

**1 Definitions and Interpretation**

1.1 In these terms, 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 these Terms;

**"Approved Purchase Order"** means a Purchase Order accepted or approved by Olympus in accordance with clause 4.4;

**"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 Devices will be Collected and/or Delivered, 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 Device at the Clinical Site, which shall be the Device Owner 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 these terms and which relates to the provisions of the Services or the subject matter of these terms;
- ii) know-how, secret processes and inventions disclosed to the relevant Party by or on behalf of the other Party in connection with the Services; and
- iii) all other information disclosed to the relevant Party by or on behalf of the other Party 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;

**"Date of Report"** means the date of the Services Report;

**"Collection", "Collect" and "Collected"** means the date and time at which the Device is collected either:

- i) by Olympus from Clinical Site; or
- ii) by the Device Owner from an Olympus Authorised Service Centre;

**"Delivery", "Deliver" and "Delivered"** means the date and time at which the Device is delivered either:

- i) by the Device Owner to an Olympus Authorised Service Centre; or
- ii) by Olympus to the Clinical Site,

as indicated on the relevant Quotation;

**"Device"** means the goods or items requiring Repair, and may include a device which has any status other than of Repaired Device;

**"Device Owner"** means the entity which has legal ownership of the Device;

**"Device Repair Registration"** means the pre-registration of a Device with Olympus for a Repair in accordance with Olympus' requirement including but not limited to submitted in accordance with clause 2.1;

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**“Device Status”** means any of but not limited to the statuses of a Device detailed in Schedule 1 to these terms;

**“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);

**“Inspection”** means the preliminary assessment of the Device carried out by Olympus either at an Olympus Authorised Repair Centre or at the Clinical Site to determine the Services required to Repair the Device;

**“Inspection Fee”** means the fee payable by the Device Owner in respect of the Inspection and including but not limited to:

- i) Delivery to Clinical Site and/or Collection from Clinical Site;
- ii) cleaning and decontamination;

**“Inspection Fee Quotation”** means the request for payment of the Inspection Fee, whether by quotation or invoice issued by Olympus to the Device Owner;

**“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;

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

**“OEM”** means original equipment manufacturer;

**“OEM Authorised Repair Centre”** means a repair centre authorised by the Device’s OEM;

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

**“Olympus”** means KeyMed (Medical and Industrial Equipment) Limited, a company registered in England and Wales with company number 966736, and registered address at KeyMed House, Stock Road, Southend on Sea, SS2 5QH;

**“Olympus Authorised Service Centre”** means Medical Repair Centre, 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;

**“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 these terms;

**“Part”** means any part, component or element used by Olympus in the Inspection and/or Repair of a device;

**“Purchase Order”** means, where applicable, a purchase order for the Inspection or the Services, submitted by the Device Owner to Olympus;

**“Quotation”** means a Services Quotation or Inspection Fee Quotation, as applicable;

**“Repair”** means the repair and testing works to the Device undertaken by Olympus as part of the Services;

**“Repaired Device”** means a Device which has been Repaired by Olympus;

**“Request”** means any request to Olympus by the Device Owner for Repair whether by pre-registration with Olympus Customer Care Services, in advance of Delivery or Collection of the Device, or, if not pre-registered, by Delivery of a Device to an Olympus Authorised Repair Centre;

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**“Services”** means the provision of the Repair, including Parts and labour and any supporting services undertaken by Olympus in respect of the Device in respect of the Repair;

**“Services Purchase Order”** means a purchase order submitted by the Device Owner in respect of a Services Quotation;

**“Services Quotation”** means a quotation issued by Olympus to the Device Owner in respect of the Services required to return the Device to OEM Standard, including the Repair;

**“Services Report”** means the report prepared by Olympus at the conclusion of the Services detailing the Repair undertaken and/or including the Device Status;

**“Storage Fees”** means as defined in clause 12.1;

**“Supporting Services”** means, where applicable and as indicated on the Quotation, any additional services provided by Olympus

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

**“Valid Request”** means a Request which satisfies the requirements of these terms, and indicated as “valid” (though not an acceptance of offer to contract) by Olympus in the provision of an Inspection Fee Quotation.

**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 these terms shall include the Schedules to it (including their Appendices), and references to clauses and schedules are to clauses of, and Schedules to, these terms. References to paragraphs are to paragraphs of the Schedules.

**1.4** Headings shall be ignored in interpreting these terms.

**1.5** The words “includes” and “including” are to be construed without limitation.

**1.6** Unless otherwise specified in these terms, 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 application of these terms; 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 Device Owner 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 Device Owner 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.

