Supply Agreement

This supply agreement comprises: (a) the key terms set out in the table below, including any referenced appendices ("**Key Terms**"); and (b) the terms and conditions appended in the hereto (the "**T&Cs**"), together this "**Agreement**". To the extent that there is any conflict or ambiguity between the Key Terms and the T&Cs, a term contained in the Key Terms shall have priority over one contained in the T&Cs. All defined terms not defined in the Key Terms below are defined in the T&Cs.

|  |
| --- |
| **Key Terms** |
| **Party details (each a "Party" and together the "Parties")** |
| Supplier: | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  (the “Supplier”) |
| HDR UK: | **Health Data Research UK**, a company incorporated in England and Wales (company number 10887014), and a charity registered with the Charity Commission (charity number 1194431) with its registered office at 215 Euston Road, London, NW1 2BE ("**HDR UK**"). |
| Supplier Notice Details: | For the attention of: Address: Email:  |
| HDR UK Notice Details: | For the attention of: Head of ContractsAddress: 215 Euston Road, London, NW1 2BEEmail: Contracts@hdruk.ac.uk |
| **Commercial terms** |
| Commencement Date: |  |
| Term: |  |
| Services | [Set forth here or in Appendix 3 depending on the complexity] |
| Fees:  |  |
| Special Terms: |  |

By signing below each party agrees to be bound by the terms of this Agreement. This Agreement may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

|  |  |
| --- | --- |
| Signed by an authorised representative for and on behalf of: | Signed by an authorised representative for and on behalf of: |
| **Supplier** | **Health Data Research UK** |
| *……………………………………………………………..* | *……………………………………………………………..* |
| *Name: …………………………………………………….* | *Name: …………………………………………………….* |
| *Position: ………………………………………………….*  | *Position: ………………………………………………….*  |
| *Date: ……………………………………………………...* | *Date: ……………………………………………………...* |

**APPENDIX 1 – TERMS AND CONDITIONS**

# Definitions and Interpretation

## In this Agreement, capitalised terms shall have the meanings ascribed to them above in the Key Terms or below, as applicable:

##  “**Applicable Law**” means in respect of either Party, all laws, statutes, regulations, directions, guidelines and codes of conduct of any governmental or other regulatory body of competent jurisdiction, and any orders of any court or other tribunal of competent jurisdiction which are applicable to the performance by that party of its obligations or enjoyment of its rights under this Agreement;

##  “**Confidential Information**” means in relation to a party (the "**Disclosing Party**") all information that would be regarded as confidential by a reasonable business person (however recorded, preserved or disclosed and whether or not marked as "confidential") which relates to the Disclosing Party, or to its employees, officers, customers or suppliers and which is directly or indirectly disclosed by or on behalf of the Disclosing Party to the other party (the "**Recipient**") under or in connection with this Agreement (or which is learnt or acquired by the Recipient in connection with this Agreement), whether before or after the Commencement Date, including: (a) the terms of this Agreement; and (b) where the Supplier is the recipient, HDR UK Materials and all information and data relating to HDR UK systems (including any login details to such systems), but not including any information that: (i) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this Agreement or of any other undertaking of confidentiality addressed to the Disclosing Party; (ii) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; (iii) information which the Recipient can show by its written records was developed or created independently by or on behalf of the Recipient; or (iv) the parties agree in writing is not confidential;

##  “**Deliverables**” means all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation the Key Deliverables;

##  “**Employee Liabilities**” means all claims, demands, actions, proceedings and any award, compensation, damages, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis;

##  “**HDR UK Materials**” means all materials, equipment and tools, drawings, specifications and data supplied by HDR UK to the Supplier;

##  “**Intellectual Property Rights**” or "**IPRs**" means (a) patents, rights to inventions, designs, copyright and related rights, database rights, trade marks and trade names, rights in get-up and related goodwill and the right to sue for passing off or unfair competition (in each case whether registered, registerable or unregistered); (b) proprietary rights in domain names; (c) rights to use, and protect the confidentiality of, trade secrets, know-how and Confidential Information; (d) applications, and rights to apply for and be granted registrations, including extensions and renewals of, such rights; and (e) all other rights of a similar nature or having an equivalent effect anywhere in the world;

