
HC21 GROUP – COMMERCIAL TERMS OF SALE

1. DEFINITIONS

1.1. In this Agreement the following words shall have the following meanings:

Agreement:	means the terms and conditions in this commercial terms of sale agreement including any PS Record and any other documents; incorporated by reference by the written agreement of the Parties;
Confidential Information:	means information that is proprietary or confidential to the disclosing Party to the extent that a reasonable person would consider such information as confidential;
Customer:	means the organisation entering into this Agreement with the Supplier;
Effective Date:	means for each Order agreed hereunder, the effective date of that Order specified therein;
Product:	means the physical products, stock and/or equipment provided under this Agreement, as may be further described in the PS Record;
“Product and Service Record” or “PS Record”	means the document, email/fax or other communication between the Parties specifying the Product and Services Ordered by the Customer under the terms of this Agreement.
Fee:	means the fees payable by the Customer to Supplier for the Product and/or Services;
Manufacturer Warranty:	means the original warranty supplied by the manufacturer of the Product;
Order:	means the Customer’s order for the Product and/or Services under this Agreement;
Order Term:	means the term of any Order which may be specified in the relevant PS Record or otherwise default to the date when the Product and/or Services have been delivered to the Customer;
Services:	means the services provided by Supplier under this Agreement including training and support for any Product;
Software:	means the support platform which may be used by the Supplier to provide the Services and licensed to the Customer under the terms of this Agreement; and
Supplier:	means the HC21 group company providing the Product and/or Services to the Customer as may be specified in the PS Record.

1.2. In this Agreement (except where the context otherwise requires):

- 1.2.1. use of the singular includes the plural and vice versa;
- 1.2.2. use of any gender includes the other genders;
- 1.2.3. any reference to a statute, statutory provision, subordinate legislation, code or guideline is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation; and
- 1.2.4. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

-
- 1.3. The terms of this Agreement will not apply if the Supplier has separately agreed, negotiated and executed (by an authorised signatory) a separate set of terms and conditions with the Customer.
 - 1.4. This Agreement shall apply to the supply of both Product and Services as applicable.
 - 1.5. Each of Supplier and Customer is (a “**Party**”) and together Supplier and Customer are (the “**Parties**”).

2. SALE OF THE EQUIPMENT AND SERVICES

- 2.1. During the term of this Agreement and subject to the provisions of this Agreement, the Customer shall buy such quantities of the Product and/or Services as may be Ordered by the Customer from time to time.
- 2.2. This Agreement shall apply to all future arrangements between the Parties for, the Supplier to supply and the Customer to buy, the Product and Services unless the Parties agree otherwise in writing.
- 2.3. Further details of the Product and Services provided including the relevant Fees may be set out in the PS Record.

3. AGREEMENT FORMATION

- 3.1. If an Order is made following a quotation received from the Supplier, the Customer should reference the quotation number when placing the Order.
 - 3.2. Confirmation of an Order will usually be provided in writing by email or by post. The Supplier is under no obligation to accept an Order.
 - 3.3. If this Agreement is not signed by the Customer, this Agreement shall be deemed to apply for all Product and/or Services purchased from the Supplier and a contract will be formed on the earlier of these dates:
 - 3.3.1. the date that confirmation of the Order is received by the Customer in writing; or
 - 3.3.2. the date of delivery, or commencement of delivery, of the Product and/or Services;
 - 3.3.3. the date payment is made for the Product and/or Services.
 - 3.4. If the Supplier is unable to provide the Product and/or Services, for example because that item is not in stock or no longer available or because Supplier cannot meet the requested delivery date or because of an error in the Fee or in the quotation (as referred to in clause 3.6), the Supplier will inform the Customer of this by phone, e-mail or post and the Supplier will not process the Order. If the Customer have already paid for the Product and/or Services, the Supplier will refund the full amount including any delivery costs charged as soon as possible.
 - 3.5. This Agreement shall apply to all sales by the Supplier to the Customer to the exclusion of all other terms and conditions including any which the Customer may purport to apply under any purchase order, confirmation of Order or any such similar document. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter. No variation or addition to this Agreement shall be effective unless agreed in writing by an authorised representative of the Supplier.
 - 3.6. Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier and without any prior notification. The views and opinions expressed in any sales literature or on the Supplier’s website are the views of the contributors and should not be taken necessarily as fact.
-