**2 Supply of Services to the Clinical User**

**2.1** Olympus is an ethical and conscientious medical device manufacturer and repair service provider. Olympus provides the Services only to and for the benefit of Clinical Users. In the event that the Device Owner is not itself the Clinical User of the Device, the Device Owner agrees that:

- i) it shall clearly identify in the Device Repair Registration and any Purchase Order, and any other

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correspondence with Olympus:

- (a) the Device Owner;
  - (b) the Clinical User, if different from the Device Owner; and
  - (c) the Clinical Site;
- ii) the Services are provided for and to the benefit of the Clinical User only;
  - iii) it will ensure and facilitate the direct communication from Olympus to the Clinical User, without interference, as regards the Device and Services. The Device Owner 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;
  - iv) repair or other reports prepared by Olympus in respect of the Device and Services will be provided or presented directly to the Clinical User by Olympus. Subject to the provisions of clause 13, and depending on any confidentiality or commercial sensitivities, provision of such reports to the Device Owner or any other party shall be in Olympus' discretion; and
  - v) any and all actions or omissions of the Clinical User, if it is a different entity to the Device Owner, shall be deemed and regarded by Olympus to be the actions or omissions of the Device Owner. The Device Owner shall be wholly liable to Olympus in respect of any actions or omissions of the Clinical User, as if they were those of the Device Owner in accordance with these terms.
- 2.2 In order to satisfy itself of the requirements of clause 2.1, Olympus may verify the Clinical User, Clinical Site and prior use of the Device, and the Device Owner shall provide or procure the provision of all reasonable support to Olympus in respect of this.
- 2.3 Olympus may, in its absolute discretion, decline any Device Repair Registration or Purchase Order which does not comply with or satisfy the requirements of clause 2.1 and 2.2.
- 2.4 Any breach by the Device Owner of any of the conditions of this clause 2 shall be deemed a material breach of these terms.

**3 Request for Inspection**

- 3.1 The submission of a Request shall be subject to these terms. The submission of a Request constitutes an offer by the Device Owner under these terms and a commitment to contract on these terms.
- 3.2 No Request shall be deemed accepted by Olympus unless and until accepted or approved by Olympus (thereby becoming a **"Valid Request"**).
- 3.3 To indicate a Valid Request, Olympus shall issue an Inspection Fee Quotation. The Inspection Fee Quotation does not constitute an offer (nor an acceptance of offer to contract) and shall be valid for the period indicated in the Inspection Fee Quotation only.
- 3.4 The Inspection Fee is applied individually in respect of each Device that is submitted for or requires Inspection.
- 3.5 The Inspection Fee shall be payable in accordance with the Inspection Fee Quotation, and Olympus may withhold the provision of the Inspection until payment of the Inspection Fee has been made in full.
- 3.6 An amount equal to the Inspection Fee will be credited against the applicable Services Quotation, should such Services Quotation be accepted.
- 3.7 Olympus reserves the right to apply Storage Fees, in accordance with clause 12, in respect of any Device which is Delivered to Olympus without a Valid Request.

**4 Supply of Services**

- 4.1 Following Inspection, Olympus shall issue the Services Quotation to the Device Owner. The Device Owner shall indicate its acceptance of the Services Quotation by submitting the Services Purchase Order within the period of validity of the Services Quotation.
- 4.2 Whilst every effort is made to accurately determine the Services required, the Services Quotation is only an

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estimate based on Inspection. Olympus reserves the right to submit a revised Services Quotation, should the need for additional work become apparent after Repairs have commenced.

- 4.3 Olympus does not commit to or provide any guarantee or promise for Repair timeframe or any delivery of the Services in respect of a Device.
- 4.4 For some Devices or accessories, it may be necessary to send the Device to an OEM Authorised Repair Centre for Repair, where extended Repair times may be experienced. This will be communicated to the Device Owner.
- 4.5 The submission of a Services Purchase Order in respect of a Services Quotation constitutes an offer by the Device Owner and shall be subject to these terms.
- 4.6 No Services Purchase Order shall be deemed accepted unless and until accepted or approved by Olympus (an "**Approved Purchase Order**").
- 4.7 The Device Owner shall confirm that it does not wish to accept the Services Quotation in writing to Olympus and shall arrange for the Collection of the Device from Olympus (immediately, and in any case within two Business Days of such confirmation).
- 4.8 Olympus reserves the right to apply Storage Fees, in accordance with clause 12, in respect of any Device that has been Delivered to Olympus and for which:
  - i) the Services Quotation has expired without confirmation of a Approved Purchase Order; or
  - ii) the Device Owner has indicated it does not wish to accept the Service Quotation but does not Collect the Device in accordance with clause 4.4.

