

NUH CS-NRC- SLA 01

These Terms and Conditions to be used with Non NHS Bodies such as Third Sector and Independent Providers of Services or Supplies

DATED 1st Day of July 2017

**NOTTINGHAM UNIVERSITY (1)
HOSPITALS NHS TRUST**

and

**JULIAN BAKER t/a FUNCTIONAL (2)
FASCIA.**

126B London Road Est, Bath BA1 7DD

CONTRACT

**for Delivery of Services/Supplies
by a Contractor**

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THIS CONTRACT is made on the First day of July 2015

BETWEEN:

(1) **NOTTINGHAM UNIVERSITY HOSPITALS NHS TRUST** of Trust Headquarters, Derby Road, Nottingham, Nottinghamshire, NG7 2UH ("**Trust**"); and

JULIAN BAKER t/a FUNCTIONAL FASCIA and whose office is at 126B London Road West, Bath, BA1 7DD ("**Contractor**")

Each referred to in this Agreement in the singular as a "**Party**" and together "**the Parties**"

BACKGROUND:

The Trust (The National Repository Centre) requires The Contractor (Functional Fascia) to provide hands-on classes for Integrated Allied Health Professionals.

On Completion of the classes, donations are held by The National Repository Centre for cremation

AGREED TERMS

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"**Act**" means the National Health Service Act 2006;

"**Agreement**" means this agreement and any and all Schedules and appendices as are attached to it or referred to in it;

"**Agreed Premises**" means the address(es) specified in **Error! Reference source not found.** as locations at which the Services are to be performed OR Supplies provided or, where there are no locations specified in **Error! Reference source not found.**, the address of the Contractor as specified at the start of this Agreement;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday in England) when Banks in London are open for business;

"**Cabinet Office Code**" means the cross Government codes issued from time to time by the Cabinet Office;

"**Commencement Date**" has the meaning give to such term in clause 2.1;

“Contract Standard” means such standard as complies in each and every respect with the Agreement;

“Contractor” Julian Baker t/a Functional Fascia whose registered office is at 126B London Road West, Bath, BA1 7DD

“Convictions” means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

“Data Protection Legislation” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“Direct Transfer” means the transfer of the patient directly to the National Nottingham Repository Centre premises from the point of collection;

“Dispute Resolution Procedure” means the procedure set out in clause 37;

“Extension Period” means a period of 12 Months by which the Parties may agree to extend the duration of this Agreement after the Initial Term;

“Equipment” means the equipment required to provide the Services and as otherwise agreed between the Parties as detailed in Schedule 3;

“FOIA” means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Fraud" means any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown;

"Good Industry Practice" means using standards, practices, methods and procedures conforming to all Legislation (from time to time) and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service contractor engaged in the provision of Services/Supplies similar to the Services/Supplies under the same or similar circumstances as those applicable to the Agreement and which are in accordance with any codes of practice published by relevant trade associations;

"Group" in relation to a company, that company, any company of which it is a subsidiary (its holding company) and any other subsidiary of such holding company; and each company in a Group is a member of the Group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time;

"Guidance" means any applicable health or social care guidance, direction or determination which the Contractor has a duty to have regard to, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Contractor by the Trust/or the Department of Health and which for the avoidance of doubt shall include the NHS Operating Framework;

"Health Care Professional" has the same meaning as in section 108(3) of the Act;

"Initial Term" has the meaning given to such term in clause 2.1;

"Intellectual Property" means any and all patents, trademarks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, know-how, unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and

rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;

"Intellectual Property Right" includes the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding;

"Law" means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (d) Guidance;
- (e) National Standards; and
- (f) any applicable code, including without limitation the Cabinet Office Code;

in each case in force in England and Wales;

"Medical Records" means a hard copy of the patient's medical notes, supporting reports and relevant paperwork. X-Rays and CT, MRI scans;

"Month" means a calendar month;

"National Standards" means those standards applicable to the Contractor under the Law and/or Guidance as amended from time to time;

"NRC" means The National Repository Centre, Nottingham University Hospitals City Campus Mortuary;

"Patient" means a deceased patient currently being stored for donation to the Nottingham National Repository Centre in the deceased's own home, Hospital, Nursing Home or chosen Funeral Home;

“Prohibited Acts” has the meaning given to such term in clause 36.1;

“Referral” means the referral of a Patient for the Services provided by Functional Fascia

“Request to Transfer” means the request to transfer the referred patient under the provision of the Services;

“Scheduled Purposes” means the storage of a body of a deceased person or relevant material which has come from a human body for the use for the following scheduled purposes:

- Education or training relating to human health
- Research in connection with disorders, or the functioning, of the human body
- Establishing after a person’s death the efficacy of any drug or other treatment administered to them;