4. PRICES AND QUOTATIONS

- 4.1. Quotations from the Supplier are valid for a period of thirty (30) days (unless otherwise stated) from the date of issue. The prices given in any quotation by the Supplier are applicable to that quotation only and will not apply to future purchases.
- 4.2. The Fee payable for the Product and/or Services shall be the amount specified on the invoice.
- 4.3. The Supplier may at its discretion, as a condition of entering into the Agreement require the Customer to provide to the Supplier a cash deposit, guarantee, bank guarantee or enter into a credit arrangement.
- 4.4. All Fees are exclusive of sales tax for which the Customer shall be additionally liable at the applicable rate at the time of and as stated on the invoice.

5. FEES & PAYMENT

- 5.1. The Fees for the Product and/or the Services shall be as set out in the relevant PS Record or quotation or in your Order confirmation.
- 5.2. Terms of payment are strictly thirty (30) days from date of invoice, unless alternative terms have been agreed in writing by the Supplier.
- 5.3. Time for payment shall be of the essence and any failure to pay, or failure to comply with the provisions of this Agreement, shall entitle the Supplier to the following remedies, at its sole discretion, (which are without prejudice to any other remedy that the Supplier may have):
 - 5.3.1. treat the Agreement as repudiated by the Customer;
 - 5.3.2. delay, suspend or cancel any future delivery or deliveries and/or to limit the amount of, or refuse the grant of, credit to the Customer; or
 - 5.3.3. deactivate Products already delivered, until such time as payment is made or the dispute is resolved.
- 5.4. The Supplier reserves the right to charge interest on overdue invoices and this shall accrue on any unpaid amounts from the date when payment becomes due at two percent (2%) per annum above the Central Bank of Ireland base rate from time to time until the date of payment (a part of a month being treated as a full month for the purpose of calculating interest) to accrue both before and after any judgement.
- 5.5. Fees for the Product and/or Services may change from time to time, but, subject to clause 3.6, changes will not affect any Product and/or Services already paid for.
- 5.6. All invoices shall be paid in full, free from any deduction for any set off, counterclaim or otherwise, unless otherwise agreed in writing with the Supplier.

6. PRODUCT DELIVERY AND STORAGE

- 6.1. All quoted delivery dates are estimates only. The Supplier is not obliged to meet such dates and will not be liable to the Customer in the event of any delays caused by any reason whatsoever.
 - 6.2. Time of delivery shall not be of the essence and the Supplier shall not be liable for any losses, costs, damages or expenses by the Customer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery date. The Supplier shall not be liable for any delay in delivery of the Product and/or Services that is caused by Events outside Our Control as defined at clause 19.3 or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Product and/or Services.
 - 6.3. The Supplier is deemed to have delivered the Product when the Product is made available to the Customer for physical collection, by or on behalf of the Customer, at the Supplier's nominated delivery point.
-

-
- 6.4. On delivery of the Product the Customer is required to sign a proof of delivery form verifying the quantity and description of the Product delivered.
 - 6.5. The Supplier reserves the right to arrange carriage of the Product via a third party carrier on such terms as the Supplier shall determine in its sole discretion.
 - 6.6. Alternative arrangements with regard to the delivery of the Product may be agreed in writing with the Supplier and all additional costs incurred by the Supplier in connection with such arrangements shall be borne by the Customer.
 - 6.7. The carrier's first attempt to deliver the Product shall be considered as delivery of the Product and, unless otherwise agreed in writing by the Supplier, all deliveries can take place up until 6pm on each working day.
 - 6.8. Unless otherwise agreed the Supplier may deliver by instalments and, in such case, each instalment shall be treated separately and any delay, default or non-delivery in respect of any instalment by the Supplier shall not entitle the Customer to cancel the remainder of the Order.
 - 6.9. The Supplier reserves the right to charge for delivery. Express delivery, specified timed delivery or small order for Product may each incur additional charges.

