visual inspection of outer condition of the device

iii) assessment of mechanical components of the device;

iv) check of device-specific functionalities;

v) cleaning of outer surface and dust removal inside the Products; and

vi) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law.

**2 Preventative Maintenance**

2.1 Preventative maintenance activities (with a frequency in accordance with applicable regulations and/or a device's instructions for use) to include:

i) inspection;

ii) check of device-specific functionalities of the device;

iii) cleaning of outer surface and dust removal inside the device;

iv) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law;

v) replacement of worn parts, as deemed necessary by Olympus; and

vi) OEM parts, labour, travel and shipment.

**3 Corrective Maintenance**

3.1 Corrective maintenance following normal wear and tear and reasonable use of devices includes:

i) Clinical Site repairs performed by Olympus Field Service Engineers, including travel time, OEM parts and labour;

ii) repairs at an Olympus Authorised Service Centre, including OEM parts, labour and shipment to Clinical Site;

iii) exchange of a damaged device by Olympus at Clinical Site or at the Olympus Authorised Service Centre. Olympus will determine in its sole discretion whether the damaged device is exchanged for a new or refurbished device (which will be communicated to the Purchaser);

iv) usage modifications integrated software on devices; and

v) OEM-recommended, legal and regulatory or security updates to integrated software on devices.

**4 Provision of a loan device**

4.1 If requested at the point of registering the repair requirement, Olympus will, subject to availability, provide a loan device for the use of the Clinical User.

4.2 The loan device, once available, will be delivered by Olympus to the Clinical Site. Risk in the loan device passes to the Purchaser on actual delivery.

4.3 The loan device is provided for use strictly by the Clinical User only. The loan device will be considered as if it was the relevant Product for the purposes of the Olympus Warranty and provision of the Warranty Services, and the obligations of each party will apply to the loan device as if it was the Product.

4.4 It is the responsibility of the Purchaser to ensure the loan device, together with the Olympus Returns Form, is returned to Olympus as soon as possible (and not more than four (4) Business Days) after the repaired Product has been delivered by Olympus to the Clinical Site. Olympus will not be liable for any use of the loan device beyond this point, and any such use by the Clinical User or any third party shall be deemed unauthorised and therefore a breach of the Olympus Warranty in accordance with Clause 6.8 of Schedule 2.

4.5 Unless the Purchaser, or a party on its behalf, opts to organise such transit itself, in which case the Purchaser shall be responsible for such costs and carriage, and for any damage to the loan device caused by such courier, the costs of transit of the loan device, organized by Olympus, is deemed included in the Price.

4.6 Should the loan device be lost, stolen or otherwise not returned to Olympus, the Purchaser will be responsible for the costs incurred by Olympus in replacing the loan device.

**5 Olympus Uptime Support**

5.1 Olympus may provide the following services to the Clinical User in respect of the Olympus Warranty:

i) root cause analyses of repair history and current repair trends;

ii) specific damage prevention recommendations;

iii) training and hands-on tutorials on damage prevention and repair avoidance; and

iv) periodic review meeting.

**Schedule 3**

**Rental Terms**

**1 Definitions**

1.1 In this Schedule, the following words and expressions have the following meanings:

"**Authorised Repair Services Provider**" means an equipment repair services provider authorised by the OEM in writing from time to time to carry out the Services in respect of the Products;

"**Finance Lease**" means a Rental under which ownership of the Products transfers to the Purchaser at the end of the Term in accordance with Clause 8.4 of Schedule 3;

"**Misuse**" has the meaning given to it in Clause 3.1(xi) of Schedule 3;

"**Operating Lease**" means a Rental under which ownership of the Products remains with Olympus during and at the end of the Term, in accordance with Schedule 3;

"**Rental Charges**" means the charges payable by the Purchaser for the provision of the Products on a lease basis as set out in the Quotation or, where there is no Quotation, the Approved Purchase Order, or as otherwise agreed between the Parties in writing; and

"**Term**" means the period during which Olympus provides the Products on a lease basis to the Purchaser under this Schedule, as specified on the Approved Purchase Order or as agreed between the Parties in writing.

**2 Rental**

2.1 The Purchaser wishes to procure the Products from Olympus on a lease basis for the Term, and Olympus wishes to provide the Products on a lease basis to the Purchaser for the Term (the "**Rental**").

2.2 The Rental shall commence on the Date of Dispatch and shall continue for the Term, unless terminated by either Party in accordance with this Contract.

2.3 Other than in respect of a Finance Lease, if for any reason Olympus is unable to lease any Product to the Purchaser at any time, Olympus may replace any such Product with an equivalent alternative and such alternative shall be deemed to be Product for the purposes of this Contract. The Rental Charges shall continue to reflect the value in relation to the Product being replaced.

**3 Products**

3.1 The Purchaser undertakes to Olympus to:

i) ensure that Products are only used by suitably trained and qualified Personnel of the Clinical User, and only for the purposes for which they are designed, and in a proper manner in accordance with the Documentation;

ii) not alter the Products and not remove any existing components from the Products and to ensure that the Clinical User does not alter the Products or remove any existing components from the Products. For the avoidance of doubt, "alter" shall include combining (in any way) the Products with any other hardware or software items;

iii) keep Olympus fully informed of all material matters relating to the Products, including immediately notifying Olympus in the event of any loss, accident, breakdown, unsatisfactory working or damage to the Products;

iv) keep the Products at all times at the Clinical Site and not move or attempt to move any part of the Products to any other location;

v) permit and/or procure the right for Olympus or its duly authorised representative to access the Clinical Site to inspect the Products at all reasonable times, upon reasonable notice, and grant and/or procure the right to reasonable access and facilities for such inspection;

vi) not part with control of, underlet or lend the Products (other than to any Clinical User in accordance with this Contract), sell or offer for sale or allow the creation of any mortgage, charge, lien or other security interest in respect of the Products;

vii) not suffer or permit the Products to be confiscated, seized or taken out of the possession or control of the Purchaser or any Clinical User under any distress, execution or other legal process, and to immediately notify Olympus of any threat of such action so that Olympus may make a timely move to object and (where appropriate) stop such action;

viii) if the Products are so confiscated, seized or taken as referenced under Clause 3.1(vii) of Schedule 3, notify Olympus and, at the Purchaser's sole expense, use its best endeavours to procure an immediate release of the Products. The Purchaser shall indemnify Olympus on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

ix) not use the Products for any unlawful purpose, and comply with relevant regulations issued by the government or local authorities relating to the Products and to ensure that any Clinical Users are placed under the same restrictions;

x) ensure that at all times the Products remain identifiable as being Olympus' property;

xi) ensure that the Purchaser, the Clinical User and the Personnel shall not make excessive use of, or place unreasonable burdens on, the Products ("**Misuse**"). Whether any conduct of the Purchaser, the Clinical User and/or

Personnel constitutes Misuse of the Products shall be determined by Olympus in its sole and absolute discretion;

xii) on termination or expiry of the Term, allow and/or procure the right for Olympus or its representatives to access to the Clinical Site for the purpose of removing the Products, other than where title to the Products has transferred to the Purchaser in accordance with Clause 8.4 of Schedule 3; and

xiii) not do or permit to be done anything which could invalidate the insurances referred to in Clause 7 of Schedule 3.

3.2 To the extent that the Purchaser acts in breach of Clause 3.1(ii) of Schedule 3, the Purchaser shall, on demand by Olympus, and without prejudice to any other rights or remedies available to Olympus under this Contract or otherwise:

i) at the Purchaser's cost, separate the Products from such other hardware or software components and repair any damage to the Products caused by such separation; and

ii) indemnify Olympus against all losses, costs or expenses incurred by Olympus as a result of such combination of Products with other hardware and/or software components, and separation of the same.

3.3 In the event that it is not possible to separate the Products from the other hardware and/or software components as anticipated under Clause 3.2 of Schedule 3, without prejudice to any other rights or remedies available to Olympus under this Contract or otherwise, such hardware and/or software components shall form part of the Products and such hardware and/or software components shall be owned by Olympus. The Purchaser hereby assigns to Olympus or shall procure such assignment from the relevant third party, with full title guarantee and free from all encumbrances, title in and to any hardware and/or software components that are irreversibly combined with the Products.

**4 Services**

4.1 To ensure the Products under the Rental are maintained to an OEM Standard during the Term:

i) other than in respect of Products under a Finance Lease, the Services in respect of the Products shall be provided by Olympus or an Olympus Group Company for the Term and such shall be included in the Rental Charges applicable; or

ii) for Products under a Finance Lease, the Purchaser may enter into a Services Contract or a contract provided by an Authorised Repair Services Provider for services equivalent or similar to the Services in respect of the applicable Products for the Term,

**5 Price and Payment Terms**

5.1 In consideration of the provision of the Products by Olympus under the Rental during the Term, the Purchaser shall pay to Olympus the Rental Charges (if applicable), in accordance with Clause 5 of Schedule 3 and Clause 8 of the General Terms.

5.2 The Rental Charges are payable in advance as set out in an Approved Purchase Order.

5.3 Where Olympus has agreed to supply any Products to the Purchaser under this Schedule free of charge (for example, for demonstration purposes), Olympus reserves the right to introduce Rental Charges during the Term. Olympus shall notify the Purchaser of any decision to levy charges in writing in advance.

**6 Purchaser's Responsibility**

6.1 The Purchaser shall indemnify, keep indemnified and hold harmless Olympus from and against all claims by any person whatsoever for injury to person or property and in respect of all costs, expenses, liabilities, losses, damages, amounts paid in settlement, interest, proceedings, legal costs (on a full indemnity basis) and judgments which Olympus incurs or suffers and which arise in connection with or out of the use of the Products (including any accidents involving the Products), whether due to the Purchaser's or any Clinical User's negligence or otherwise (but excluding death or injury arising from Olympus' negligence and any other liability of Olympus which cannot be excluded under Applicable Law), and whether arising under statute, common law or otherwise. In addition to its obligations under Clause 7 of Schedule 3, the Purchaser shall maintain in force full insurance cover against liability under this Clause 6.2 of Schedule 3.

6.2 The Purchaser will indemnify and keep indemnified Olympus against:

i) all fines, penalties and liabilities imposed on Olympus arising in respect of non- compliance or contravention by the Purchaser or any Clinical User of any law or regulation which applies to Products, their use or operation, together with any costs or expenses relating thereto incurred by Olympus; and

ii) all claims, costs, expenses, liabilities, losses, damages, amounts paid in settlement, interest, proceedings, legal costs (on a full indemnity basis) and judgments which Olympus incurs or suffers as a result of any breach or default on the part of the Purchaser of its obligations under this Contract.

**7 Insurance**

7.1 The Purchaser shall ensure that all Products are insured and remain insured throughout the Term for a value not less than the Products' full market value against all risks on a comprehensive policy.

7.2 The Purchaser shall procure that all insurance policies maintained under this Contract apply any payments made under the policy or policies directly in or towards satisfaction of the claim in respect of which such payment is made.

7.3 If the Products are declared a total loss, any proceeds of insurance shall be applied at Olympus' option towards:

i) replacement of the Products with products of equivalent value, which replacement will be deemed to be the Products under this Contract for all purposes and the Purchaser shall continue to be liable to pay the Rental Charges as if such loss had not taken place; or

ii) payment to Olympus of the sum necessary to compensate Olympus for the loss of profit suffered as a result of the loss of such Products and the rental for such Products shall terminate.