“Services/Supplies” means the services/supplies that the Contractor is required to provide under this Agreement (including, but not limited to, the services/supplies described in the Specification);

“Services/Supplies Fee” means the annual fee (as set out in **Error! Reference source not found.**) payable to the Contractor by the Trust under the Agreement for the full and proper [performance of the Services] OR [delivery of the Supplies] by the Contractor;

“Specification” means the description of the Services/Supplies and additional requirements regarding the [performance and quality of the Services] OR [delivery and quality of the Supplies] as set out in Schedule 1;

“Staff” means all staff (whether clinical or non clinical) employed or engaged by the Contractor (including the Contractor’s consultants, agents, and agency personnel, and persons employed or engaged by any Sub-Contractors) in any activity related to or connected with [the provision of the Services] OR [delivery of the Supplies];

“Sub-Contract” any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to [provide to the Contractor the Services] OR [deliver the Supplies] or any part thereof necessary for the [provision of the Services] OR [delivery of the Supplies] or any part thereof or necessary for the management, direction or control of the [Services] OR [Supplies] or any part thereof and Sub-Contractor shall be construed accordingly;

“Subsidiary” in relation to a company wherever incorporated (a holding company), means a "subsidiary" as defined in section 1159 of the Companies Act 2006, save that in the case of

a limited liability partnership which is a subsidiary of a company or another limited liability partnership (either, its holding company), or a company which is a subsidiary of a limited liability partnership (its holding company), the term "subsidiary" in that context shall have the meaning set out in sections 736 and 736A of the Companies Act 1985 as though amended by the Limited Liability Partnerships Regulations 2001 prior to 01 October 2009.

Unless the context requires otherwise:

(a) the application of the definition of subsidiary to any company at any time shall apply to the company as it is at that time; and

(b) references to **Subsidiary** are references to a subsidiary of the company; and

“**Term**” means the period commencing on the Commencement Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as amended , extended or re-enacted from time to time.

1.7 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time

1.8 A reference to writing or written includes faxes but not e-mail.

1.9 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.

1.10 A reference to "this Agreement" or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or

Agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

- 1.11 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

“**Transport**” means any Funeral Director’s standard ‘removal vehicle’;

2 Commencement and Duration

- 2.1 This Agreement shall commence on **01/07/2017** (Commencement Date) and shall continue, unless terminated earlier in accordance with clause 14 or clause 25.4, for **[3]** years: **30/06/2020** (“**Initial Term**”), when it shall terminate automatically without notice unless, no later than 3 Months before the end of the Initial Term (or any Extension Period agreed under this clause), the Parties agree in writing that the term of the Agreement shall be extended for an Extension Period. Unless it is further extended, subject to clause 2.2, under this clause or terminated earlier in accordance with clause 14, the Agreement shall terminate automatically without notice at the end of an Extension Period.
- 2.2 The Parties may not agree more than a maximum of 2 Extension Periods. Thus the maximum Term of this Agreement is 5 years, subject to earlier termination at the end of the Initial Term, the first Extension Period, or under clause 14.

3 The Services/Supplies

- 3.1 In consideration of the Services/Supplies Fee the Contractor undertakes during the Term to provide the Services/Supplies in accordance with this Agreement.

4 Standard and Performance of Services/Supplies

- 4.1 The Contractor shall deliver the Services/Supplies in accordance with this Agreement and to such standard as is in accordance with Good Industry Practice.
- 4.2 The Contractor shall provide at its own expense all Staff, equipment, tools, appliances, materials or items required for the provision of the Services/Supplies to the Contract Standard and shall be responsible for the provision and installation of all equipment and materials used in connection with the Agreement.
- 4.3 Subject to clause 25, the Contractor shall be responsible for providing and maintaining the Services/Supplies to the Contract Standard at all times and will ensure continuity of Services/Supplies (at no extra cost to the Trust). The Contractor must have in place reasonable and comprehensive contingency plans and arrangements (which will be made available to the Trust on request) to ensure continuity of Services/Supplies.
- 4.4 The Contractor shall ensure that all equipment used in connection with the Agreement is maintained in good working order in compliance with manufacturer's instructions and Good Industry Practice.
- 4.5 All equipment and materials used by the Contractor shall comply with latest relevant British Standard or European equivalent specifications where such exist and the Contractor shall upon request furnish the Trust's Nominated Officer with evidence to prove that such equipment and materials comply with this clause 4.5.
- 4.6 Any communication or electrical equipment used by the Contractor in connection with the Agreement shall not cause any interference with or damage to any equipment used by the Trust.
- 4.7 In providing the Services/Supplies, the Contractor shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Trust's computer systems.