7. TITLE AND RISK

- 7.1. Delivery of an Order shall be completed when the Product is delivered to the address provided and the Product will be the Customer's responsibility from that time.
 - 7.2. Risk in any Product shall pass to the Customer on completion of delivery.
 - 7.3. Title in any Product shall not pass to the Customer until the Supplier receives payment in full, including all applicable delivery charges.
 - 7.4. Until title to the Product has passed to the Customer, the Customer shall:
 - 7.4.1. store the Product separately from all other products held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.4.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Product;
 - 7.4.3. maintain the Product in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 7.4.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.5; and
 - 7.4.5. give the Supplier such information relating to the Product as the Supplier may require from time to time.
 - 7.5. If the Customer is in breach of this Agreement or the Customer becomes bankrupt or has an administrator, receiver or a receiver and manager appointed or goes into liquidation, whether voluntary or otherwise, or is wound up or dissolved or declared insolvent the Supplier may at any time, without prior notice to the Customer, and without prejudice to any other rights which it may have against the Customer:
 - 7.5.1. terminate the Agreement; and/or
 - 7.5.2. suspend some or all its obligations under the Agreement with the Customer; and/or
 - 7.5.3. enter upon any premises owned or occupied by the Customer where the Supplier reasonably believes the Product may be stored and repossess the Product without being liable for any damages caused to the extent permitted by applicable law.
 - 7.6. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Product which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy the Supplier) immediately become due and payable.
 - 7.7. The Customer must keep the Product insured against all risks for Product of that kind from the
-

time the risk in the Product passes to the Customer until the time title to the Product passes to the Customer.

8. SUPPLY OF SERVICES

- 8.1. The Supplier shall provide the Services to the Customer in accordance with this Agreement and the relevant PS Record in all material respects.
- 8.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the PS Record, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4. It is a condition of this Agreement that Customer has all necessary licenses, consents and permissions in place to access any building and use any equipment, data or software provided by Customer (the “**Relevant Resources**”) to enable Supplier to provide the Services. Customer is responsible for promptly obtaining and providing to Supplier all Permissions necessary for Supplier to provide the Services described in this Agreement. A (“**Permission**”) means any consents, permission, licenses or approvals required to give Supplier and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the Relevant Resources, hardware, software, firmware and other products and services Customer uses, without infringing the ownership or license rights (including Intellectual Property Rights) of the providers or owners of such products and services. Customer will indemnify, defend and hold Supplier, and its subcontractors, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys’ fees and costs) arising from or in connection with any claims (including Intellectual Property Rights infringement) made against Supplier, alleged to have occurred as a result of Customer’s failure to provide any Permissions to Supplier. Supplier will be relieved of the performance of any obligations that may be affected by Customer’s failure to promptly provide any Permissions to Supplier and Customer will provide proof of the relevant Permissions upon request by Supplier.

9. USE OF THE SOFTWARE

- 9.1. Customer acknowledges that the Software has not been developed to meet Customer’s requirements and Customer’s use of and access to the Software is provided to assist in the provision of support Services.
- 9.2. Supplier 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 Customer acknowledges that the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10. SOFTWARE LICENCE

- 10.1. If access to the Software is provided as part of the Services required by the Customer, Supplier grants Customer, a non-transferable, non-exclusive, internal licence to use the Software during the Order Term in the manner specified in the Documentation and in accordance with this Agreement.
- 10.2. All rights in the Software not expressly licensed or granted to Customer are hereby reserved to the Supplier or its licensors.
- 10.3. The Customer shall ensure that only designated members of staff (the “**Authorised Users**”) access the Software. The Customer shall ensure that use of the Software by the Authorised