7.4 Where requested by Olympus, the Purchaser shall (at the Purchaser's expense) assign or procure the assignment to Olympus of all rights, benefits and claims under the insurance policy maintained in compliance with this Contract and irrevocably appoint Olympus to be its sole agent to receive any monies payable under such insurance and to negotiate, agree or compromise with the insurers as to the amount payable and to institute proceedings, whether in the Purchaser's name or otherwise, against the insurers in relation to any claim against them and to give an effective receipt and discharge to the insurers. Olympus shall return all surplus monies received from such policy after discharge of all sums owed to Olympus (including all reasonable costs and expenses incurred in processing such claim).

7.5 The Purchaser shall ensure that all premiums due for such insurance contemplated under Clause 7 of Schedule 3 are paid when due and will produce to Olympus on request the policy together with evidence of payment of the premiums. If there is any default in the payment of such premiums Olympus may pay them and the Purchaser shall repay the amount of such premiums to Olympus on demand.

7.6 The Purchaser shall indemnify and keep indemnified Olympus from and against all costs and losses arising from loss or damage to Products not recoverable under the insurance policy (including any amount deducted by the insurers by way of excess in respect of damage caused to Products prior to total loss and all and any loss suffered by Olympus in consequence of the loss or destruction of Products).

**8 Title and Risk**

8.1 Subject to Clause 8.4 of Schedule 3, the Products shall at all times remain the property of Olympus, and the Purchaser and any Clinical User shall have no right, title or interest in or to the Products, save for the right to possession and use of the Products subject to the terms and conditions of this Schedule.

8.2 Subject to Clause 8.4 of Schedule 3, title and property in all substitutions, replacements (including spare parts) and/or renewals made in or to the Products shall vest in Olympus.

8.3 The risk of loss, theft, damage or destruction of the Products shall pass to the Purchaser on Delivery. The Products shall remain at the sole risk of the Purchaser during the Term and any other term during which the Products are in the possession, custody or control of or on behalf of the Purchaser unless and until the Products are in Olympus' possession off the Clinical Site.

8.4 Where the Parties have expressly agreed to a Finance Lease, as documented in the Approved Purchase Order, title to the Products shall transfer from Olympus to the Purchaser at the end of the Term provided that the Purchaser has paid all Rental Charges and any other costs owed to Olympus in full. Olympus shall carry out any such acts (including executing any documents) as may be reasonably required (at the Purchaser's cost) to give effect to such assignment.

**9 Liability**

9.1 Without limiting Clause 12.3 of the General Terms, and subject to Clause 12.4 of the General Terms, Olympus shall not be liable for any loss or damage, whether direct or indirect (including loss of working time), suffered by the Purchaser or any Clinical User through:

i) late Delivery of Products,

ii) breakdown or stoppage of Products, or failure to service, maintain or repair Products where loss or damage has arisen from any Excluded Cause, or

iii) from any cause beyond Olympus' control during the Term (including third party maintenance and repair services carried out on behalf of the Purchaser – including by or on behalf of the Clinical User).

**10 Termination and Consequences of Termination**

10.1 Notwithstanding anything to the contrary set out in this Contract (including in a Quotation or an Approved Purchase Order), Olympus may terminate (in whole or in part) the Rental (other than an Operating Lease or a Finance Lease) for convenience at any time on 14 days' written notice to the Purchaser.

10.2 Unless Clause 8.4 of this Schedule 3 applies:

i) on termination for any reason, or expiry of the Rental, the Purchaser shall ensure that the Products are held to Olympus' order and promptly returned directly to Olympus or made available for collection by or on behalf of Olympus. No administrator, administrative receiver or other receiver equivalent, nor any of the Purchaser's or Clinical User's creditors shall be entitled to any lien or other possessory remedy or security over the Products, which are held in trust by the Purchaser and Clinical User on behalf of Olympus; and/or

ii) on termination by Olympus further to clause 15.1 of the General Terms, the Purchaser shall be liable on demand to make payment in full of any sums outstanding and owed by the Purchaser to Olympus at such time, and the Rental Charges that would have been payable had the Rental continued until expiration.

**11 Pre-installed Operating Software**

11.1 The Purchaser acknowledges (and shall ensure that the Clinical User acknowledges) that any Operating Software is licensed not sold. The Operating Software is owned by an Olympus Group Company or a third-party licensor.

11.2 Unless it is identified by the Quotation or the Approved Purchase Order that the Purchaser or Clinical User (as applicable) will obtain a direct licence from the third party licensor of the Operating Software or that a separate software licence agreement applies for the Purchaser's or Clinical User´s (as applicable) use of the Operating Software, Olympus grants (or shall procure the grant) to the Purchaser or the Clinical User (as applicable) a non-exclusive, fully-paid up, royalty-free, worldwide licence from the date of actual delivery of the Operating Software to use (and to permit Authorised Users to use) the Operating Software

on the Products for the clinical use by the Clinical User, including for back-up and disaster recovery purposes.

**Appendix 1 to Schedule 3**

**Servicing of Rentals (excluding Finance Leases)**

During the Term of the Rental Olympus may, in respect of the Products, provide the Services set out in Part 1 this Appendix 1 to Schedule 3 and subject to Part 2 of this Appendix 1 to Schedule 3.

**Part 1**

**1 The Services**

1.1 The Services are provided for the benefit and support of the Clinical User and are not transferrable or assignable by the Purchaser in respect of itself or the Clinical User. The provision of the Services is distinct from the legal sale and purchase relationship between Olympus and the Purchaser

1.2 If the Products are damaged during the Term, Olympus will repair such Products and return them to OEM Standard, or (as determined by Olympus) replace such Products with a like or similar new device.

1.3 During the Term, Olympus may provide the following in respect of the Services:

i) Preventative Inspection: Clinical Site visit by Olympus Field Service Engineer in accordance with applicable regulations and/or device's instructions for use) to conduct:

(a) visual inspection of outer condition of the device;

(b) assessment of mechanical components of the device;

(c) check of device-specific functionalities;

(d) cleaning of outer surface and dust removal inside the Products; and

(e) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law.

ii) Preventative Maintenance: (at a frequency in accordance with applicable regulations and/or a device's instructions for use) to include:

(a) inspection;

(b) check of device-specific functionalities of the device;

(c) cleaning of outer surface and dust removal inside the device;

(d) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law;

(e) replacement of worn parts, as deemed necessary by Olympus; and

(f) OEM parts, labour, travel and shipment.

iii) Corrective Maintenance: following normal wear and tear and reasonable use of devices includes:

(a) Clinical Site repairs performed by Olympus Field Service Engineers, including travel time, OEM parts and labour;

(b) repairs at an Olympus Authorised Service Centre, including OEM parts, labour and shipment to Clinical Site;

(c) exchange of a damaged device by Olympus at Clinical Site or at the Olympus Authorised Service Centre. Olympus will determine in its sole discretion whether the damaged device is exchanged for a new or refurbished device (which will be communicated to the Purchaser);

(d) usage modifications integrated software on devices; and

(e) OEM-recommended, legal and regulatory or security updates to integrated software on devices;

iv) Provision of a loan device: if requested at the point of registering the repair requirement, Olympus will, subject to availability, provide a loan device for the use of the Clinical User, subject to the following:

(a) the loan device, once available, will be delivered by Olympus to the Clinical Site. Risk in the loan device passes to the Purchaser on actual Delivery;

(b) the loan device is provided for use strictly by the Clinical User only. The loan device will be considered as if it was the relevant Product for the purposes of the Olympus Warranty and provision of the Warranty Services, and the obligations of each party will apply to the loan device as if it was the Product;

(c) it is the responsibility of the Purchaser to ensure the loan device, together with the Olympus Returns Form, is returned to Olympus as soon as possible (and not more than four (4) Business Days) after the repaired Product has been delivered by Olympus to the Clinical Site. Olympus will not be liable for any use of the loan device beyond this point, and any such use by the Clinical User or any third party shall be deemed unauthorised and therefore a breach of the Rental;

(d) unless the Purchaser, or a party on its behalf, opts to organise such transit itself, in which case the Purchaser shall be responsible for such costs and carriage, and for any damage to the loan device caused by such courier, the costs of transit of the loan device, organized by Olympus, is deemed included in the Price.

(e) should the loan device be lost, stolen or otherwise not returned to Olympus, the Purchaser will be responsible for the costs incurred by Olympus in replacing the loan device.

v) Olympus Uptime Support: Olympus may provide the following services to the Clinical User:

(a) root cause analyses of repair history and current repair trends;

(b) specific damage prevention recommendations;

(c) training and hands-on tutorials on damage prevention and repair avoidance; and

(d) periodic review meetings.

**Part 2**

**2 The Provision of the Services**

2.1 The Services are provided on the basis of:

i) the frequency, content and extent of the Services, with regard to the utilisation and delivery of any or all of the supports detailed in Part 2 of Appendix 1 to Schedule 3, shall be solely determined by Olympus, considering the Clinical User, experience with Olympus products, processes and requirements, Clinical Site facilities, Clinical User staff turnover and review of repair requirements;

ii) the carrying out of the Services during Normal Working Hours only;

iii) as applicable, determination by Olympus whether the Services are carried out at an Olympus Authorised Service Centre or at the Clinical Site by an Olympus Field Service Engineer; and

iv) if carried out at the Clinical Site, the Purchaser providing, or procuring the provision of, sufficient and compliant working space and provisions as required and communicated by Olympus, including but not limited to:

(a) a work bench space of not less than 160cmx60cm;

(b) sufficient illumination;

(c) access to electrical power supply and water; and

(d) required equipment such as monitors, video processors, light sources, suction pumps etc,

and Olympus shall not be responsible for any delays or failure in providing the Services which are caused by the Purchaser's failure to deliver these conditions.

2.2 In addition to Clause 1.3 of Appendix 1 to Schedule 3, the Rental and the Services are provided subject to the Products remaining:

i) in clinical use;

ii) by the Clinical User only; and

iii) at the Clinical Site; and

throughout the Term;

2.3 In addition to the provisions of clauses 2.1 and 2.2 of Appendix 1 to Schedule 3, Olympus may (in its absolute discretion) determine any of the following events as a breach of the Services and therefore of the Rental:

i) use of incompatible reprocessing chemicals, processes and equipment and/or use of the Products not in accordance with Olympus' Instructions For Use;

ii) damage arising from the unverified reprocessing chemicals, processes and equipment which affects the functionality of the Products;

iii) damage arising from the negligence of any party other than Olympus;

iv) maintenance, repair, handling or services conducted by a third party;

v) incorrect or negligent packaging of Products by any party other than Olympus.

2.4 In the event that any of the obligations of the Purchaser in respect of a Rental are not delivered or are breached by any party other than Olympus, Olympus:

i) reserves the right to withhold the Products if it reasonably believes or suspects that the Products present a patient- or product-safety issue or concern, and to communicate such to the Clinical User;

ii) may charge the Purchaser for the costs of repair of any such damage, subject to Olympus' chargeable repair service rates and terms; and/or

iii) may terminate the Rental with immediate effect.