##  "**Supplier IPRs**" all IPRs that are owned by or licensed to the Supplier and which are or have been developed independently of this Agreement; and

##  "**VAT**" means value added tax or any other similar tax, charge or levy from time to time during the Term.

## In this Agreement (except where the context otherwise requires): (a) use of the singular includes the plural and vice versa; (b) any reference to a statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") is a reference to such legislation as amended, consolidated or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation; (c) any phrase introduced by the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms, and (d) a reference to writing or written includes email.

# Services

## The Supplier shall perform the Services and provide the Deliverables to HDR UK during the Term in accordance with this Agreement.

## The Supplier shall perform the Services in a timely manner and so as to meet any performance and/or delivery dates for the Services specified in the Key Terms.

## In supplying the Services, the Supplier shall: (a) perform the Services with all reasonable care and skill which would be expected from a skilled and experienced provider in accordance with best practice in the Supplier's industry, profession or trade; (b) co-operate with HDR UK in all matters relating to the Services; (c) ensure that the Services and Deliverables conform in all respects with the service description set out in the Key Terms and that the Deliverables shall be fit for any purpose that HDR UK expressly or impliedly makes known to the Supplier; (d) ensure that the Deliverables are of the best quality and are free from defects in workmanship, installation and design; and (e) use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled.

## All Deliverables will be subject to sign-off by HDR UK and will only be considered as provided under this Agreement upon written confirmation from HDR UK to the Supplier that the Deliverables meet requirements.

# Goods

## The Supplier shall supply and deliver the Goods in accordance with this Agreement, during normal business hours to HDR UK at the Delivery Location and on the delivery date(s) and at the time(s) specified in the Key Terms.

## Risk in the Goods shall pass to HDR UK on completion of delivery, which shall occur on acceptance by HDR UK of the Goods at the Delivery Location. Title shall pass to HDR UK upon the earlier of: (a) payment for the relevant Goods being made by HDR UK; and (b) on completion of delivery of the Goods (as defined in this clause), in each case with full title guarantee.

## The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered. If the Supplier requires HDR UK to return any packaging materials to the Supplier, that fact must be notified to HDR UK in writing and will be at the Supplier's cost.

## The Supplier shall not deliver the Goods in instalments without HDR UK's prior written consent. Where it is agreed that Goods may be delivered by instalments, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle HDR UK to the remedies set out in clause 4.2.

## HDR UK shall not be deemed to have accepted any Goods until HDR UK has had a reasonable time to inspect them following delivery, or if later, within a reasonable time after any latent defect in the Goods has become apparent. HDR UK has the right to inspect and test the Goods at any time before or upon delivery. If following such inspection or testing HDR UK considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.6, HDR UK shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement, and HDR UK shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## The Supplier shall ensure that the Goods: (a) correspond with their description and any applicable specification in the Key Terms; (b) will be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by HDR UK expressly or by implication, and in this respect HDR UK relies on the Supplier's skill and judgement; (c) will be free from defects and remain so for 12 months after acceptance; (d) comply with all Applicable Laws, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and (e) are properly packed and secured in such manner as to enable them to reach their destination in good condition.

# Supplier's Obligations

## In performing its obligations under this Agreement, the Supplier shall: (a) hold all HDR UK Materials in safe custody at its own risk and maintain HDR UK Materials in good condition until returned to HDR UK; (b) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Agreement; and (c) comply with all Applicable Laws (including those relating to anti-bribery and anti-slavery) and any HDR UK policies provided to the Supplier from time to time.