-
- Users is in accordance with the terms and conditions of this Agreement and shall be responsible and liable for any Authorised User's breach of this Agreement. The Customer undertakes:
- 10.3.1. that the number of Authorised Users accessing the Software shall not exceed the agreed number of licenses;
 - 10.3.2. that each license provided may only be used by one Authorised User;
 - 10.3.3. that each Authorised User shall keep a secure password for use of the Software and shall keep that password confidential; and
 - 10.3.4. to maintain a list of current Authorised Users and provide such list to the Supplier upon request.
- 10.4. The Customer shall not access, store, distribute or transmit any viruses or any material when using the Software that is considered illegal or harmful or facilitates illegal activity.
- 10.5. Save as otherwise permitted under this Agreement or by law Customer shall not:
- 10.5.1. translate, adapt, vary or modify the Software or, merge all or part of the Software into any computer software or documentation or create derivative works based predominantly upon all or part of the Software;
 - 10.5.2. access use, sell, distribute, broadcast or commercially exploit the Software or any rights under this Agreement;
 - 10.5.3. modify or remove any lawful copyright notices on the Software; or
 - 10.5.4. disassemble, decompile, reverse engineer, or in any manner decode the Software for any reason.
- 10.6. If Supplier has reason to suspect that the use of the Software by Customer is in breach of this Agreement, Customer shall permit Supplier to access Customer systems and to enter during normal working hours any premises owned or controlled by Customer for the purposes of audit.
- 10.7. In the event that, following an audit pursuant to clause 10.6, it is determined that the Software is not being used in accordance with this Agreement or is being misused then Supplier shall be entitled, without prejudice to its other rights under this Agreement, to suspend operation or remove access to the Software.

11. WARRANTY

- 11.1. The Supplier warrants that on delivery the Product shall:
- 11.1.1. conform in all material respects with their description; and
 - 11.1.2. be free from material defects in design, material and workmanship.
- 11.2. The Supplier warrants that the Services will be provided using reasonable care and skill.
- 11.3. The Manufacturer's Warranty (if any) shall apply to the Product. The Customer must notify the Supplier in writing within ten (10) days of the receipt of the Product if the Customer does not accept the Manufacturer's Warranty. Following such period the Manufacturer's Warranty will be deemed to apply. If delivery of the Product has been effected and the Customer does not accept the Manufacturer's Warranty, the Customer shall be required to return the Product to the Supplier, at its sole cost and expense, within a period of (10) days of such notification. The Manufacturer's Warranty shall be deemed accepted if the Product is not returned within the prescribed period.
- 11.4. In the event of a Product recall by the manufacturer or any regulator the Customer must ensure that no further use is made of the Product and follow the instructions for the Product recall carefully. Customer shall pursue any claim against the Manufacturer directly, in the event of any Product recall, and shall not have any recourse against the Supplier.
- 11.5. The Supplier or the manufacturer shall not be liable for the Product's failure to comply with the warranty in clause 11.1 and clause 11.2 (as applicable) if:
- 11.5.1. the defect arises because the Customer failed to follow the Supplier's oral or written

-
- instructions as to the storage, installation, commissioning, use or maintenance of the Product or (if there are none) good trade practice;
 - 11.5.2. the defect arises as a result of the Supplier following any drawing, design or Product specification supplied by the Customer;
 - 11.5.3. the Customer alters or repairs the Product without the written consent of the Supplier;
 - 11.5.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 11.5.5. the Product differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
 - 11.6. Except as provided in this clause 11, the Supplier shall have no liability to the Customer in respect of failure of the Product to comply with the warranty set out in clause 11.1 and clause 11.2 (as applicable) .
 - 11.7. This Agreement shall apply to any repaired or replacement Product supplied by the Supplier.
 - 11.8. The Software is provided to Customer “as is” and there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Supplier, except as specifically stated in this Agreement or otherwise required by law. Any condition, warranty, representation or other term concerning the Software which might otherwise be implied into, or incorporated in, this Agreement (including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement of intellectual property rights) or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law.
 - 11.9. Supplier does not warrant that the operation of the Software or Product will be uninterrupted or error free.

12. RETURNS AND CREDIT

- 12.1. The Customer shall be obliged to carefully inspect the Product delivered without delay after delivery. This shall also apply if the Supplier delivers them to a third party at the instruction of the Customer.
 - 12.2. The Customer is deemed to have accepted the Product and/or Services to its full satisfaction unless a valid claim is made within seven (7) days of inspection or otherwise in accordance with this Agreement.
 - 12.3. Subject to the terms of this Agreement, including any earlier termination in accordance with the requirements of clause 17 (Term and Termination), the Customer has no right of return of any Product following acceptance of an Order..
 - 12.4. Any Product in respect of which any claim of defect or damage is made by the Customer shall be preserved by the Customer intact at the Customer’s risk and shall, at the request of the Supplier, be:
 - 12.4.1. retained by the Customer for a reasonable period to enable the Supplier or its agent to inspect the Product; or
 - 12.4.2. collected from the Customer by the Supplier if the Product are defective; or
 - 12.4.3. returned (carriage paid) by the Customer to the Supplier’s depot as notified to the Customer.
 - 12.5. Any Product required to be returned by the Customer must be pre-authorized by the Supplier before actual return. Upon request, the Customer may be given a returns authorisation number by the Supplier.
 - 12.6. The Product returned must be accompanied by a dispatch note stating the Supplier’s original Order number, returns authorisation number and reason for return.
-