## Schedule 4

## Placement Terms

**1 Definitions**

1.1 In this Schedule, the following words and expressions have the following meanings:

"**Commitment Items**" means the consumable Products the Purchaser commits to purchasing in exchange for receiving the Placed Product, as set out in the Quotation or, where there is no Quotation, the Approved Purchase Order;

"**Minimum Purchase Obligations**" means the minimum purchase obligations of the Commitment Items as set out in the Quotation or, where there is no Quotation, the Approved Purchase Order;

"**Placement Price**" means the price payable by the Purchaser for the rental of the Placed Products and the purchase of the Commitment Items as set out in the Quotation or, where there is no Quotation, the Approved Purchase Order; and

"**Term**" means the period during which Olympus provides the Placed Products on a lease basis to the Purchaser under this Schedule, as specified on the Quotation or, where there is no Quotation, the Approved Purchase Order, or as agreed between the Parties in writing, and includes any extensions.

**2 Placed Products**

2.1 Subject to the Purchaser´s compliance with the Minimum Purchase Obligations, Olympus shall provide to the Purchaser the Placed Products for use by the Purchaser at the Clinical Site during the Term. Olympus shall at all times retain ownership of the Placed Products and nothing in the Contract shall be construed as a transfer of ownership of the Placed Products to the Purchaser.

2.2 Upon expiry of the Term or otherwise on termination of the Placement for any reason, the Placed Products shall be returned by the Purchaser to Olympus and Olympus shall be entitled to remove the Placed Products from the Clinical Site.

**3 Minimum purchase of Commitment Items**

3.1 Olympus sells to the Purchaser the Commitment Items based upon the Placement Price. The Placement Price for the Commitment Items includes a user fee for the Placed Products as well as a fee to cover the Services.

3.2 The Purchaser shall comply with the Minimum Purchase Obligations during the Term. The Purchaser and Olympus shall conduct periodic review meetings (as agreed by the Parties) for Olympus to verify whether the Purchaser´s commitment levels according to the Minimum Purchase Obligations have been met. The Purchaser shall cooperate with and provide information to Olympus as reasonably requested by Olympus.

3.3 In the event that the Purchaser fails to meet the Minimum Purchase Obligations during the Term, Olympus may terminate the Placement and/or demand that the Purchaser pays (i) any shortfall between the actual price paid per Commitment Item and the price the Purchaser would have paid per Commitment Item based on actual usage; and (ii) a reasonable amount for the use of the Placed Products during the Term.

**4 Title and Risk**

4.1 The Placed Products shall at all times remain the property of Olympus, and the Purchaser shall have no right, title or interest in or to the Placed Products (save the right to possession and use of the Placed Products subject to the terms and conditions of this Contract). Title and property in all substitutions, replacements (including spare parts) and/or renewals made in or to the Placed Products shall vest in Olympus.

4.2 Subject to Clauses 6 and 7 of this Schedule 4, the risk of loss, theft, damage or destruction of the Placed Products shall pass to the Purchaser on Delivery. The Placed Products shall remain at the sole risk of the Purchaser during the Term and any other term during which the Placed Products are in the possession, custody or control of the Purchaser until such time as the Placed Products are redelivered to Olympus.

4.3 Risk in the Commitment Items shall pass to the Purchaser on Delivery. Title to the Commitment Items shall pass to the Purchaser on the earlier of (i) receipt of payment by Olympus for the Commitment Items or (ii) the Purchaser's use of the Commitment Items.

**5 Charges and payment**

5.1 In consideration of the provision of the Placed Products and Commitment Items by Olympus, the Purchaser shall pay to Olympus the Placement Price, in accordance with Clause 5 of this Schedule 4 and Clause 8 of the General Terms.

5.2 Olympus shall be entitled to issue an invoice on Delivery of the Commitment Items.

**6 Repairs and Replacements**

6.1 To ensure the Placed Products are maintained to an OEM Standard during the Term, Olympus or an Olympus Group Company will provide the Services to the Purchaser in accordance with the terms of the Services Contract. In consideration of such Services, the Purchaser agrees to be bound by, and to perform the Purchaser obligations under, the Services Contract.

6.2 If Olympus decides that repairs to the Placed Products are necessary, it may arrange for such repairs to be carried out at the Clinical Site or at any location of its nomination.

6.3 If Olympus is unable to repair or, if necessary, replace certain Placed Products it may on written notice to the Purchaser:

i) terminate the Placement insofar as it relates to such Placed Products;

ii) replace any such Placed Products with an equivalent alternative and such alternative shall be deemed to be the Placed Products for the purposes of this Placement; and/or

iii) remove the Placed Products from the Clinical Site.

6.4 Unless such damage to or replacement of the Placed Product is covered by the Services Contract the cost of any repairs to or replacements of the Placed Products found by Olympus to be necessary to return the Placed Product to OEM Standard shall be paid to Olympus by the Purchaser upon demand. If Olympus is unable to repair or, if necessary, replace certain Placed Products it may on written notice to the Purchaser:

i) terminate the Placement insofar as it relates to such Placed Products;

ii) replace any such Placed Products with an equivalent alternative and such alternative shall be deemed to be Placed Products for the purposes of this Placement; and/or

iii) remove the Placed Products from the Clinical Site.

6.5 Notwithstanding Clauses 6 7 of Schedule 4, the Purchaser shall be responsible for the cost of any damage to any Placed Products where such damage arises from any cause other than normal use of the Placed Products in accordance with the provisions of the Contract, including:

i) use of the Placed Products with other equipment or materials not supplied or approved in writing by Olympus;

ii) any maintenance, alteration, modification or adjustment performed by persons other than Olympus or its authorised representative;

iii) the Purchaser or a third party moving the Placed Products;

iv) any other use or treatment of the Placed Products in breach of any of the provisions of the Contract;

v) the neglect or any other misuse of the Placed Products; and/or

vi) Force Majeure Event.

6.6 The provisions of Clause 6 of Schedule 4 shall be without prejudice to any rights or remedies that may be available to the Purchaser under Clause 7.1 of Schedule 4.

**7 Placed Products Warranty**

7.1 Olympus warrants that for the Term the Placed Products shall be free from material defects in workmanship and materials.

7.2 Olympus shall, at its option and cost, either repair or replace the Placed Products if they are not in conformity with the warranty under Clause 7.1 of Schedule 4 in accordance with the timescales set out in the Quotation, if any, provided that:

i) the Purchaser allows Olympus to inspect and test the Placed Products to determine the presence and cause of the defect (and, if requested by Olympus, the Purchaser shall return the Placed Products to Olympus for this purpose, at the Purchaser's cost);

ii) the defect has not been caused by any misuse of the Placed Products, failure to follow the instructions contained within the Documentation as to the use and/or storage of the Placed Products and/or any breach of the Purchaser's obligations under the Contract; and

iii) the Placed Products have not been subject to any third-party maintenance services or been altered in any way following Delivery (and, for these purposes, "alter" shall include combining (in any way) the Placed Products with any other hardware or software items).

7.3 If, upon inspection and testing of the Placed Products, it materialises that Olympus is not liable under Clause 7.2 of Schedule 4 to repair or replace the Placed Products, the Purchaser shall reimburse Olympus for:

i) any labour time (in accordance with Olympus' then current day rates); and

ii) all expenses (in accordance with any internal expenses policy of Olympus, if in existence),

iii) incurred by Olympus in connection with investigating the alleged defect.

7.4 Repair or replacement in accordance with Clause 7.2 of Schedule 4 shall be the sole and exclusive remedy of the Purchaser for breach of warranty under Clause 7.1 of Schedule 4.

**8 Termination and consequences of termination**

8.1 Notwithstanding anything to the contrary set out in this Contract (including in a Quotation or an Approved Purchase Order), Olympus may terminate this Placement for convenience at any time on ninety (90) days' written notice to the Purchaser.

8.2 On expiry or termination of this Placement for any reason, the Purchaser shall ensure that the Placed Products are held to Olympus' order and made available for collection by or on behalf of Olympus. No administrator, administrative receiver or other

receiver equivalent, nor any of the Purchaser's creditors shall be entitled to any lien or other possessory remedy or security over the Placed Products, which are held in trust by the Purchaser on behalf of Olympus.

**9 Pre-installed Operating Software**

9.1 The Purchaser acknowledges (and shall ensure that the Clinical User acknowledges) that any Operating Software is licensed not sold. The Operating Software is owned by an Olympus Group Company or a third-party licensor.

9.2 Unless it is identified by the Quotation or the Approved Purchase Order that the Purchaser or Clinical User (as applicable) will obtain a direct licence from the third party licensor of the Operating Software or that a separate software licence agreement applies for the Purchaser's or Clinical User´s (as applicable) use of the Operating Software, Olympus grants (or shall procure the grant) to the Purchaser or the Clinical User (as applicable) a non-exclusive, fully-paid up, royalty-free, worldwide licence from the date of actual delivery of the Operating Software for the Term to use (and to permit Authorised Users to use) the Operating Software on the Products for the clinical use by the Clinical User, including for back-up and disaster recovery purposes

**Appendix 1 to Schedule 4**
**Servicing of Placements**

During the Term of the Placement Olympus may, in respect of the Products, provide the Services set out in Part 1 this Appendix 1 to Schedule 4 and subject to Part 2 of this Appendix 1 to Schedule 4.

**Part 1**

**1 The Services**

1.1 The Services are provided for the benefit and support of the Clinical User and are not transferrable or assignable by the Purchaser in respect of itself or the Clinical User. The provision of the Services is distinct from the legal sale and purchase relationship between Olympus and the Purchaser.

1.2 .If the Products are damaged during the Term, Olympus will repair such Products and return them to OEM Standard, or (as determined by Olympus) replace such Products with a like or similar new device.

1.3 During the Term, Olympus may provide the following in respect of the Services:

i) Preventative Inspection**:** Clinical Site visit by Olympus Field Service Engineer in accordance with applicable regulations and/or device's instructions for use) to conduct:

(a) visual inspection of outer condition of the device;

(b) assessment of mechanical components of the device;

(c) check of device-specific functionalities;

(d) cleaning of outer surface and dust removal inside the Products; and

(e) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law.

ii) Preventative Maintenance: (at a frequency in accordance with applicable regulations and/or a device's instructions for use) to include:

(a) inspection;

(b) check of device-specific functionalities of the device;

(c) cleaning of outer surface and dust removal inside the device;

(d) electrical safety checks, in accordance with standards determined by Olympus in accordance with Applicable Law;

(e) replacement of worn parts, as deemed necessary by Olympus; and

(f) OEM parts, labour, travel and shipment.

iii) Corrective Maintenance: following normal wear and tear and reasonable use of devices includes:

(a) Clinical Site repairs performed by Olympus Field Service Engineers, including travel time, OEM parts and labour;

(b) repairs at an Olympus Authorised Service Centre, including OEM parts, labour and shipment to Clinical Site;

(c) exchange of a damaged device by Olympus at Clinical Site or at the Olympus Authorised Service Centre. Olympus will determine in its sole discretion whether the damaged device is exchanged for a new or refurbished device (which will be communicated to the Purchaser);

(d) usage modifications integrated software on devices; and

(e) OEM-recommended, legal and regulatory or security updates to integrated software on devices;

iv) Provision of a loan device: if requested at the point of registering the repair requirement, Olympus will, subject to availability, provide a loan device for the use of the Clinical User, subject to the following:

(a) the loan device, once available, will be delivered by Olympus to the Clinical Site. Risk in the

loan device passes to the Purchaser on actual Delivery;

(b) the loan device is provided for use strictly by the Clinical User only. The loan device will be considered as if it was the relevant Product for the purposes of the Olympus Warranty and provision of the Warranty Services, and the obligations of each party will apply to the loan device as if it was the Product;

(c) it is the responsibility of the Purchaser to ensure the loan device, together with the Olympus Returns Form, is returned to Olympus as soon as possible (and not more than four (4) Business Days) after the repaired Product has been delivered by Olympus to the Clinical Site. Olympus will not be liable for any use of the loan device beyond this point, and any such use by the Clinical User or any third party shall be deemed unauthorised and therefore a breach of the Placement;

(d) unless the Purchaser, or a party on its behalf, opts to organise such transit itself, in which case the Purchaser shall be responsible for such costs and carriage, and for any damage to the loan device caused by such courier, the costs of transit of the loan device, organized by Olympus, is deemed included in the Price.