**5 The Services**

- 5.1 The Services are provided for the benefit and support of the Clinical User and are not transferrable or assignable. It is distinct from the contractual supply relationship between Olympus and the Device Owner.
- 5.2 Subject to these terms, Olympus will provide the Services.
- 5.3 The provision of the Services is strictly subject to the following provisions:
  - i) the Services shall be solely determined by Olympus;
  - ii) Services are carried out during Normal Working Hours only;
  - iii) as applicable, Olympus will determine whether the Inspection and/or Services are carried out at an Olympus Authorised Service Centre or at the Clinical Site by an Olympus Field Service Engineer; and
  - iv) if the Inspection and/or Services are carried out at the Clinical Site, the Device Owner shall:
    - (a) 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:
      - (i) a work bench space of not less than 160cmx60cm;
      - (ii) sufficient illumination;
      - (iii) access to electrical power supply and water; and
      - (iv) required equipment such as monitors, video processors, light sources, suction pumps etc.,
    - (b) ensure, or procure, that Olympus is notified of the location and condition of the Devices prior to any attendance at the Clinical Site by an Olympus Field Service Engineer, and that the Devices are available for Olympus to assess at the Clinical Site in order to deliver the Services,

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

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5.4 Upon completion of the Services, Olympus shall issue a Services Report to the Clinical User.

**6 Notification**

6.1 If, during an Inspection or Repair by Olympus of a Device, Olympus has reason to believe or suspect, or identifies, that, in its opinion, a Device 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 Device Owner and/or the Clinical User of the Devices 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 Devices.

**7 Defects**

7.1 For a period of 12 months following the Date of Report the Parts used in the Repair 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.

7.2 Subject to clause 7.1, if the Device Owner gives notice in writing to Olympus, within 12 months of the Date of Report, that some or all of the Parts of a Repaired Device do not comply with the statement set out in clause 7.1, Olympus shall, at its option, repair or replace the defective Parts, subject to:

- i) Olympus being given a reasonable opportunity of examining such Repaired Device and Parts; and
- ii) the Device Owner (if requested) returning such Repaired Device to Olympus (at the Olympus' cost).

7.3 Olympus shall not be liable for the Parts' failure to comply with the warranty set out in clause 7.1 if:

- i) the Device Owner, or Clinical User, as applicable, makes any further use of such Repaired Device after giving notice in accordance with clause 7.2;
- ii) any party other than Olympus alters or repairs such Repaired Device or Parts 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 Parts or Repaired Device differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.4 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 these terms.

**8 Collection and Delivery**

8.1 Where Devices are to be Collected and/or Delivered by Olympus in providing the Services, this clause 8 shall apply.

8.2 Olympus shall Collect and/or Deliver the Device to the Clinical Site only during Normal Working Hours.

8.3 Any dates provided by Olympus for the Collection or Delivery of Devices are estimates only. Olympus shall notify the Device Owner of the date on which it proposes to Collect or Deliver the Device. Time shall not be of the essence in relation to Collection or Delivery of any Devices. Olympus shall not be liable for any costs incurred by the Device Owner resulting from delays in Collection or Delivery, howsoever arising.

8.4 Olympus shall have no liability for any failure to Collect or Deliver the Device to the extent that such failure is caused by a Force Majeure Event or the Device Owner's failure to provide Olympus with adequate Collection or Delivery details.

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- 8.5 Any further attempts by Olympus to Collect or Deliver a Device after any failure to first do so (other than due to Olympus) shall be on a chargeable basis, payable in full by the Device Owner prior to any subsequent attempt by Olympus to Collect or Deliver.
- 8.6 Olympus reserves the right to apply Storage Fees, in accordance with clause 12, in respect of any Device which it attempts to Deliver in accordance with clause 8.5.

**9 Risk**

- 9.1 Risk in the Devices passes to Olympus only on Collection of the Device from the Clinical Site by Olympus or Delivery of the Device by the Device Owner to Olympus as applicable, and risk in the Device or Repaired Device, as applicable, passes to the Device Owner upon Delivery of the Device to the Clinical Site by Olympus or on Collection of the Device by the Device Owner from Olympus, as applicable.

**10 Price and Payment Terms**

- 10.1 The Device Owner shall pay any request for payment raised by Olympus in accordance with these terms, whether in respect of the Inspection or the Services, as applicable:
- i) within thirty (30) days of the date of the request (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.
- 10.2 The amounts requested under these terms are exclusive of all value added taxes, goods taxes or other sales taxes which may at any time be chargeable, which the Device Owner shall pay at the rate prevailing at the date of the relevant request.
- 10.3 The Device Owner 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.
- 10.4 If the Device Owner fails to pay any amounts due for payment under these terms on or before the due date:
- i) the Device Owner 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 reserves the right to:
    - (a) apply Storage Fees, in accordance with clause 12, in respect of such Device; and/or
    - (b) withhold any Delivery, or Collection by the Device Owner, of a Device or Repaired Device,if all or any part of the amounts it has invoiced remain unpaid.