-
- 12.7. If the Supplier agrees to alter or terminate an Order under this Agreement or the Supplier agrees to the return of Product, which is not faulty:
- 12.7.1. the Product returned (at Customer's risk) will be credited (less a restocking fee (which can vary by Product)) if the Product is of saleable condition and in its original packaging when received by the Supplier; and
 - 12.7.2. the Customer will indemnify the Supplier against any loss, damage and expense incurred by the Supplier in relation to the cancellation or alteration of that Order including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Product and/or Service and all labour and engineering costs incurred by the Supplier including compensation to any contractor of the Supplier and loss of profit.

13. CUSTOMER'S OBLIGATIONS

- 13.1. The Customer shall:
- 13.1.1. ensure that the terms of the Order are complete and accurate;
 - 13.1.2. co-operate with the Supplier in all matters relating to the Services;
 - 13.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 13.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Product and/or Services, and ensure that such information is accurate in all material respects;
 - 13.1.5. prepare the Customer's premises for the supply of the Product and/or Services; and
 - 13.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 13.2. If the Supplier's performance of any of its obligations in respect of this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 13.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Agreement until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 13.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 13.2; and
 - 13.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. All intellectual property rights in or arising out of or in connection with the Services and the Software shall be owned or licensed by the Supplier.
- 14.2. The Customer acknowledges that, in respect of any third party intellectual property rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 14.3. The Customer will not and may not permit any person reasonably within the Customer's control

-
- to:
- 14.3.1. modify any of the Software or Product;
 - 14.3.2. copy, clone or reverse engineer any hardware Product;
 - 14.3.3. copy, decompile, disassemble or reverse engineer any software Product or the Software; and
 - 14.3.4. copy, modify or decompile any documents accompanying the Software or Product.
- 14.4. In the event the Customer breaches its obligations under this clause, the Supplier may immediately terminate this Agreement and the Customer shall indemnify and hold the Supplier harmless against any and all losses or damages related to such breach of the Agreement.
- 14.5. All documents, specifications, proposals and similar materials are the exclusive property of the Supplier or its licensors.

15. CONFIDENTIALITY

- 15.1. Each Party may be given access to the Confidential Information of the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 15.1.1. is or becomes publicly known other than through any act or omission of the receiving Party;
 - 15.1.2. was in the other Party's lawful possession before the disclosure;
 - 15.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - 15.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 15.2. Each Party shall hold the other's Confidential Information in confidence and, unless required by law, shall not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 15.3. Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

16. LIMITATION OF LIABILITY

- 16.1. Nothing in this Agreement shall limit or exclude the Supplier's liability for:
- 16.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 16.1.2. fraud or fraudulent misrepresentation;
- 16.2. Subject to clause 16.1:
- 16.2.1. the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise (whether direct or indirect) for loss of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, loss, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever arising under or in connection with the Agreement; and
 - 16.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Fees paid to the Supplier for the relevant Product and/or Service in the twelve (12) month period preceding the claim.

-
- 16.3. Terms implied by statute to protect consumers, which are capable of exclusion, including under the Sale of Goods and Supply of Services Act 1980 and the Consumer Protection Act 1987, are hereby excluded to the fullest extent permitted by law.
- 16.4. The liability of the Supplier under this Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by an act or omission of the Customer.
- 16.5. Except as expressly stated in this Agreement, the Supplier does not give any representation, warranties or undertakings in relation to the Product, Software and/or Services. Any representation, condition or warranty which might be implied or incorporated into this Agreement by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Supplier will not be responsible for ensuring that the Product Software and/or Service is suitable for the Customer.
- 16.6. This clause 16 shall survive termination of the Agreement.