(e) should the loan device be lost, stolen or otherwise not returned to Olympus, the Purchaser will be responsible for the costs incurred by Olympus in replacing the loan device.

v) Olympus Uptime Support: Olympus may provide the following services to the Clinical User:

(a) root cause analyses of repair history and current repair trends;

(b) specific damage prevention recommendations;

(c) training and hands-on tutorials on damage prevention and repair avoidance; and

(d) periodic review meetings.

**Part 2**

**2 The Provision of the Services**

2.1 The Services are provided on the basis of:

i) the frequency, content and extent of the Services, with regard to the utilisation and delivery of any or all of the supports detailed in Part 2 of Appendix 1 to Schedule 4, shall be solely determined by Olympus, considering the Clinical User, experience with Olympus products, processes and requirements, Clinical Site facilities, Clinical User staff turnover and review of repair requirements;

ii) the carrying out of the Services during Normal Working Hours only;

iii) as applicable, determination by Olympus whether the Services are carried out at an Olympus Authorised Service Centre or at the Clinical Site by an Olympus Field Service Engineer; and

iv) if carried out at the Clinical Site, the Purchaser providing, or procuring the provision of, sufficient and compliant working space and provisions as required and communicated by Olympus, including but not limited to:

(a) a work bench space of not less than 160cmx60cm;

(b) sufficient illumination;

(c) access to electrical power supply and water; and

(d) required equipment such as monitors, video processors, light sources, suction pumps etc,

and Olympus shall not be responsible for any delays or failure in providing the Services which are caused by the Purchaser's failure to deliver these conditions.

2.2 In addition to Clause 1.3 of Appendix 1 to Schedule 4, the Placement and the Services are provided subject to the Products remaining:

i) in clinical use;

ii) by the Clinical User only; and

iii) at the Clinical Site; and throughout the Term;

2.3 In addition to the provisions of clauses 2.1 and 2.2 of Appendix 1 to Schedule 4, Olympus may (in its absolute discretion) determine any of the following events as a breach of the Services and therefore of the Placement:

i) use of incompatible reprocessing chemicals, processes and equipment and/or use of the Products not in accordance with Olympus' Instructions For Use;

ii) damage arising from the unverified reprocessing chemicals, processes and equipment which affects the functionality of the Products;

iii) damage arising from the negligence of any party other than Olympus;

iv) maintenance, repair, handling or services conducted by a third party;

v) incorrect or negligent packaging of Products by any party other than Olympus.

2.4 In the event that any of the obligations of the Purchaser in respect of a Placement are not delivered or are breached by any party other than Olympus, Olympus:

i) reserves the right to withhold the Products if it reasonably believes or suspects that the Products present a patient- or product-safety issue or concern, and to communicate such to the Clinical User;

ii) may charge the Purchaser for the costs of repair of any such damage, subject to Olympus' chargeable repair service rates and terms; and/or

iii) many terminate the Placement with immediate effect.

**Schedule 5**

**Temporary Software Licence Terms**

**1 Definitions**

1.1 In this Schedule, the following words and expressions have the following meanings: "**Claim**" has the

meaning given to it in Clause 2.8 of Schedule 5;

"**Initial Fixed Term**" means the initial period during which the Purchaser receives, and Olympus provides the licence to Software under this Schedule, as agreed between the Parties;

"**Renewal Term**" has the meaning given to it in Clause 4.2 of Schedule 5;

"**Software Licence Fees**" means the fees the Purchaser must pay to Olympus in order to receive the licence to Software, as agreed between the Parties; and

"**Term**" means the period during which Olympus provides the licence to Software under this Schedule, which may include an Initial Fixed Term and Renewal Terms, as agreed between the Parties.

**2 Licence grant**

2.1 In consideration for the Purchaser's payment of the Software Licence Fees, and in addition to the Licence set out in this Schedule 5, Olympus shall provide the Software Maintenance and INFOCUS SoftwareCare as set out in the Appendix to this Schedule 5 in accordance with this Schedule 5 during the Term.

2.2 Subject to the terms of the Contract, in particular this license for Software, Olympus grants the Purchaser a non-exclusive and non-transferrable, irrevocable, worldwide licence during the Term to:

i) use and to permit Authorised Users to use the Software and Documentation for the business purposes of the Purchaser; and

ii) use and make a reasonable number of copies of the Software and Documentation (and permit any Authorised User to do so) for back-up, disaster recovery and archive purposes insofar as the making of the copy is necessary for the use of the Software permitted by this licence. Any copies made will be subject to the terms and conditions of this Contract

(the "**Software Licence**").

2.3 The provision to the Purchaser of upgrades, modifications and enhancements to the Software is subject to a further written agreement between the Purchaser and Olympus (which may be in the form of an amendment to the existing Contract or a new contract) and payment of additional Software Licence Fees if applicable.

2.4 If the Clinical User is not the Purchaser, the Purchaser shall grant a sub-license to the Clinical User, and the Purchaser shall:

i) be liable for the acts and omissions of the Clinical User as if they were its own; and

ii) procure that the Clinical User is aware of, and complies with, the obligations and restrictions imposed on the Purchaser under these license terms, including all obligations and restrictions relating to record keeping, audits and installation or use of the Software.

2.5 Any sub-license granted by the Purchaser under Clause 2.3 of Schedule 5 shall prohibit further sub- licensing and shall include a provision to the effect that the sub-license shall terminate immediately on the termination of this Software Licence.

2.6 The Purchaser shall indemnify Olympus or an Olympus Group Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Olympus or Olympus Group Company arising out of or in connection with:

i) the Purchaser´s breach or negligent performance or non-performance of the terms of this Schedule; and

ii) a breach of the terms of this Schedule by the Clinical User the Purchaser has granted a sublicense to.

2.7 This indemnity shall apply whether or not Olympus or the Olympus Group Company has been negligent or at fault.

2.8 If any third party makes a claim, or notifies an intention to make a claim, against Olympus or any Olympus Group Company which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Claim**"), the Purchaser shall be deemed to have given to Olympus, or the Olympus Group Company, sole authority to avoid, dispute, compromise or defend the Claim.

**3 Restrictions**

3.1 The Purchaser shall:

i) observe and comply with any use restrictions specified on the Quotation or Approved Purchase Order;

ii) effect and maintain adequate security measures to safeguard the Software and the Documentation from unauthorised access, use or copying; and

iii) notify Olympus immediately if the Purchaser becomes aware of any unauthorised access to, use or copying of the Software and/or Documentation by any person.

3.2 The Purchaser shall not, nor shall it permit others to:

i) make any copies of the Documentation without Olympus' prior written consent, save as set out in this Schedule;

ii) decompile, reverse engineer or disassemble the Software;

iii) make any alterations, modifications, additions or enhancements to the Software except as specifically described in the Documentation without Olympus' prior written consent;

iv) translate or adapt the Software or Documentation for any purpose nor create derivative works based on the Software or Documentation without Olympus' express written consent in each case;

v) acquire any title, copyright or other proprietary rights in the Software or the Documentation or any copies of the Software or Documentation;

vi) transfer or distribute whether by rental, sale, sub-licence (except as expressly permitted in this Schedule), loan or otherwise, all or any part of the Software and the Documentation to any other person; or

vii) remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Software or which are visible during its operation, or which are on its carrier medium or on any Documentation.

**4 Term**

4.1 The Software Licence shall continue for the Term, unless terminated by either Party in accordance with this Contract.

4.2 On the expiry of the Initial Fixed Term, the Parties may agree in writing to renew the Software Licence (a "**Renewal Term**").

4.3 If the Parties have not agreed to a Renewal Term, the Software Licence shall terminate at the end of the Initial Fixed Term.

**5 Software Licence Fees**

5.1 The Purchaser shall pay Olympus the Software Licence Fees (if any) in accordance with this Clause 5 of this Schedule 5 and Clause 8 of the General Terms in respect of the licence grant under this Schedule 5.

5.2 Unless otherwise agreed in writing by the Parties, the Software Licence Fees for the Initial Fixed Term and any Renewal Term shall be invoiced within thirty (30) days following the start of the Initial Fixed Term or Renewal Term, as applicable.

5.3 The Software Licence Fees will be reviewed on the expiry of the Initial Fixed Term and each Renewal Term (where applicable) and any increase in the Software Licence Fees will be notified to the Purchaser in writing at least twenty (20) Business Days prior to the period in which the increase will apply.

**6 Software Warranty**

6.1 Olympus warrants that during the Term, the Software will perform and function substantially as described in the Documentation. Olympus does not warrant that operation of the Software will be uninterrupted or error free.

6.2 Olympus' sole obligation under the warranty in this Clause 6 of Schedule 5, and the Purchaser's sole and exclusive remedy for breach of such warranty shall be, at Olympus' own expense and option, for Olympus to use all reasonable endeavours to rectify any non- conformance with the warranty notified to Olympus by the Purchaser during the Term by repair (by way of a patch, work around, correction or otherwise) within a reasonable period of time or to replace the Software in whole or in part.

6.3 The warranty given in Clause 6 of Schedule 5 is the only warranty given by Olympus in respect of the Software and Documentation. To the extent permitted by law, Olympus expressly excludes all other warranties and conditions, whether express or implied including (but not limited to) those as to the quality or fitness for purpose of the Software.

6.4 Olympus shall not be liable for any breach of the warranty in Clause 6 of Schedule 5 attributable to an Excluded Cause.

6.5 If a problem is found upon investigation not to be Olympus' responsibility under the provisions of Clause 6 of Schedule 5, Olympus may charge the Purchaser immediately for all reasonable costs and expenses incurred by Olympus in the course of or in consequence of such investigation.

**7 Records and Audits**

7.1 The Purchaser shall maintain or shall procure the maintenance of accurate and complete written records of usage of the Software.

7.2 Within ten (10) Business Days of being requested to do so by Olympus, the Purchaser shall provide Olympus with copies of the records referred to in Clause 7.1 of Schedule 5 for the purpose of verifying that treatment of the Software is in accordance with the Contract.

7.3 The Purchaser shall allow and procure for Olympus (and its authorised representatives) access to its premises to inspect the equipment on which the Software is installed or on which Olympus reasonably believes the Software might be installed, and to audit (and take copies of) the relevant records of the Purchaser, to the extent necessary to verify that the use of the Software is in accordance with the Contract.

7.4 Unless otherwise agreed in writing, the inspections and audits referred to in Clause 7.3 of Schedule 5 shall be undertaken:

i) during Normal Business Hours;

ii) subject to the provision by Olympus of a minimum of five (5) Business Days' notice; and

iii) not more than twice in any calendar year.