**11 Device Status**

- 11.1 Upon a Valid Request a Device is cleaned and decontaminated by Olympus, prior to Inspection.
- 11.2 Olympus may dismantle, disassemble, deconstruct, remove and install Parts of the Device as part of its Inspection. Where possible and/or practical, any test or new Parts used in the Inspection and to determine the Repair required will be removed from the Device and Olympus reserves the right to return the Device in a partially disassembled or deconstructed state and original faulty Parts may or may not be reinstalled.
- 11.3 The Device Status at the point risk in the Device transfers at any time from Olympus to the Device Owner, as indicated in writing by Olympus.

**12 Storage**

- 12.1 Subject to these terms, Olympus reserves the right to apply a charge in respect of any Device ("**Storage Fees**"):
- i) which is Delivered to Olympus without pre-registration of the Request for Repair, from the day risk in such Device passes to Olympus;

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- ii) for which the Inspection Fee and/or the Services Quotation has not been paid in full, from the date on which due payment became overdue;
- iii) for which a Purchase Order has not been raised within the period of validity stated in the Quotation, from the date on which such validity expires;
- iv) which, in accordance with clause 4.5, is not Collected by the Device Owner within two Business Days of confirmation of such from Olympus, or for which Delivery to Clinical Site by Olympus was not actionable.

12.2 Olympus reserves the right to apply and demand payment for Storage Fees at any time, and to withhold such Device in its possession until payment by the Device Owner of the Storage Fees is made in full. Olympus reserves the right, without liability, to destroy any Device in respect of which Storage Fees have been incurred for a period (continuously or in aggregate) of six months or more and such shall not negate the obligation to make payment for the respective Storage Fees.

**13 Confidentiality**

13.1 Subject to clause 13.2 of these terms, a Party shall treat all Confidential Information of the other as strictly confidential and shall not disclose Confidential Information to any person.

13.2 Either 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.

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

13.4 The restrictions contained in this clause 13 shall continue to apply after the termination or expiry of these terms (however arising) without limit in time.

13.5 In the event that the Device Owner is not the Clinical User of the Device, the Device Owner 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 Device of the Device Owner. The provisions of this clause 13 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 Device Owner shall be deemed to have breached the provisions of this clause 13 by receipt also of such information other than from Olympus.

**14 Intellectual Property**

14.1 All Intellectual Property Rights in the Inspection and the Services belong to Olympus or the applicable third-party owner of such rights. Nothing in these terms shall operate to transfer ownership of any such Intellectual Property Rights to the Device Owner.

14.2 The Device Owner agrees not to remove, suppress or modify in any way any proprietary marking on any Part or Repaired Device (including any trademark or copyright notice).

**15 Clinical Sites**

15.1 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 Device Owner in advance in writing to Olympus from time to time.

15.2 The Device Owner shall permit access to (or shall procure the permission of access to) Olympus and

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Olympus Personnel to Clinical Sites as reasonably required in connection with these terms. Olympus agrees and acknowledges that:

- i) it shall not carry out any alterations to any Clinical Site without the prior written consent of the Device Owner;
- 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 these terms 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 these terms and shall make good any damage caused by its occupation, use or vacation of a Clinical Site to the reasonable satisfaction of the Device Owner.

**16 Liability**

16.1 Subject to clauses 16.2, 16.3 and 16.4, Olympus' maximum aggregate liability arising out of or in connection with these terms, 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 these terms will be limited to one hundred percent (100%) of the total amounts paid or payable to Olympus under these terms in the contract year in which the liability arose.

16.2 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 these terms, 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 these terms, subject always to clause 16.4.

16.3 Subject to clause 16.4, Olympus, shall not be liable to the Device Owner for any loss the Device Owner suffers in connection with these terms, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, howsoever caused including by negligence, as a result of the Device Owner's breach of its obligations under clause 2.1.

16.4 Nothing in these terms 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 Device Owner's obligation to pay amounts payable to Olympus;
- iv) the Device Owner's breach of its obligations under clause 2.1;
- v) in the case of the Device Owner's liability, damage to the Devices;
- vi) liability under any indemnity given by the Device Owner; 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.

16.5 Nothing in clause 16 will prevent or restrict the right of a Party to seek injunctive relief or specific performance or other discretionary remedies of the court.