17. TERM AND TERMINATION

- 17.1. This Agreement will commence on the Effective Date and shall continue unless terminated or extended in accordance with its provisions. This Agreement shall automatically terminate in the event that there are no operational Orders in any period of twelve (12) months from the Effective Date of this Agreement. Each Order shall be completed after the relevant Order Term.
- 17.2. Subject to clause 17.3, the Supplier may at any time terminate this Agreement, for any reason or no reason by giving the Customer thirty (30) days written notice of such termination.
- 17.3. A minimum Term may be specified in the PS Record (the “**Minimum Term**”). There shall be no right of termination for convenience during the specified Minimum Term. Following the Minimum Term the Order may be terminated in accordance with clause 17.2.
- 17.4. The Supplier may terminate this Agreement (including any Order) or any part of any Order, by written notice, with effect from the date of such notice (which may be immediate) if the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts.
- 17.5. Either Party may at any time by notice terminate this Agreement (including any Order) with immediate effect:
- 17.5.1. if the other is in material breach (which shall include a single event or a series of persistent minor events which together are material) of this Agreement and that breach is not capable of remedy; or
 - 17.5.2. if the other is in material breach (which shall include a single event or a series of persistent minor events which together are material) of this Agreement and that breach is capable of remedy and the other has failed to remedy that breach within thirty (30) days of notice from the non-breaching Party to the other specifying the breach and requiring its remedy.

18. DATA PROTECTION

- 18.1. By placing an Order, Customer acknowledges that the Supplier may store, process and use personal data collected from Customer for the purposes of the business relationship including, processing the Order and for the performance of this Agreement. Supplier shall protect Customer’s personal data in accordance with the HC21 Data Protection Statement available on its website at <https://www.healthcare21.eu/group-data-protection-statement/>.
- 18.2. The Parties agree that the provisions of the data processing agreement attached to the relevant PS Record (if applicable) will apply if the Supplier processes personal data on behalf of, and under instructions from, the Customer. In the absence of an explicit signed DPA between the customer and the HC21 entity, the DPA addendum to these Terms takes effect.

19. OTHER IMPORTANT TERMS

- 19.1. The Supplier's delay or failure to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of its rights or remedies in respect of any present or future default of the Customer in performance or compliance with any of this Agreement. If the Supplier makes an over-supply of any Products or provides additional Products to those ordered by the Customer under this Agreement the Supplier shall be entitled to: (i) charge for such Products in the event that any are used by the Customer or (ii) collect such Products, within a reasonable period of time, and the Customer shall facilitate such collection.
- 19.2. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.
- 19.3. The Supplier shall not be liable for any "Events Outside Our Control" which shall include, failure to fulfil or any delay in fulfilling any obligation arising from the Agreement if the failure or delay has been caused directly or indirectly by lack of instruction/s from the Customer, changes in applicable law, stock shortage/s, industrial dispute or breakdown, war or other civil commotion, terrorism, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action, any epidemic/pandemic, any act of God or any other cause beyond the reasonable control of the Supplier. The Supplier may terminate this Agreement on written notice, effective immediately and without liability, in case of Events Outside Our Control arising.
- 19.4. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.
- 19.5. The Agreement shall be governed by the laws of England and Wales for Customers in the United Kingdom. The laws of the Republic of Ireland shall apply for all other Customers. Customer agrees to submit to the exclusive jurisdiction of the courts in the Republic of Ireland or England and Wales (as applicable) in the event of any disputes.

IN WITNESS the Parties or their duly authorised representatives have executed this Agreement:			
SUPPLIER:		CUSTOMER:	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

DATA PROCESSING ADDENDUM TO HC21 GROUP TERMS OF SERVICE

This Data Processing Addendum (“Addendum”) completes and forms part of the HC21 Group Terms of Service available at <https://healthcare21.eu/about-us/compliance-regulatory/terms-of-sale/>, as updated from time to time, or other agreement between Customer and Service Provider (together the “Parties”) governing Customer’s use of the Service (altogether “Terms of Service”)

This Addendum regulates the Processing of Personal Data subject to EU Data Protection Law for the Purposes (as defined in Section 3) by the Parties in the context HC21 Group (the “Service”). The terms used in this Addendum have the meaning set for in this Addendum. Capitalised terms not otherwise defined herein have the meaning given to them in the Terms of Service.