## Schedule 6

## Perpetual Software Licence Terms

### 1 Definitions

1.1 In this Schedule, the following words and expressions have the following meanings:

"**Claim**" has the meaning given to it in Clause 2.7 of this Schedule 6; and

"**Perpetual Software Licence Fees**" means the fees the Purchaser must pay to Olympus in order to receive the Perpetual Software Licence, as agreed between the Parties.

### 2 Licence grant

2.1 Subject to the terms of the Contract, in particular this license for Software, Olympus grants the Purchaser a non-exclusive, irrevocable, fully paid up, royalty-free, perpetual, worldwide licence to:

i) use and to permit Authorised Users to use the Software and any related Documentation for the agreed purpose of the clinical business operations at the Clinical Site; and

ii) use and make a reasonable number of copies of the Software and any related Documentation (and permit any Authorised User to do so) for back-up, disaster recovery and archive purposes insofar as the making of the copy is necessary for the use of the Software permitted by this licence. Any copies made will be subject to the terms and conditions of this Contract

(the "**Perpetual Software Licence**").

2.2 In consideration for the Purchaser's payment of the Perpetual Software Licence Fees, and in addition to the Perpetual Software Licence set out in this Schedule 6, Olympus shall provide the Software Maintenance and INFOCUS SoftwareCare as set out in the Appendix to this Schedule 6 in accordance with this Schedule 6 during the Term.

2.3 The provision of upgrades, modifications and enhancements to the Software is subject to a further written agreement between the Purchaser and Olympus (which may be in the form of an amendment to the existing Contract or a new contract) and payment of additional Perpetual Software Licence Fees if applicable.

2.4 If the Clinical User is not the Purchaser, the Purchaser shall grant a sub-license to the Clinical User for the use of the Software at the Clinical Site, and the Purchaser shall:

i) be liable for the acts and omissions of the Clinical User as if they were its own; and

ii) procure that the Clinical User is aware of, and complies with, the obligations and restrictions imposed on the Purchaser under these license terms, including all obligations and restrictions relating to record keeping, audits and installation or use of the Software.

2.5 Any sub-license granted by the Purchaser under Clause 2.3 of Schedule 6 shall prohibit further sub- licensing and shall include a provision to the effect that the sub-license shall terminate immediately on the termination of this Perpetual Software Licence. The only permitted sub-licencing is as set out in Clause 2.3 of Schedule 6. Any further sublicensing is prohibited.

2.6 The Purchaser shall indemnify Olympus or any Olympus Group Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Olympus or Olympus Group Company arising out of or in connection with:

i) the Purchaser´s breach or negligent performance or non-performance of the terms of this Schedule; and

ii) a breach of the terms of this Schedule by a Clinical User the Purchaser has granted a sublicense to.

2.7 This indemnity shall apply whether or not Olympus or Olympus Group Company has been negligent or at fault.

2.8 If any third party makes a claim, or notifies an intention to make a claim, against Olympus or Olympus Group Company which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Claim**"), the Purchaser shall be deemed to have given to Olympus, or the Olympus Group Company, sole authority to avoid, dispute, compromise or defend the Claim.

### 3 Restrictions

3.1 The Purchaser shall:

i) observe and comply with any use restrictions specified on the Quotation or Approved Purchase Order;

ii) effect and maintain adequate security measures to safeguard the Software and the Documentation from unauthorised access, use or copying; and

iii) notify Olympus immediately if the Purchaser becomes aware of any unauthorised access to, use or copying of the Software and/or Documentation by any person.

3.2 The Purchaser shall not, nor shall it permit others to:

i) make any copies of the Documentation without Olympus' prior written consent, save as set out in this Schedule;

ii) decompile, reverse engineer or disassemble the Software;

iii) make any alterations, modifications, additions or enhancements to the Software except as specifically described in the Documentation without Olympus' prior written consent;

iv) translate or adapt the Software or Documentation for any purpose nor create derivative works based on the Software or Documentation without Olympus' express written consent in each case;

v) acquire any title, copyright or other proprietary rights in the Software or the Documentation or any copies of the Software or Documentation;

vi) transfer or distribute whether by rental, sale, sub-licence (except as expressly permitted in this Schedule), loan or otherwise, all or any part of the Software and the Documentation to any other person; or

vii) remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Software or which are visible during its operation or which are on its carrier medium or on any Documentation.

**4 Perpetual Software Licence Fees**

4.1 The Purchaser shall pay Olympus the Perpetual Software Licence Fees (if any) in accordance with this Clause 4 of Schedule 6 and Clause 8 of the General Terms in respect of the licence granted under this Schedule.

4.2 Unless otherwise agreed in writing by the Parties, any Perpetual Software Licence Fees shall be invoiced within thirty (30) days following the Purchaser or Clinical User's receipt of the Software.

**5 Software Warranty**

5.1 Olympus warrants that, for a period of six months from the date of the Perpetual Software Licence, the Software will perform and function substantially as described in the Documentation. Olympus does not warrant that operation of the Software will be uninterrupted or error free.

5.2 Olympus' sole obligation under the warranty in Clause 5 of Schedule 6, and the Purchaser's sole and exclusive remedy for breach of such warranty shall be, at Olympus' own expense and option, for Olympus to use all reasonable endeavours to rectify any non-conformance with the warranty notified to Olympus by the Purchaser by repair (by way of a patch, work around, correction or otherwise) within a reasonable period of time or to replace the Software in whole or in part.

5.3 The warranty given in this Clause 5 of Schedule 6 is the only warranty given by Olympus in respect of the Software and Documentation. To the extent permitted by law, Olympus expressly excludes all other warranties and conditions, whether express or implied including (but not limited to) those as to the quality or fitness for purpose of the Software.Olympus shall not be liable for any breach of the warranty in this Clause 5 of Schedule 6 attributable to an Excluded Cause.

5.4 If a problem is found upon investigation not to be Olympus' responsibility under the provisions of this Clause 5 of Schedule 6, Olympus may charge the Purchaser immediately for all reasonable costs and expenses incurred by Olympus in the course of or in consequence of such investigation.

**6 Records and Audits**

6.1 The Purchaser shall maintain accurate and complete written records of its usage of the Software.

6.2 Within ten (10) Business Days of being requested to do so by Olympus, the Purchaser shall provide Olympus with copies of the records referred to in Clause 6.1 of Schedule 6 for the purpose of verifying that the Purchaser´s treatment of the Software is in accordance with the Contract.

6.3 The Purchaser shall allow and procure for Olympus (and its authorised representatives) access to its premises to inspect the equipment on which the Software is installed or on which Olympus reasonably believes the Software might be installed, and to audit (and take copies of) the relevant records of the Purchaser, to the extent necessary to verify that the use of the Software is in accordance with the Contract.

6.4 Unless otherwise agreed in writing, the inspections and audits referred to in Clause 6.3 of Schedule 6 shall be undertaken:

i) during Normal Business Hours;

ii) subject to the provision by Olympus of a minimum of five (5) Business Days' notice; and

iii) not more than twice in any calendar year.

**Schedule 7**

**SaaS Terms**

**1 Definitions**

1.1 In this Schedule, the following words and expressions have the following meanings:

"**Acceptable Use Policy**" has the meaning given to it in Clause 6 of Schedule 7;

"**Ancillary Software**" means the software made available by Olympus to the Clinical User Clinical User to be deployed on machines operated by or for the Clinical User Clinical User specifically for the purpose of facilitating the Clinical User's Clinical User's access to and use of the Software Services, as further described in the Documentation, For the avoidance of doubt, Ancillary Software does not include Third-Party Software or Third-Party Applications;

"Availability Requirement" has the meaning given to it in Schedule 8;

"**Claim**" has the meaning given to it in Clause 4.8 of Schedule 7;

"**Claim Against Olympus**" means any Claim made or brought against Olympus, its Affiliates or subcontractors arising out of or in connection with the Clinical User Data (including any processing of the Clinical User Data in accordance with the Contract), the Purchaser's use of Resultant Data or Usage Data, or the Purchaser's use of any Olympus Technology in violation of the Contract;

"**Claim Against the Purchaser**" means any Claim made or brought against the Purchaser that the Purchaser's use of the Olympus Technology in accordance with the Contract, infringes, misappropriates or otherwise violates such third party's Intellectual Property Rights;

"**Clinical User Data"** means all data and information uploaded, submitted or otherwise provided by the Clinical User to the Software Services. For the avoidance of doubt, Clinical User Data does not include Usage Data or Resultant Data;

"**Data**" means, collectively, Clinical User Data, Resultant Data and Usage Data;

"**Deliverables**" means all work product of the Professional Services, including any code, documents and other materials provided by Olympus to the Clinical User in connection with the Professional Services;

"**Demonstration Services**" has the meaning given to it in clause 8.7 of Schedule 7;

"**Documentation**" means any manuals, instructions, or other documents or materials that Olympus makes available to the Clinical User in any form or medium and which describe the functionality, components, features, or requirements of the Olympus Technology, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof;

"**Feedback**" has the meaning given to it in clause 11.4 of Schedule 7;

"**INFOCUS SoftwareCare**" means the standard maintenance and support services described in Schedule 8;

"**Initial Fixed Term**" means the initial period during which the Purchaser or Clinical User, as applicable receives, and Olympus provides the Software Service under this Schedule, as agreed between the Parties;

**"Login Credentials"** means username, passwords, security credentials or authentication keys issued to the Purchaser or Clinical User an Authorised User by Olympus (or created by the Purchaser, Clinical User or an Authorised User at Olympus' invitation) for access to the Software Service;

"**Olympus Technology"** means, collectively, Software Services, Ancillary Software, Deliverables, and Documentation;

"**Professional Services**" means the implementation, training, consulting or other professional services in relation to the Software Services ordered by the Purchaser under the Purchase Order;

"**Renewal Term**" has the meaning given to it in Clause 7.2 of Schedule 7;

"**Resultant Data"** means all data and information derived from the processing of the Clinical User Data and provided by Olympus to the Clinical User as output of the Software Services in accordance with the Documentation. Resultant Data does not include any data or information that is part of the Olympus Technology;

"**Software Service Subscription**" has the meaning given to it in clause 3.2 of Schedule 7;

"**Software Subscription Fees**" means the fees the Purchaser must pay to Olympus in order to receive the Software Service, as agreed between the Parties;

"**Term**" means the period during which the Clinical User receives and Olympus provides the Software Service under this Schedule, which may include an Initial Fixed Term and Renewal Terms, as agreed between the Parties.

"**Third Party Applications"** means all data and information derived from the processing of the Clinical User Data and provided by Olympus to the Clinical User as output of the Software Services in accordance with the Documentation. Resultant Data does not include any data or information that is part of the Olympus Technology;

"**Third Party Technology"** means third-party software, technology and materials provided in connection with the Olympus Technology, including any open source software, as identified in the Documentation; and

"**Usage Data"** means all data and information related to the Clinical User's access to or use of the Olympus Technology, including any end user profile-, visit-, session-, impression-, click through-, or click stream-data, and any statistical or other analysis, information, or data based on or derived from any of the foregoing

**2 Clinical User**

2.1 If the Clinical User is not the Purchaser, the Purchaser shall grant a sub-license to the Clinical User, and the Purchaser shall:

i) be liable for the acts and omissions of the Clinical User as if they were its own; and

ii) procure that the Clinical User is aware of, and complies with, the obligations and restrictions imposed on the Purchaser under this Schedule 7, including all obligations and restrictions relating to record keeping, audits and installation or use of the Software Service.