## If the Goods and/or Services (or any part thereof) are not delivered by the due date for delivery or performance of the same or do not comply with the undertakings set out in clauses 2.3, 3.6, 4.1, or 7.5 , then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods and/or Services, HDR UK may exercise any one or more of the following remedies: (a) to reject the Goods and/or Services (in whole or in part) and (with respect to Goods) return them to the Supplier at the Supplier's own risk and expense; (b) to require the Supplier to repair or replace the rejected Goods at the Supplier's expense, or re-perform the relevant Services, or to provide a full refund of the price of the rejected Goods and/or Services; (c) to refuse to accept any subsequent delivery of the Goods and/or provision of Services which the Supplier attempts to make

# HDR UK’s Obligations

## HDR UK shall: (a) provide such access to HDR UK's premises, facilities and data as may reasonably be requested by the Supplier and agreed with HDR UK in writing in advance, for the purposes of providing the Goods and/or Services; (b) provide such necessary information for the provision of the Goods and/or Services as the Supplier may reasonably request.

## A failure by HDR UK to comply with the terms of this Agreement can only relieve the Supplier from complying with its obligations under this Agreement with effect from the date on which the Supplier notifies HDR UK in writing and in reasonable detail of HDR UK's failure and its effect or anticipated effect on the Services and/or delivery of Goods.

# Fees and Payment

## In consideration for the provision of the Goods and/or Services, HDR UK shall pay the Supplier the Fees in accordance with this clause 6. The Fees are the full and exclusive remuneration of Supplier in respect of the Goods and/or the performance of the Services, and include the costs of packaging, insurance and carriage of the Goods (if applicable).

## The Supplier shall invoice HDR UK as set out in the Key Terms. Each invoice shall include all supporting information reasonably required by HDR UK.

## Subject to clause 4.5, HDR UK shall pay each invoice which is properly due and submitted to it by the Supplier within thirty (30) days of receipt to a bank account nominated in writing by the Supplier.

## If HDR UK fails to pay the Supplier any sum due under this Agreement by the due date, HDR UK shall pay interest on the overdue amount, from the due date until payment of the overdue sum, at the rate of two percent (2%) per annum above Bank of England's base rate from time to time.

## If there is a dispute about whether any amount is payable to the Supplier under this Agreement, HDR UK may withhold the amount in dispute until the dispute is resolved. If HDR UK disputes a payment in good faith, then the interest payable under clause 6.4 is only payable after the dispute is resolved, on sums found or agreed to be due, from seven (7) days after the dispute is resolved until payment.

## All Fees: (a) shall be payable in pounds sterling; and (b) are exclusive of VAT, which HDR UK shall pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

# Intellectual Property

## Save in respect of the Supplier IPRs, the Supplier irrevocably assigns to HDR UK, absolutely with full title guarantee, by way of present and future assignment as at the date of creation all of its rights, title and interest (including all IPRs) in and to any such Deliverables without further consideration. Where applicable as part of this process, the Supplier shall ensure that a waiver of applicable moral rights is obtained from the author of any relevant copyright work forming part of the Deliverables.

## The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Supplier grants to HDR UK an irrevocable, non-exclusive, perpetual, sub-licensable, worldwide and royalty-free licence to use, copy and modify the Supplier IPRs for the purpose of receiving and using (a) the Services during the Term, and (b) the Deliverables in perpetuity.

## HDR UK and its licensors shall retain ownership of all HDR UK Materials, including any IPRs therein. HDR UK grants to the Supplier a non-exclusive, non-transferable and royalty-free licence to use the HDR UK Materials (including any IPRs therein) during the Term and solely for the purpose of providing the Services to HDR UK in accordance with this Agreement.

## The Supplier shall give HDR UK all reasonable assistance, and shall execute all documents, necessary to perfect, preserve, register or record its right in any such Deliverables.

## The Supplier warrants that the receipt, use and onward supply (as applicable) of the Goods, Services and Deliverables by HDR UK shall not infringe the rights, including the IPRs, of any third party.

# Data Protection

## To the extent that either Party processes any personal data provided by the other Party in connection with this Agreement, each Party shall (a) act as independent controllers in relation to such personal data; (b) comply with its respective obligations under applicable Data Protection Laws in relation to such personal data; and (c) promptly provide the other Party with such reasonable cooperation, information and assistance as reasonably requested by the other Party to enable that Party to comply with its obligations under applicable Data Protection Laws in relation to such personal data.