This Addendum becomes effective where the HC21 Entity processes personal data, as a Data Processor, on behalf of the Customer, when a specific DPA is not otherwise signed between the customer and HC21 entity for this purpose.

1. Definitions. The following terms have the meanings set out below for this Addendum:

1.1. “Controller” means the entity which alone or jointly with others determines the purposes and the means of the Processing of Personal Data.

1.2. “Data Subject” means a natural person whose Personal Data are processed in the context of this Addendum.

1.3. “EU Data Protection Law” means the EU General Data Protection Regulation 2016/679, the e - Privacy Directive 2002/58/EC (as amended by Directive 2009/136/EC), their national implementing legislations; the Swiss Federal Data Protection Act, the UK 2018 Data Protection Act, the UK General Data Protection Regulation, and the Data Protection Acts of the EEA countries (all as amended and replaced from time to time).

1.4. “Europe” means the European Economic Area (“EEA”), the United Kingdom and Switzerland.

1.5. “International Data Transfer” means any disclosure of Personal Data by an organization subject to EU Data Protection Law to another organization located outside Europe.

1.6. “Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

1.7. “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

1.8. “Processor” means the entity which processes Personal Data on behalf of a Controller.

1.9. “Processing of Personal Data” (or “Processing/Process”) means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.10. “Standard Contractual Clauses” (or “SCCs”) means the clauses annexed to EU Commission Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third

countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council (OJ L 199, 7.6.2021, p. 31 - 61), as amended from time to time.

1.11. "UK Addendum" means the addendum to the SCCs issued by the UK Information Commissioner under Section 119A(1) of the UK Data Protection Act 2018 (version B1.0, in force March 21, 2022).

1.12. "Sub - Processor" means the entity engaged by the Processor of any further sub - contractor to Process Personal Data on behalf of and under the instructions of the Controller.

2. Roles of the Parties.

For the purpose of this Addendum, the Parties acknowledge and confirm that Customer is a Controller and Service Provider (HC21 Group entity) is a Processor for the Processing of Personal Data for the Purposes (as defined in Section 3) in the context of the Service.

3. Description of the Processing Activities

Service Provider will Process Personal Data to provide its Services as described in the Terms of Service and only for the purpose of providing such Services. A full list of personal information that we collect and specific purposes that we collect for is outlined in the table in Appendix 1

4. Obligations of Customer

Customer confirms and warrants that, in relation to the Processing of Personal Data for the Purposes in the context of the Service, it acts as a Controller and that:

- (a) it complies with EU Data Protection Law when Processing Personal Data, and only gives lawful instructions to Service Provider
- (b) Data Subjects have been informed of the uses of Personal Data as required by EU Data Protection Law
- (c) it ensures there is a valid legal ground for the processing of Personal Data under EU Data Protection Law
- (d) it complies with Data Subject requests to exercise their rights of access, rectification, erasure, data portability, restriction of Processing, and objection to the Processing, and rights relating to automated decision - making
- (e) it complies with data accuracy, proportionality and data retention principles
- (f) implements appropriate technical and organizational measures to ensure, and to be able to demonstrate, that the Processing of Personal Data is performed in accordance with EU Data Protection Law and
- (g) it will cooperate with Service Provider to fulfil their respective data protection compliance obligations in accordance with EU Data Protection Law.

5. Obligations of Service Provider

Service Provider confirms and warrants that it complies with EU Data Protection Law when Processing Personal Data for the Purposes in connection with the Service, and that it:

5.1. Only Processes Personal Data on behalf of the Customer in accordance with the use and performance of the service and not for any other purposes than those specified in Section 3 or as otherwise agreed by both Parties in writing

5.2. Will promptly inform Customer if, in its opinion, Customer's instructions infringe EU Data Protection Law, or if Service Provider is unable to comply with Customers' instructions. Service Provider shall inform Customer of any applicable legal requirement under EU or EU member state law that prevents Service

Provider from complying with Customer's instructions, unless that law prohibits such information on important grounds of public interest.