2.2 Any sub-licenses granted by the Purchaser under clause 2.1 of Schedule 7 shall prohibit further sub-licensing and shall include a provision to the effect that the sub-license shall terminate immediately on the termination or expiry of the Purchaser's Software Service Subscription.

**3 Software Service**

3.1 In consideration for the Purchaser's payment of the Software Subscription Fees, and in addition to the Software Service Subscription set out in this Schedule 7, Olympus shall provide the Software Subscription Services as set out in the Quotation and in accordance with this Schedule 7 during the Term.

3.2 Subject to the terms of the Contract, in particular this licence for the Software Service, Olympus grants the Purchaser a non-exclusive, non-sublicensable, non-transferable, worldwide licence during the Term to:

i) access and use and to permit their respective Authorised Users to access and use the Software Service and Documentation for internal business purposes and the agreed purpose of the clinical business operations at the Clinical Site; and

ii) make a reasonable number of copies of the Documentation for training and reference use,

subject to the limits (if any) specified on the Quotation or Purchase Order as to the maximum number of permitted Authorised Users and subject to the Purchaser agreeing to and complying with the requirements of this Contract and the Documentation (including any applicable privacy notice) (the "**Software Service Subscription**").

3.3 Subject to the terms of the Contract, Olympus grants the Purchaser a non-exclusive, non-sublicensable and non-transferable licence during the Term to install and execute the Ancillary Software on machines operated by or for the Purchaser (including on the Purchaser's servers) for the purpose of facilitating the Purchaser's access to and use of the Software Service.

3.4 Subject to the terms and conditions of the Contract, Olympus grants the Purchaser a non-exclusive, non-sublicensable and non-transferable license during the Term to use the Documentation for the Purchaser's internal business purposes in connection with its use of the Software Services.

3.5 Notwithstanding Olympus' obligation to maintain or enhance the quality of the Olympus Technology under clause 3.7 of Schedule 7, the provision of material upgrades, modifications and enhancements to the Software Service is subject to a further written agreement between the Purchaser and Olympus (which may be in the form of an amendment to the existing Contract or a new contract) and payment of additional Software Subscription Fees if applicable.

3.6 The Software Services do not replace the need for the Purchaser to maintain its own regular data backups and/or or redundant data archives. Olympus has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of Clinical User Data or Resultant Data.

3.7 Olympus reserves the right to make any changes to the Olympus Technology and standard customer support services that it deems necessary or useful to:

i) maintain or enhance the quality or delivery of Olympus' services to its customers, the cost efficiency or performance of Olympus' services, or the competitive strength of or market for Olympus' services, provided that, no such change materially reduces the level of performance, functionality, security or availability of the Software Services; or

ii) comply with Applicable Law.

3.8 Olympus may make Third-Party Technology available to the Purchaser. The Purchaser understands and acknowledges that Third-Party Technology is not licensed to the Purchaser pursuant to the Contract and that the Purchaser's use of Third-Party Technology is governed solely by, and subject to, the terms and conditions of the appliable third-party licence, therefore Olympus has no obligations or liability for any such Third-Party Technology which shall be governed by such licence. If the Purchaser does not agree to abide by the applicable terms for any such Third-Party Technology, then the Purchaser should not install or use such Third-Party Technology.

3.9 Olympus does not control, warrant, or support, and shall not be responsible or liable for Third-Party Applications. Any acquisition by the Purchaser of Third-Party Applications is solely between the Purchaser and the provider of the Third-Party Application. Olympus does not guarantee the continued availability of any features of the Software Services designed to interoperate with

Third-Party Applications and may cease providing them in its own discretion and at any time without any liability to the Purchaser. Any changes in Third-Party Applications or their availability shall not affect the Purchaser's obligations under the Contract. If the Purchaser receives notice that a Third-Party Application may no longer be used or must be removed, modified and/or disabled to avoid violating applicable law or third party rights, the Purchaser shall promptly do so. If the Purchaser does not take the required action in accordance with the above, or if in Olympus' reasonable judgment continued violation is likely to occur, Olympus may disable the applicable Third-Party Application without any liability to the Purchaser.

3.10 All Third Party Technology is provided "as is" and any representation or warranty of or concerning any Third Party Technology is strictly between the Purchaser and the Third Party Technology owner or distributor of the Third Party Technology.

**4 Professional Services**

4.1 Olympus shall provide to the Purchaser the Professional Services described in the Quotation. Performance dates specified in the Quotation are estimates only, and Olympus shall use commercially reasonable efforts to meet any such dates. If either Party wishes to change the scope or performance of the Professional Services, it shall submit details of the requested change to the other Party. No requested change will be effective unless mutually agreed upon in writing.

4.2 Olympus grants the Purchaser a non-exclusive, non-sublicensable and non-transferable right during the Term to use the Deliverables solely in connection with the Purchaser's use of the Software Services in accordance with the Contract.

4.3 All Professional Services (including any Deliverables) shall be deemed accepted if the Purchaser does not reject them detailing the non-conformity in writing to Olympus within seven (7) days of delivery of such Professional Services or Deliverables.

4.4 The Purchaser shall provide such cooperation and assistance as Olympus reasonably requests to enable Olympus to perform the Professional Services, including by timely:

i) assigning an internal project manager as primary point of contact and allocating sufficient IT resources;

ii) actively participating through suitably qualified and authorized personnel in scheduled meetings;

iii) providing Olympus access to the Clinical Site, , information technology infrastructure and suitably qualified personnel;

iv) responding to Olympus' inquiries and providing accurate and complete information and feedback; and

v) providing required consents, approvals, authorizations, and decisions.

4.5 If delivery of Professional Services is required for any Term to commence and such delivery is delayed by more than ninety (90) days due in whole or in part to the Purchaser's delay in performing, or failure to perform, any of its obligations under the Contract, the Term shall commence without delivery of the Professional Services and Olympus shall not be responsible or liable for any unavailability or non-conformity of the Olympus Technology caused by Olympus' delay in delivering the Professional Services.

**5 Olympus' obligations**

5.1 Subject to the terms and conditions of the Contract, Olympus shall use commercially reasonable efforts to make the Software Services available in accordance with the Availability Requirement and to provide INFOCUS SoftwareCare for the Software Services, both as set forth in Schedule 8. The Purchaser may purchase enhanced support services (if available) at Olympus' then current rates.

5.2 Olympus shall use commercially reasonable endeavours to :

i) schedule downtime for routine or planned maintenance between the hours of 8am and 5.30pm, and provide the Purchaser with at least six (6) Normal Working Hours' in advance of the first maintenance window of all scheduled outages of the Software Services; and

ii) provide at least six (6) Normal Working Hours' notice to the Purchaser in advance of unscheduled maintenance performed outside Normal Working Hours.

5.3 Olympus may, in its sole discretion and at any time, modify or change the Software Service. Olympus will use commercially reasonable efforts to provide at least thirty (30) days' notice to the Purchaser of any change that materially affects the functionality of the Software Service.

**6 Purchaser Obligations**

6.1 The Purchaser shall:

i) use the Olympus Technology only in accordance with the Contract and the Applicable Law and shall comply with Olympus' reasonable instructions concerning the use of the Olympus Technology;

ii) set up, maintain, and operate in good repair and in accordance with the Documentation all information technology infrastructure, including hardware, software and network connections, on or through which the Software Services are accessed or used;

iii) at the request of Olympus or as agreed between the Parties, promptly implement all updates, modifications or replacements of the Olympus Technology made available by Olympus to the Purchaser;

iv) keep all access credentials for the Software Services confidential and not disclose them to others;

v) prevent unauthorised access to or use of the Olympus Technology, and notify Olympus promptly of any such unauthorised access or use;

vi) be responsible and liable for all access to and use of the Olympus Technology directly or indirectly by or through the Purchaser's information technology infrastructure or access credentials, as if such access and use were by the Purchaser itself;

vii) be responsible and liable for the accuracy, quality and legality of Clinical User Data, the means by which the Clinical User acquired Clinical User Data, the Clinical User's use of Clinical User Data with the Software Services, and establishing a legal basis for the processing under the Contract of Clinical User Data that constitutes personal data; and

viii) be responsible and liable for the Purchaser's use of Resultant Data, including all of the Purchaser's conclusions, decisions, and actions based on, Resultant Data.

6.2 Except as the Contract expressly permits and to the extent such restrictions are not prohibited by Applicable Law, the Purchaser shall not, and shall not permit others to:

i) copy, modify, translate, create derivative works of, reverse engineer, disassemble, decompile or decode any Olympus Technology;

ii) rent, lease, lend, sell, sublicense, assign, distribute, or make otherwise available any Olympus Technology to any third party;

iii) exceed the designated level of usage in respect of which the Software Subscription Fees are determined (if applicable);

iv) attempt to gain unauthorized access to the Olympus Technology or its related systems or networks;

v) input, upload, transmit or otherwise provide to or through the Olympus Technology any information or material that is unlawful or infringes on the legal rights of others, or that contains any harmful code, including Viruses, worms, malware or ransom ware;

vi) interfere with or disrupt the integrity or performance of the Olympus Technology or third-party data contained therein;

vii) remove or alter any proprietary notices in the Olympus Technology;

viii) except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Contract:

(a) access or use the Olympus Technology to build a competing product or service or to determine whether the Olympus Technology is within the scope of any patent;

(b) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software Service and/or Documentation (as applicable) in any form or media or by any means; or

(c) attempt to de-compile, reverse compile, disassemble the Software Service; or

ix) otherwise access or use the Olympus Technology and all or any part of the Software Service other than as specified in the Documentation or in order to build a product or service which is the same or substantially the same as, or competes with, the Software Service and/or the Documentation;

x) use the Software Service and/or Documentation to provide services to third parties; or

xi) unless otherwise expressly permitted in this Contract, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Service and/or Documentation available to any third party except the Authorised Users.

6.3 The Purchaser shall not, and shall procure that others shall not, access, store, distribute or transmit any Virus, or any material during the course of its use of the Software Service that:

i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

ii) facilitates illegal activity;

iii) depicts sexually explicit images;

iv) promotes unlawful violence;

v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

vi) is otherwise illegal or causes damage or injury to any person or property,

6.4 and Olympus reserves the right, without liability or prejudice to its other rights to the Purchaser, to disable the Purchaser's access to the Software Service, or any part thereof, in the event of a breach this clause 6.3 of Schedule 7.

6.5 The Purchaser shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Login Credentials, the Software Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Olympus.

**7 Acceptable Use Policy**

7.1 Neither Purchaser, nor an Authorised User, may use the Software Service:

i) in a way prohibited by law, regulation, governmental order or decree;

ii) to violate the rights of others;

iii) to try to gain unauthorised access to or disrupt any service, device, data, account or network;

iv) to spam or distribute malware;

v) in any way that could harm the Software Service or impair anyone else's use of it;

vi) in any application or situation where failure of the Software Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; or

vii) to assist or encourage anyone to do any of the above,
herein referred to as the "**Acceptable Use Policy**".

7.2 Violation of the Acceptable Use Policy may result in suspension of access to the Software Service.

**8 Term and Termination**

8.1 The Software Service Subscription shall continue for the Term, unless terminated by either Party in accordance with this Contract.

