

Standard Form of Indemnity

Name of NHS Body _____

Location item to be used at _____

Department _____

An Agreement made the _____ day of _____

Between _____ (* the NHS Body *) and

The Supplier: _____

Name of person: _____

Contact details: _____

WHEREAS

(1) The Supplier is the owner of the equipment described in the Schedule (“the Equipment”).

(2) The Supplier wishes the NHS Body to use the Equipment for the benefit of the Supplier for the purpose of evaluation, testing research, design, investigation or trial demonstration.

IT IS HEREBY AGREED that the Supplier shall lend and the NHS Body shall borrow and use free of charge the Equipment for the period specified in the Schedule in the premises specified in the Schedule (“the Premises”) on the terms set out below.

1. The Supplier shall be liable for and shall indemnify the NHS Body against all liability in respect of personal injury to or the death of any person, loss of or damage to property and any loss or expense in consequence of or in any way arising out of the installation, presence, use or removal of the Equipment on or from the Premises provided that this indemnity shall not extend to liability resulting from the negligence of the NHS Body own servants or agents.
2.
 - (a) The Supplier shall insure against its full liability under Clause 1.
 - (b) The insurance cover shall be in the minimum sum of £5 million in respect of any one incident.
 - (c) The Supplier upon request shall produce to the NHS Body documentary evidence that the insurance is properly maintained.
 - (d) Should the Supplier default in insuring, the NHS Body may itself affect insurance and may charge the cost together with an administrative charge of 5% to the Supplier.
3. The Supplier shall provide the NHS Body with written evidence on the safety of the Equipment, drawing attention to any failures to comply with relevant British Standards

or NHS specifications or the use of the Equipment necessary to ensure the safety of patients or staff shall be pointed out to the NHS Body.

4. A delivery note shall accompany the delivery of the Equipment, identifying the Equipment by serial number or otherwise.
5. At the point of delivery to the NHS Body, the Equipment shall be free of any Personal Data (as defined in clause 10).
6. Detailed instructions in the use of the Equipment shall be given to the NHS Body's nominated staff by a qualified agent of the Supplier and detailed instruction manuals, where available, shall be supplied to the NHS Body.
7. The Equipment will not be modified or interfered with by the NHS Body without the agreement of the Supplier.
8. (a) The NHS Body shall not be liable for any charge for maintenance, repair, consumable materials and accessories required for the operation of the Equipment during the period of the loan or for any carriage or installation charges except by prior notification to and the issue of an official purchase order by the NHS Body.

(b) Except where the Supplier has advised to the contrary in writing, the Supplier shall be responsible for all maintenance of whatever nature to be carried out in respect of the Equipment during the period of loan.
9. Any damage to the Equipment occurring at the Premises, to the extent this is caused by: (i) the NHS Body failing to use or operate such Equipment in accordance with the express written instructions of the Supplier; (ii) a negligent act or omission of the NHS Body; or (iii) any modifications made to the Equipment not expressly authorised by the Supplier in writing shall be made good by the Supplier at the NHS Body's reasonable cost and expense.
10. In this indemnity:

(a) "Data Protection Legislation" means (i) the UK GDPR; (ii) the Data Protection Act 2018; and (iii) any other law in force from time to time with regards to the Processing of Personal Data and privacy, which may apply to either Party in respect of its activities under the indemnity.

(b) the phrases "Controller", "Data Subject", "Personal Data", "Processing", "Processor", "Personal Data Breach" shall have the meanings given in the Data Protection Legislation.

(c) "Processing" shall have the meaning given in the Data Protection Legislation, and "Process" and "Processed" shall be construed accordingly.
11. (a) Where, during the period of the loan, the NHS Body records Personal Data, on the Equipment, the NHS Body shall be the Controller and, to the extent that the Supplier Processes any Personal Data (including without limitation where the Supplier, upon request from the NHS Body, securely erases Personal Data from the Equipment before the removal of Equipment), the Supplier shall be the Processor in respect of

such Personal Data in terms of the Data Protection Legislation and the provisions of this Clause 11 and the information, where relevant, set out in Annex A to the Schedule (the “Processing Information”) and in the delivery note shall apply.