## For the purposes of clause 6.1: (a) "**Data Protection Laws**" means all applicable privacy and data protection laws in any relevant jurisdiction in each case, as amended, revised or replaced from time to time and all applicable national implementing legislation and guidelines, or any applicable analogous legislation in any jurisdiction, in each case, as amended, revised or replaced from time to time; and (b) the terms "**controller**", "**personal data**" and "**processes**" shall be interpreted in accordance with applicable Data Protection Laws.

# Term and Termination

## This Agreement shall commence on the Commencement Date and shall (unless terminated earlier in accordance with its terms) continue in force for the duration of the Term.

## Without affecting any other right or remedy available to it, HDR UK may terminate this Agreement (a) without liability, for convenience by giving the Supplier thirty (30) days written notice; and/or (b) by notice in writing to the Supplier if the Supplier is in breach of clause 4.1(c), such notice to specify the effective date of termination.

## Without affecting any other right or remedy available to it, either Party may terminate this Agreement by notice in writing to the other Party, such notice to specify the effective date of termination, if: (a) the other Party commits a material breach of the terms of this Agreement or (if such breach is capable of remedy) fails to remedy that breach within thirty (30) days after being notified in writing to do so; (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## On expiry or termination of this Agreement for any reason, the Supplier shall: (a) immediately deliver to HDR UK all Deliverables whether or not then complete, and return all HDR UK Materials; and (b) if so requested by HDR UK, provide all assistance reasonably required by HDR UK to facilitate the smooth transition of the Services to HDR UK or any replacement supplier appointed by it.

## On expiry or termination of this Agreement for any reason, subject to HDR UK’s right to retain any documents or materials (including Confidential Information) to: (a) comply with any Applicable Laws; (b) continue to take the full benefit of the Goods, Services and/or Deliverables; and/or (c) facilitate the transfer of any Services to a replacement supplier, each Party shall return or, if specifically requested to do so in writing, destroy all Confidential Information of the other Party which such Party has in its control or possession and, in the case of destruction of Confidential Information, certify that such destruction has taken place.

## The parties agree that it is not intended that the expiry or termination of this Agreement or the Services (in whole or in part) will give rise to a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulation 2006 or any equivalent legislation in any relevant jurisdiction (the "**Transfer Regulations**") and that the Transfer Regulations shall not apply on expiry or termination of this Agreement or the Services (in whole or in part). Neither HDR UK nor any replacement supplier shall have any liability for any Supplier personnel or former Supplier personnel or any other person whatsoever on expiry or termination of the Services (in whole or in part) and the Supplier shall indemnify HDR UK and any replacement Supplier against all Employee Liabilities suffered or incurred by HDR UK or a replacement Supplier as a result of (a) any claim or demand made or brought against HDR UK or a replacement Supplier by any Supplier personnel or former Supplier personnel or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment, its termination or cessation howsoever arising (including for the avoidance of doubt as a result of its termination or non-acceptance into employment by HDR UK or a replacement Supplier) have or should have transferred to HDR UK or a replacement Supplier pursuant to the Transfer Regulations, and (b) any claim or demand made or brought by any person whomsoever on the grounds that there has been a failure in whole or in part to inform and/or consult under the Transfer Regulations on the part of the Supplier or HDR UK or a replacement Supplier in connection with any relevant transfer under the Transfer Regulations. Notwithstanding any provision to the contrary in the Agreement, for the purposes of this clause 9.6 and in accordance with the Contracts (Rights of Third Parties) Act 1999 any replacement Supplier shall be entitled to enforce the benefits conferred on it by this clause 9.6. The consent of the replacement Supplier shall not be required for the variation or termination of this clause 9.6 even if that variation or termination affects or will affect the benefits conferred on the replacement Supplier.

## Termination or expiry of this Agreement shall not affect the accrued rights, remedies, obligation or liabilities of the Parties.

## Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

# Limitation of Liability

## Nothing in this Agreement shall operate so as to exclude or limit the liability of either Party to the other for death or personal injury caused by its own negligence, fraud or fraudulent misrepresentation, and/or any other liability which may not be limited or excluded under applicable law.

## Subject to clauses 10.1 and 10.3, and (in relation to the Supplier) excluding any liability under clause 10.4, the total aggregate liability of each Party to the other Party under or in relation to this Agreement, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty, shall not exceed the greater of (a) the total contract value, being the total Fees stated to be payable during the Term in the Key Terms (or if such value is not known, the agreed estimated total Fees to be payable during the Term); or (b) 150% of the total amount of Fees received by the Supplier from HDR UK in the 12-month period preceding the month in which the relevant event giving rise to the claim arose.

## Subject to clause 10.1, in no event shall either Party be liable to the other for any indirect or consequential loss, whether arising from negligence, breach of contract or otherwise.

## The Supplier's liability shall be unlimited in respect of any losses arising (a) under or in relation to the indemnity given in clause 9.6, (b) from abandonment of this Agreement, or (c) in relation to a breach of clause 4.1(c), clause 7.5, clause 8 or clause 12.

# Insurance

## During the Term and for a reasonable period thereafter, the Supplier shall maintain in force, with a reputable insurance company, appropriate insurance to cover the liabilities that may arise under or in connection with this Agreement, and shall produce to HDR UK on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

# Confidentiality and Publicity

## The Recipient shall at all times (i) keep all Confidential Information secret and confidential and prevent its unauthorised disclosure, and (ii) not disclose Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with clause 12.2.

## The Recipient may disclose the Disclosing Party's Confidential Information: (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the Recipient's obligations under this Agreement. The Recipient shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Disclosing Party's Confidential Information comply with this clause 12; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. In such circumstances, the Recipient shall (provided that it is practical and lawful to do so) notify the Disclosing Party in writing as soon as practicable before the disclosure referred to in this clause 12.2(b).

## The Recipient shall not use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

## The Supplier shall not issue any press release or other public document, or make any public statement, relating to the execution or subject matter of this Agreement without HDR UK's prior written consent (including as to the form, content and timing of the release, document or statement).

# General

## Provided that it complies with the remainder of this clause 13.1, a Party shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if and to the extent that (a) such delay or failure directly results from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**"), and (b) if the Force Majeure Event was reasonably foreseeable, the impact or effect of such Force Majeure Event could not have been reasonably mitigated against or avoided. In order to claim relief under this clause 13.1, the affected Party shall (a) promptly notify the other Party in writing of the Force Majeure Event, including detail on its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. If the period of delay or non-performance continues for thirty (30) days, the Party not affected may terminate this Agreement by giving written notice to the affected Party.

## Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand, by email or by next working day delivery service at its postal or email address (as applicable) as set out in the Key Terms, or such other address as may have been notified by that party for such purposes. Any notice shall be deemed received on the next working day after it is sent.

## The Supplier may not assign, transfer, charge, subcontract or deal in any other manner any or all of its rights or obligations under this Agreement without the prior written consent of HDR UK. As at the Commencement Date, HDR UK consents to the appointment of the subcontractor(s) identified in the Key Terms (if any). If HDR UK consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

## The Parties agree that (a) the rights, powers and remedies provided in this Agreement are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise; (b) if any provision of this Agreement is found by any competent authority or a court of law to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect and the provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable; (c) no failure or delay by a Party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy and a waiver is only effective if given in writing; (d) no variation of this Agreement shall be effective unless it is in writing and signed by both Parties; (e) this Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter; (f) these T&Cs apply to the exclusion of any other terms that the Supplier may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing; and (g) except as set out in this Agreement, a person who is not a Party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

## This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales, and shall be subject to the exclusive jurisdiction of the English courts (provided that the foregoing is without prejudice to each party's right to seek injunctive or other interlocutory relief in any court of competent jurisdiction).

**Appendix 2 Services**