8.2 On the expiry of the Initial Fixed Term, the Software Service Subscription shall renew for the same term length as the Initial Fixed Term, if agreed between the Parties by an Approved Purchase Order in respect of the Renewal Term prior to expiration of the Initial Fixed Termin writing (a "**Renewal Term**").

8.3 If the Parties have not agreed to a Renewal Term in accordance with clause 8.2**Error! Reference source not found.** of this S chedule 7, the Software Service Subscription shall terminate at the end of the Initial Fixed Term.

8.4 At Olympus' sole discretion, Olympus may temporarily suspend the Purchaser's access to and use of all or any part of the Software Services without limiting its other rights and remedies and without incurring any obligation or liability by reason of such suspension if:

i) the Purchaser or an Authorised User is in violation of the Acceptable Use Policy;

ii) the Purchaser fails to pay any amount when due hereunder and such failure continues for twenty (20) days following written notice thereof; or

iii) Olympus reasonably determines that:

(a) the Purchaser's use of the Software Services disrupts or poses a security risk to the Software Services or to any other purchaser, clinical user, customer or vendor of Olympus or its Affiliates;

(b) the Purchaser is using the Software Services for fraudulent or illegal activities or beyond the scope of the rights granted, or has failed to comply with any material term of the Contract; or

(c) suspension is required to comply with Applicable Law or any judicial or other governmental demand or order.

8.5 In its conduct of a suspension, Olympus shall:

i) suspend the Software Service only to the extent reasonably necessary. Olympus will provide reasonable notice before suspending the Software Service unless Olympus believes an immediate suspension is required, in which case it may suspend the Software Services without prior notice; and

ii) use commercially reasonable efforts to resume providing access to the Software as soon as reasonably possible after the event giving rise to the suspension is cured.

8.6 Notwithstanding the provisions in clause 15 of the General Terms, Olympus may terminate the Contract in whole or in part with immediate effect upon written notice to the Purchaser if:

i) the Purchaser fails to pay any amount when due hereunder and such failure continues more than twenty (20) days after Olympus' delivery of written notice thereof; or

ii) the Purchaser breaches any of its obligations under clause 8.2 of Schedule 7 or clause 9 of the General Terms.

8.7 Notwithstanding anything to the contrary in the Contract, if Olympus makes Olympus Technology and/or Professional Services available to the Purchaser for testing or demonstration purposes (collectively "**Demonstration Services**"):

i) the Term for the Demonstration Services shall be as stipulated by Olympus, will not automatically extend, and may be terminated by Olympus at any time for convenience;

ii) Olympus shall have no obligation to provide any INFOCUS SoftwareCare or meet any Availability Requirement with respect to the Demonstration Services;

iii) the Demonstration Services are provided "as is", and Olympus makes no representations or warranties, express, implied, statutory or otherwise, including any implied warranties or merchantability, fitness for a particular purpose, title and noninfringement, and any warranties arising from course of dealing, course of performance, or usage of trade, all of which are hereby specifically excluded and disclaimed;

iv) Olympus shall have no indemnification obligation with respect to the Demonstration Services; and

v) Olympus shall not be liable to the Purchaser for any loss, liability, damage or expense arising out of or in connection with the Demonstration Services, unless such loss, liability, damage or expense shall be proven to result from Olympus' gross negligence or wilful misconduct in the performance of its obligations under the Contract.

## 9 Software Subscription Fees

9.1 The Purchaser shall pay Olympus the Software Subscription Fees in accordance with this Clause 9 of Schedule 7 and Clause 8 of the General Terms in respect of the licence grant under this Schedule.

9.2 Unless otherwise agreed in writing by the Parties, the Software Subscription Fees for the Initial Fixed Term and any Renewal Term shall be invoiced within thirty (30) days following the start of the Initial Fixed Term or Renewal Term, as applicable.

9.3 The Software Subscription Fees will be reviewed on the expiry of the Initial Fixed Term and each Renewal Term (where applicable) and any increase in the Software Subscription Fees will be notified to the Purchaser in writing at least twenty (20) Business Days prior to the period in which the increase will apply.

## 10 Audit

10.1 Olympus or its nominee (including its accountants and auditors) may, on 30 days' notice, inspect and audit the Purchaser's use of the Olympus Technology and compliance with the Contract at any time during the Term and for one (1) year following its termination or expiration. Unless there is a material reasons, all audits shall be conducted no more frequently than once in any twelve (12) month period and in a manner that does not unreasonably interfere with the Purchaser's business operations.

10.2 The Purchaser shall make available all such books, records, equipment, data, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Olympus with respect to such audit. If the audit determines that the Purchaser's use of the Olympus Technology exceeded the usage permitted by the Contract, the Purchaser shall:

10.2.1 pay to Olympus all amounts due for such excess use of the Olympus Technology, plus interest on such amounts as calculated pursuant to clause 8.4 of the General Terms; and

10.2.2 reimburse Olympus for all costs related to the audit.

10.3 The Purchaser shall make all payments required under this clause 10.1 of Schedule 7 within thirty (30) days of the date of written notification to the Purchaser of the audit results.

## 11 Intellectual Property

11.1 Notwithstanding the provisions of clause 10 of the General Terms, as between the Parties and to the extent permitted by Applicable Law:

11.1.1 the Purchaser shall own all right, title, and interest, including all Intellectual Property Rights, in and to the Clinical User Data; and

11.1.2 Olympus shall own all right, title, and interest, including all Intellectual Property Rights, in and to the Resultant Data and the Usage Data.

11.2 Subject to payment of all Software Subscription Fees, Olympus grants the Purchaser a non-exclusive, worldwide, perpetual, royalty-free, non-transferable and non-sublicensable right to use and fully exploit for its internal business purposes and in an adequate manner the Resultant Data and Usage Data made available by Olympus to the Purchaser.

11.3 The Purchaser grants Olympus and its Affiliates:

11.3.1 a non-exclusive, worldwide, royalty-free and sublicensable right to use all Data to perform Olympus' obligations or exercise Olympus' rights under the Contract; and

11.3.2 a non-exclusive, worldwide, perpetual, royalty-free, transferrable and sublicensable right to access, copy, transmit, modify and otherwise use and fully exploit all Data for its and their business purposes (including providing or improving the Olympus Technology or other products and services, and conducting research and development, including training of AI models), **PROVIDED THAT**:

(i) Data that is personal data may only be used after it has been anonymized in accordance with clause 11 of Schedule 7; and

(ii) if Data is disclosed to a third party other than Olympus' Affiliates it shall be disclosed in such a form that the Purchaser cannot be identified as the source of the Data. The Purchaser's mandatory rights under Regulation (EU) 2023/2854 (Data Act) or any equivalent UK data protection law (including but not restricted to the UK GDPR and the Data Protection Act 2018) shall remain unaffected.]

11.4 At its option, the Purchaser may provide to Olympus feedback or suggestions relating to the Olympus Technology, Professional Services or INFOCUS SoftwareCare ("**Feedback**"). If the Purchaser provides Feedback, Olympus and its Affiliates may use such Feedback without restriction and without any attribution, compensation or other obligation to any party. The Purchaser hereby assigns to Olympus all right, title, and interest, including all Intellectual Property Rights, in and to the Feedback.

**12 Olympus' Obligations**

12.1 Olympus shall use all commercially reasonable endeavours to ensure that :

12.1.1 the Software Services conform in all material respects to the Availability Requirement; and

12.1.2 the Ancillary Software conforms in all material respects to the Documentation,

12.1.3 the Software Service will perform substantially in accordance with the Documentation, and

notwithstanding the foregoing, Olympus does not make any representations or guarantees regarding uptime or availability of the Software Services unless specifically identified in Schedule 8.

12.2 Clause 12.1 of Schedule 7 shall not apply to the extent of any non-conformance which is caused by an Excluded Cause. If the Software Service does not conform with clauses 12.1 of Schedule 7, Olympus will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly and this constitutes the Purchaser's sole and exclusive remedy for any breach of clauses 12.1 of Schedule 7.

12.3 Olympus:

12.3.1 does not warrant that:

(i) the use of the Software Service will be uninterrupted or error-free; or

(ii) that the Software Service, Documentation and/or the information obtained by the Purchaser through use of the Software Service will meet the Purchaser's requirements,

12.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Purchaser acknowledges that the Software Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

12.4 Olympus shall perform the Professional Services and INFOCUS SoftwareCare using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards and shall devote adequate resources to meet its obligations under the Contract. If Olympus breaches the foregoing, Olympus shall, at its option, either:

12.4.1 correct or re-perform the non-conforming Professional Services or INFOCUS SoftwareCare; or

12.4.2 credit or refund to the Purchaser, on a pro rata basis, the share of any Software Subscription Fees paid by the Purchaser for such Professional Services. Olympus shall not be in breach of the warranty set forth in this clause 12.4 of Schedule 7, and the foregoing remedy shall not be available, unless the Purchaser provides written notice of such breach within ten (10) days after the Purchaser's acceptance or deemed acceptance of the Professional Services or after the time the Purchaser discovers or ought to have discovered that they were non-conforming.

12.5 The obligations set forth in this clause 12 of Schedule 7 shall not apply to any non-conformity arising out of or relating to:

12.5.1 any operation or use of, or other activity relating to, the Olympus Technology, other than as specified in the Documentation, including any access to or use of the Olympus Technology in combination with any hardware, system, software, network, or other materials or service not specified in the Documentation;

12.5.2 any modification or alteration of the of the Olympus Technology by any party other than Olympus, its Affiliates or its or their duly authorized contractors or agents;

12.5.3 the Purchaser's failure to timely implement any updates, modifications or replacements made available by Olympus to the Purchaser;

12.5.4 any Third-Party Technology or Third-Party Application;

12.5.5 the Purchaser's breach of the Contract or negligence or wilful misconduct in connection with the Contract; or

12.5.6 any other circumstances or causes outside of the reasonable control of Olympus.

12.6 The remedies set forth in this clause 12 and in Schedule 8 are the Purchaser's sole remedies and Olympus' sole liability set forth in this clause 12 of Schedule 7.

**12.7** Except as expressly provided herein, Olympus makes no representations or warranties, express or implied, statutory or otherwise, including any implied warranties or merchantability, fitness for a particular purpose, title and noninfringement, and any warranties arising from course of dealing, course of performance, or usage of trade, all of which are hereby specifically excluded and disclaimed. Without limiting the foregoing, Olympus makes no warranty of any kind that the Olympus Technology, Professional Services, or INFOCUS SoftwareCare, or any products or results of the use thereof, will meet the Purchaser's or any other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any software, hardware, system, or other services, or be secure, accurate, complete, free of harmful code, or error free.

**13 Miscellaneous**

13.1 The Purchaser shall comply with all Applicable Law that prohibit or restrict the import or export of any Olympus Technology or Professional Services. Olympus may, without limiting its other rights and remedies, terminate the Contract, any Term and/or Professional Services with immediate effect and without any liability to the Purchaser if Olympus reasonably determines that:

13.1.1 continued performance would violate any import or export control laws or regulations; or

13.1.2 the Purchaser has violated or caused Olympus to violate any import or export control laws or regulations.