5.3. Will notify Customer without undue delay after becoming aware of a Personal Data Breach. Service Provider will take reasonable steps to mitigate the effects and to minimize any damage resulting from the Personal Data Breach.

5.4. Will assist Customer in complying with data security, data breach notifications, data protection impact assessments, and prior consultations with supervisory authorities requirements under EU Data Protection Law, taking into account the nature of the Processing and the information available to Service Provider. To the extent authorized under applicable law, Customer shall be responsible for any costs arising from Service Provider's provision of such assistance.

5.5. Taking into account the nature of the processing, will assist Customer by appropriate technical and organizational measures, insofar as this is possible, to fulfil Customer's obligation to respond to Data Subjects' requests to exercise their rights as provided under EU Data Protection Law and specified in Clause 4. To the extent authorized by applicable law, Customer shall be responsible for any costs arising from Service Provider's provision of such assistance.

6. Data Transfers

6.1. To provide the Service, Service Provider needs to import Personal Data to their servers located in the EU / UK. Customer authorizes such Personal Data transfers and confirms and warrants that it will comply with any requirements under EU Data Protection Law with regard to such Personal Data transfers.

6.2. To provide the Service, Service Provider may need to transfer Personal Data to a sub-processor located outside the European Economic Area (EEA) or the UK. The Service Provider ensures that any transfer of Personal Data outside the EEA is undertaken using legally compliant transfer mechanisms and in accordance with the GDPR.

6.3. If compliance with EU Data Protection Law applicable to International Data Transfers is affected by circumstances outside of the Parties' control, including if an instrument for International Data Transfers is unavailable, invalidated, amended, or replaced, then Customer and Service Provider will work together in good faith to reasonably resolve such non-compliance. In the event that additional, replacement or alternative EEA, Swiss or UK Standard Contractual Clauses /Addendum are approved by the relevant EEA, Swiss or UK authorities, the Parties reserve the right to amend the Terms of Service and this Addendum to ensure continued compliance with EU Data Protection Law.

7. Sub – Processing

7.1. Customer gives a general authorization to Service Provider to disclose Personal Data to Sub - Processors under the conditions set forth below and Service Provider represents and warrants that when sub - processing the Processing of Personal Data in the context of the Service, it binds its Sub - Processors by way of an agreement which imposes on the Sub - Processor the same data protection obligations as are imposed on Service Provider under this Addendum, in particular providing sufficient guarantees to implement appropriate technical and organizational measures to ensure the Processing will meet requirements under EU Data Protection Law, to the extent applicable to the nature of the service provided by the Sub - Processors. Where the Sub - Processor fails to fulfil its data protection obligations under such agreement, Service Provider shall remain fully liable towards Customer for the performance of the Sub - Processor's obligations under such agreement.

7.2. A list of Service Provider's current Sub - Processors is available upon request to gdpr@hc21.group. Any objection by the Customer's to the service providers used by the Service Provider should be sent to gdpr@hc21.group, explaining the reasonable grounds for the objection.

8. Security of the Processing

Confidentiality. Service Provider must implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk. In assessing the appropriate level of security, Service Provider must take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects and the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed. Service Provider undertakes to implement the security measures listed in our Technical and Operations Measures (TOMS) which is available on request from gdpr@hc21.group Service Provider must take steps to ensure that any person acting under its authority who has access to Personal Data is bound by enforceable contractual or statutory confidentiality obligation.

9. Liability Towards Data Subjects

Each Party agrees that it will be liable to Data Subjects for the entire damage resulting from a violation of EU Data Protection Law on their part. If one Party paid full compensation for the damage suffered, it is entitled to claim back from the other Party that part of the compensation corresponding to the other Party's part of responsibility for the damage. For that purpose, both Parties agree that Customer will be liable to Data Subjects for the entire damage resulting from a violation of EU Data Protection Law with regard to Processing of Personal Data for which it is a Controller, and that Service Provider will only be liable to Data Subjects for the entire damage resulting from a violation of the obligations of EU Data Protection Law directed to Processor or where it has acted outside of or contrary to Customer's lawful instructions. Service Provider will be exempt from liability if it proves that it is not in any way responsible for the event giving rise to the damage.