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

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**17 Notices**

17.1 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.

17.2 Any notice given in accordance with clause 17 will be deemed to have been served:

- i) if given as set out in clause 17.1(i), at 9:00am on the first Business Day after the date of posting; and
- ii) if given as set out in clause 17.1(ii), 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.

**18 Force Majeure**

18.1 A Party shall have no liability for any delay in performance or any non-performance of any obligation under these terms, 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.

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

**19 Records and Audit**

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

19.2 The Device Owner 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 Device Owner is complying with its obligations under these terms.

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

**20 Data protection**

20.1 To the extent that Olympus processes personal data on behalf of the Device Owner 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 Device Owner and/or Clinical User, as applicable, regarded as "**controller**" and Olympus as "**processor**" and clause 19 shall apply. So far as Olympus has potential access to personal data, a data processing agreement or data processing protocol in accordance with Article 28 UK GDPR may be required to be entered into by Olympus and the controller, as applicable, prior to the processing of any personal data by Olympus.

20.2 Pursuant to the Purchase Order, the controller (or by the Device Owner on its behalf) appoints Olympus as a processor to process its personal data solely as necessary to perform its obligations under these terms. 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 Devices and these terms. The controller (or the Device Owner 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.

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20.3 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.

20.4 If the Device Owner is not the Clinical User, the Device Owner shall procure that the Clinical User complies with clause 17 and that the Clinical User enters into a data processing agreement or data processing protocol directly with Olympus.

**21 Anti-bribery**

21.1 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 these terms or for showing or not showing favour or disfavour to any person in relation to these terms; or
  - (b) in connection with these terms 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 these terms; and
- ii) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

21.2 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 these terms, the Party which has not committed the Prohibited Act or such offence shall be entitled:

- i) to terminate these terms 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.

21.3 Any termination under clause 21.2(i) shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues.

**22 Publicity**

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

**23 Survival**

23.1 The expiry or termination of these terms (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 these terms. In particular, the Device Owner shall remain liable to pay all remaining outstanding payments under the these terms.

**24 Variations**

24.1 Olympus reserves the right to amend these terms and the terms of any Schedule from time to time, subject to prior publication of updates by Olympus.

**25 Relationship of the Parties**

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25.1 The relationship of Olympus (and any Olympus employees, agents and subcontractors) to the Device Owner will be that of independent contractor and nothing in these terms shall render it (nor any Olympus employees, agents or subcontractors) an employee, worker, agent or partner of the Device Owner 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.

**26 Assignment / subcontracting**

26.1 The Device Owner shall not assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under these terms.

26.2 Olympus may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms, subject to written notification to the Device Owner.

**27 Severance**

27.1 If any provision in these terms 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.

27.2 To the extent that the Parties do not agree to delete or modify the provision, in whole or in part, under clause 27.1 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 these terms and the legality, validity and enforceability of the remainder of these terms shall, subject to any deletion or modification made under clause 27.1 of, not be affected.

**28 Waiver**

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

28.2 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.

**29 Third party rights**

29.1 A person who is not a party to these terms has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any of these terms.

**30 Waste Electrical and Electronic Equipment**

30.1 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 Device Owner, Olympus can provide a licensed carrier to collect, from the Clinical Site, and recycle Devices which are electrical and electronic equipment.

**31 Entire agreement**

31.1 These terms and any document expressly referenced in these terms 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.

31.2 No terms or conditions endorsed upon or otherwise submitted by the Device Owner to Olympus, will form any part of the relationship between Device Owner and Olympus and the Device Owner waives any right which it otherwise might have to rely on such terms and conditions.

31.3 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 these terms in respect of which its sole remedy shall be for breach of contract.

31.4 Nothing in clause 31, shall operate or be construed to exclude or limit any liability of any party for fraud, including fraudulent misrepresentation.

**32 Governing law and jurisdiction**

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- 32.1 These terms and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- 32.2 The Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with these terms and that accordingly any proceedings arising out of or in connection with these terms shall be brought in such courts.

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**Schedule 1**  
**Device Status**

<b>Status</b>	<b>Definition</b>
<b>No Fault Found</b>	Following Inspection, no fault or issue with Device found by Olympus and therefore no repair to the Device conducted
<b>Repaired</b>	Device Repaired
<b>Returned as Received</b>	The Device is “untouched” by Olympus, with no Inspection or any Services provided.
<b>Returned Following Inspection</b>	The Device has been Inspected by Olympus but, on instructions from Device Owner, not Repaired.
<b>Withheld</b>	Device is withheld by Olympus on the basis that it has an undetermined issue that requires further investigation.