**Schedule 8**

**Software Maintenance and INFOCUS SoftwareCare**

**1 Definitions**

1.1 In this Schedule, the following words and expressions have the following meanings:

"**Available**" means the Software Services are available for access and use by the Purchaser and operating materially as described in the Documentation. Availability has a correlative meaning;

"**Availability Requirement**" is defined in Section 2.1 of this Schedule 8;

"**Exception**" is defined in Section 2.3 of this Schedule 8;

"**Fault**" means a failure of the Software to function substantially in accordance with the Specification;

"**Fault Call**" means a communication from the Purchaser to Olympus to report a Fault in accordance with the process set out in this Schedule;

"**Initial Fixed Term**" means the initial period during which the Purchaser or Clinical User, as applicable receives and Olympus provides the Software Maintenance and INFOCUS SoftwareCare under this Schedule, as agreed between the Parties;

"**Maintenance and Support Fees**" means the fees payable by the Purchaser to Olympus for the Software Maintenance and INFOCUS SoftwareCare, as agreed between the Parties;

"**Renewal Term**" has the meaning given to it in Clause 6.2 of Schedule 8;

"**Resolve**" means, in relation to a Service Error, to implement a workaround or permanent solution that, in Olympus' reasonable discretion, restores Availability of the Software Services. Resolution has a correlative meaning;

"**Respond**" means to communicate with the Purchaser whether by telephone, email, or otherwise, acknowledging the Purchaser's request for support in connection with a specific Service Error and to start working on the support request;

"**Scheduled Downtime**" is defined in Section 2.3 of this Schedule 8;

"**Service Credit**" is defined in Section 2.4 of this Schedule 8;

"**Service Error**" means any reproducible failure of the Software Services to be available for access and use by the Purchaser and/or operate materially as described in the Documentation, excluding any failure as a result, in whole or in part, of any Exception;

"**Service Level Failure**" means any failure of the Software Services to meet the Availability Requirement; and

"**Service Period**" means each twelve (12) month period during the Term commencing on the beginning of the Term or any anniversary thereof, provided that the last Service Period shall end on the last day of the Term.

"**Specification**" means, in relation to a Product, the manufacturer's technical and functional specifications for that Product, and in relation to Software, means the written specification agreed by Olympus and the Purchaser for that Software signed by authorised representatives of Olympus and the Purchaser; and

"**Term**" means the period during which the Purchaser receives and Olympus provides the Software Maintenance and INFOCUS SoftwareCare under this Schedule, which may include an Initial Fixed Term and Renewal Terms, as agreed between the Parties.

**2 Performance of the Services**

2.1 In consideration for the Purchaser's payment of the Maintenance and Support Fees, Olympus shall provide the Software Maintenance and INFOCUS SoftwareCare as set out in the Appendix to this Schedule 8 in accordance with this Schedule 8 during the Term.

2.2 Subject to the terms and conditions of the Contract, Olympus shall use commercially reasonable endeavours to make the Software Services Available at least ninety-nine percent (99 %) of the time as measured over the course of each Service Period, excluding un-Availability as a result of any Exception ("**Availability Requirement**").

2.3 For purposes of calculating the actual Availability for any Service Period, the Software Services shall not be considered un-Available, and no Service Level Failure shall be deemed to occur, to the extent any downtime, degradation, or impaired ability of the Purchaser to access or use the Software Services is due, in whole or in part, to

i) any act or omission by the Purchaser in violation of the Agreement, including the Purchaser's misuse of the Software Services or failure to meet any minimum hardware or software requirements set forth in the Documentation;

ii) the Purchaser's internet connectivity;

iii) any Third-Party Technology or Third-Party Application;

iv) a Force Majeure Event;

v) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Olympus pursuant to the Agreement;

vi) Scheduled Downtime; or

vii) suspension of the Software Services pursuant to clause 8.4 of Schedule 7,

each an "**Exception**".

2.4 Olympus shall notify the Purchaser via the Software Services or by email at least twenty-four (24) hours in advance of any scheduled downtime for routine maintenance of the Software Services ("**Scheduled Downtime**") and shall use commercially reasonable endeavours to schedule any Scheduled Downtime between the hours of 7.00p.m. and 4.00a.m..

2.5 Following the end of a Service Period, in the event a Service Level Failure occurred in the respective Service Period, Olympus shall confirm this in writing to the Purchaser, and shall issue to the Purchaser the corresponding service credit ("**Service Credit**") in accordance with the table below, provided that:

i) Olympus has no obligation to issue any Service Credit unless and is current on all payments due under the Agreement at the time of such request; and

ii) in no event will a Service Credit for any Service Period exceed eight percent (8 % ) of the total Fees that would be payable for that Service Period if no Service Level Failure had occurred.

| **Availability Percentage**<br><br>(number of minutes the respective Software Services were Available during the Service Period ÷ number of minutes in the Service Period) x 100 | **Service Credit**<br><br>(% of Fees payable for the respective Software Services for the Service Period) |
|---|---|
| < 99 % - >= 97 % | 2% |
| < 97 % - >= 95% | 5% |
| < 95 % | 8% |

**3 <u>Support</u>**

3.1 Olympus shall maintain the Software Services to support Availability, including by providing to the Purchaser all updates, modifications or replacements of the Software Services and Ancillary Software. For the avoidance of doubt, pursuant to clause 3.5 of Schedule 7, new versions or significant enhancements of the Software Services and Ancillary Software are not included in the Subscription Fees.

3.2 The Purchaser shall promptly notify Olympus of any Service Error at the telephone number specified by Olympus and provide Olympus with reasonable detail of the nature and circumstances of the Service Error.

3.3 Olympus shall use commercially reasonable endeavours to Respond to Service Errors reported by the Purchaser within the following timeframes during Normal Working Hours based on the severity of the Service Error as reasonably determined by Olympus:

| **Severity Level of Service Error** | **Description** | **Response Time** |
|---|---|---|
| P1 | Severe Service Error which has a critical impact on user operations. | 1 hour |
| P2 | Service Error resulting in partial loss of functionality for users. | 8 hours |
| P3 | A non-critical Service Error which inconveniences users but only impacts operations moderately. | 24 hours |
| P4 | Minor Service Error which has limited or no impact on operations. | 48 hours |

3.4 Olympus shall use commercially reasonable endeavours to Resolve any Service Error reported by the Purchaser, including by providing (as deterimed by Olympus), during Normal Working Hours:

i) telephone support;

ii) support by email;

iii) remote support (if available), in which case the Purchaser agrees to provide Olympus with access to the Purchaser's system to install and use remote access software necessary for Olympus to provide the remote support to the Purchaser; and

iv) such, if any, on-site technical support as Olympus, in its reasonable discretion, deems necessary to attempt to Resolve the Service Error..

3.5 Olympus does not guarantee any specific Resolution times or that any Service Error will be Resolved.

3.6 The Purchaser shall provide such cooperation and assistance as Olympus reasonably requests to enable Olympus to Respond to and Resolve any Service Error, including by timely:

i) providing Olympus access to the Clinical Site, information technology infrastructure and suitably qualified personnel;

ii) responding to Olympus' inquiries and providing accurate and complete information and feedback; and

iii) providing required consents, approvals, authorizations, and decisions.

**4 Sole Remedy**

4.1 The remedies set forth in this Schedule 8 are the Purchaser's sole remedies and Olympus' sole liability for any Service Level Failure or un-Availability of the Software Services.

**5 Purchaser Obligations**

5.1 The Purchaser shall:

i) co-operate with Olympus in all matters relating to the Software Maintenance and INFOCUS SoftwareCare;

ii) appoint a dedicated representative to coordinate Fault Calls, carry out required actions to correct Faults as instructed by Olympus and facilitate Olympus' obligations under this Schedule;

iii) provide, for Olympus, its agents, subcontractors, and employees, in a timely manner and at no charge, access to the Clinical Site, data and other facilities as required by Olympus to provide the Software Maintenance and INFOCUS SoftwareCare;

iv) inform Olympus of all health and safety rules and regulations and any other reasonable security requirements that apply to the provision of the Software Maintenance and INFOCUS SoftwareCare at the Clinical Site; and

v) perform appropriate security and back-up processes of all data and software on or affected by the operation of the Software and shall be responsible for restoring lost and/or damaged data.

**6 Term**

6.1 The Software Maintenance and INFOCUS SoftwareCare shall continue for the Term, unless terminated by either Party in accordance with this Contract.

6.2 On the expiry of the Initial Fixed Term, the provision of Software Maintenance and INFOCUS SoftwareCare shall renew if agreed between the Parties in writing (a "**Renewal Term**").

6.3 If the Parties have not agreed to a Renewal Term, the provision of Software Maintenance and INFOCUS SoftwareCare shall terminate at the end of the Initial Fixed Term.

**7 Maintenance and Support Fees**

7.1 The Purchaser shall pay Olympus the Maintenance and Support Fees (if any) in accordance with this Clause 7 of Schedule 8 and Clause 8 of the General Terms in respect of the Software Maintenance and INFOCUS SoftwareCare delivered under this Schedule.

7.2 The Maintenance and Support Fees will be reviewed on the expiry of the Initial Fixed Term and each Renewal Term (where applicable) and any increase in the Maintenance and Support Fees will be notified to the Purchaser in writing at least twenty (20) Business Days prior to the period in which the increase will apply.

7.3 Unless stated otherwise in an Approved Purchase Order, the Maintenance and Support Fees for the Initial Fixed Term and any Renewal Term shall be invoiced within thirty (30) days following the start of the Initial Fixed Term or Renewal Term, as applicable.

**Appendix to Schedule 5, 6, 7 and 8**

**Service Level Agreement**

**1 Services**

1.1 Corrective maintenance is all tasks performed to identify, isolate and rectify a Fault so the Software can be restored to an operational condition within the tolerance or limits established for in service operations. During the Term, Olympus shall provide support between the following hours and by the following means:

i) telephone support during Normal Working Hours (calls received outside these hours will be forwarded to a mobile phone or forwarded to an answer phone service);

ii) email support monitored during Normal Working Hours (emails received outside these hours will be received, however no action can be guaranteed until the next Business Day);

iii) remote support during Normal Working Hours; and

iv) subject to Clause 1.2 of this Appendix to Schedule 8, onsite assistance at the Clinical Sites, guaranteed within seventy-two (72) Normal Working Hours of the Fault Call.

1.2 Onsite assistance at the Clinical Sites (as described in Clause 1.1(d) of this Appendix to Schedule 8) shall only be provided by Olympus in circumstances where Olympus is unable to resolve a Fault via remote support (as described in Clause 1.1(c) of this Appendix to Schedule 8), onsite assistance at the Clinical Sites shall only be provided as an additional service which is subject to an additional charge.

**2 Training Services**

2.1 If requested, and outside of the Professional Services and any commissioning training at the point of installation, Olympus may provide training services to Clinical Users for an additional charge.

**3 Change Requests**

3.1 If requested, Olympus shall fulfil the following change requests for an additional charge. Change requests may include but shall not be limited to the following:

i) an amendment, addition or removal request made following the implementation of the Software; and/or

ii) system architecture change request.

**4 Additional Services**

4.1 If requested, Olympus shall provide additional IT services for an additional charge. Additional services are any which include:

i) system information extraction, collection, and analysis;

ii) system capability enhancements above standard implementation, in line with the intended use of the Software;

iii) IT consultation services & project management; and/or

iv) activities undertaken beyond the standard implementation.