(b) Before removal of the Equipment by the Supplier, the NHS Body, as Controller, will ensure that either all Personal Data have been securely removed from the Equipment, or will provide instructions to the Supplier on the secure removal of the Personal Data from the Equipment in line with the NHS Scotland Information Security Policy and the Scottish Government Chief Executive Letter ‘Safeguarding the Confidentiality of Personal Data Processed by Third Party Contractors’ CEL 25 (2011), in which case the provisions of Clause 11 shall apply.

(c) The Supplier agrees to comply with the obligations applicable to Processors described by Article 28 of the UK GDPR which include, but are not limited to the following:

- (i) to implement and maintain appropriate technical and organisational security measures sufficient to comply at least with the obligations imposed on the NHS Body by Article 28(1);
- (ii) to not engage another Processor without the prior written authorisation of the NHS Body (Article 28(2));
- (iii) to act only on documented instructions from the NHS Body including those set out in the Processing Information (Article 28(3)(a)). The Supplier shall immediately inform the NHS Body if, in its opinion, an instruction infringes any Data Protection Legislation;
- (iv) to ensure that personnel authorised to Process Personal Data are under contractual confidentiality obligations to (Article 28(3)(b));
- (v) to take all measures required by Article 32 UK GDPR in relation to the security of Processing (Article 28(3)(c));
- (vi) to respect the conditions described in Article 28(2) and (4) for engaging another Processor (Article 28(3)(d));
- (vii) to assist the NHS Body, by appropriate technical and organisational measures, insofar as this is possible, to respond to requests for exercising the rights of Data Subjects rights (Article 28(3)(e));
- (viii) to assist the NHS Body, as appropriate, to ensure compliance with the obligations pursuant to Articles 32 to 36 UK GDPR taking into account the nature of the Processing and the information available (Article 28(3)(f));
- (ix) to destroy or return all Personal Data to the NHS Body at the expiry or early termination of this indemnity, unless storage is legally required (Article 28(3)(g));

- (x) to maintain a record of Processing activities as required by Article 30(2) UK GDPR;
 - (xi) to allow the NHS Body to audit the Supplier's compliance with the obligations described in this Clause 11, on reasonable notice subject to the NHS Body complying with all relevant health and safety and security policies of the Supplier and to provide the NHS Body with evidence of its compliance with the obligations set out in this Clause 11;
 - (xii) to obtain the prior agreement of the NHS Body to store or Process Personal Data outside the UK and where the Supplier does Process Personal Data outside the UK, to do so in compliance with the Data Protection Legislation; and
 - (xiii) to notify the NHS Body as soon as practicable after becoming aware of a Personal Data Breach.
12. (a) On receipt of a written request at any time from the NHS Body the Supplier shall remove the Equipment from the Premises with all practicable speed free of charge and at that time provide the NHS Body with a receipt for the Equipment. The Supplier shall remove the Equipment no later than 14 days after he has been instructed to do so, unless some other arrangement is agreed to by both parties. Failure to remove the Equipment will result in the NHS Body taking steps to dispose of it.
- (b) The NHS Body shall permit the Supplier to remove the Equipment from the Premises on receipt of reasonable notice in writing.
- (c) The Supplier will be responsible for the cost of reinstating the Premises, including the services therein, to the satisfaction of the NHS Body.
13. The Equipment shall remain continuously at the Supplier's risk during and after the period of loan.
14. The NHS Body and the Supplier hereby agree that this indemnity shall be construed in accordance with Scots Law and that in any dispute arising hereunder the Scottish Courts will have jurisdictions.

SIGNED on behalf of the NHS Body _____

Print name _____

SIGNED on behalf of the Supplier _____

Print name _____

Schedule

1. **Equipment**

Department Ref. No: _____

Serial No: _____

Model/Mark No: _____

Value: _____

Description: _____

Will Personal Data be Processed – YES/NO [If yes – please complete Processing Information in Annex A] _____

2. **Premises**

NHS Body: _____

Address: _____

3. **Service Requirements**

During loan - YES/NO _____

Details: _____

To be serviced by: _____

Date when service required: _____

4. **Period of Loan**

_____ Years _____ Months commencing the _____ day of _____

5 **Check:**

Medical Physics Acceptance check completed - Job No: _____

User Manual Supplied

User training given

Service manual supplied

Medical Physics service training/overview given

For Internal Use Only

Loan Reference No. LN _____

Annex A – Processing Information

Description	Details
Identity of the Controller and Processor	
Subject matter of the Processing	
Duration of the Processing	
Nature and purposes of the Processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data	