5 Staff

- 5.1 The Contractor shall ensure that every member of Staff involved with the provision of the Services/Supplies:

- 5.1.1 is careful, skilled and experienced in the duties required of them;
 - 5.1.2 possesses the appropriate qualifications, experience and skills to perform the duties required of them or are appropriately supervised by persons with the requisite qualifications, experience and skills;
 - 5.1.3 where they are a Health Care Professional, are registered with the appropriate professional body;
 - 5.1.4 receive proper and sufficient training and instruction in accordance with Good Industry Practice and the standards of their relevant professional body, if any, in the execution of their duties;
 - 5.1.5 receives full and detailed appraisal in terms of performance and on-going education and training in accordance with Good Industry Practice and the standards of their relevant professional body, if any;
 - 5.1.6 is in good health and have a reasonable standard of oral and personal hygiene;
 - 5.1.7 is medically and physically fit in so far as the requirements of the work are concerned; and
 - 5.1.8 complies with any requirements in the Agreement.
- 5.2 The Contractor will employ or engage sufficient Staff to ensure that all of the Services/Supplies are provided at all times and in all respects in complete conformity with the Agreement. This will include, but is not limited to, the Contractor providing a sufficient reserve of trained and competent Staff to provide the Services/Supplies during staff holidays or absence due to sickness or voluntary absence.
- 5.3 Where any member of Staff may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services the Contractor shall:
- 5.3.1 question that member of Staff concerning their Convictions; and
 - 5.3.2 obtain standard and enhanced disclosures from the Criminal Records Bureau

before they are involved in the provision of the Services/Supplies.

- 5.4 The Contractor shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with clause 5.3.1, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Disclosure and Barring Service (Criminal Records Bureau) in accordance with clause 5.3.2, or who fails to obtain standard and enhanced disclosures from the Disclosure and Barring Service (Criminal Records Bureau) upon request by the Contractor in accordance with clause 5.3.2 is involved in the provision of the Services/Supplies.
- 5.5 The Contractor shall procure that the Trust is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Contractor. Where the Trust reasonably requests (in light of the Conviction) that the person is no longer involved in the provision of the Services/Supplies the Contractor shall comply with that request.
- 5.6 The Contractor shall procure that the Trust is kept advised at all times of any disciplinary incident or incidence of serious misconduct relating to or involving the Staff.
- 5.7 The Contractor shall ensure that a member of Staff is not involved in or about the provision of the Services/Supplies if they have suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Trust's staff, residents, patients or visitors at risk. In all such cases, the Contractor is required to notify the Trust's Nominated Officer of each particular incident forthwith. The Contractor shall comply with any reasonable instruction from the Trust as to the immediate and future working capability of that person and their future involvement in the provision of the Services/Supplies. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Contractor at his own expense.
- 5.8 The Contractor shall ensure that the Staff:
 - 5.8.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Agreement;

- 5.8.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of the Agreement;
 - 5.8.3 shall not act in a manner reasonably likely to bring discredit upon the Trust;
 - 5.8.4 shall be properly and presentably dressed and wearing such uniform as is detailed in the Specification or agreed between the Parties (“the Contract Uniform”);
 - 5.8.5 shall not wear the Contractor’s uniform, the Contract Uniform or identification, or use his equipment on any Trust Premises unless fulfilling the terms of the Agreement;
 - 5.8.6 shall maintain proper standards of appearance and deportment whilst at work;
 - 5.8.7 shall not at any time be on duty under the influence of alcohol or drugs;
 - 5.8.8 shall on being charged with any criminal offence, notify the Contractor immediately;
 - 5.8.9 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task under the terms of the Agreement;
 - 5.8.10 shall not misuse or abuse the Trust’s property; and
 - 5.8.11 shall not smoke while on the Trust’s Premises.
- 5.9 It is the joint responsibility of the Contractor and his Staff to ensure that the Staff supplied to [carry out the Services] OR [provide Supplies] have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Contractor to keep records of hours worked for each member of Staff.
- 6** Premises [*this clause only required if premises are being specifically provided from which to run the Services/deliver the Supplies*] -
- 6.1 The Contractor shall ensure that the Agreed Premises are suitable for the delivery of the Services/Supplies in terms of size, quality, security and cleanliness.

- 6.2 Where some or all of the Agreed Premises are under the Trust's ownership or control (such premises being referred to as "Trust Premises") the Trust shall be entitled to require the Contractor to enter into a lease of the Trust Premises (such lease to be: for a duration equal to the Term, excluded from Part II of the Landlord and Tenant Act 1954 and to be on normal commercial terms except as to rent (which shall be a peppercorn) and if so requested the Contractor shall enter such lease within 30 days of the date that the Trust provides the Contractor with a lease of the Trust Premises. Any disputes regarding the terms of that lease shall be dealt with under the Dispute Resolution Procedure. Where the Agreed Premises are Trust Premises but the Trust does not require the Contractor to enter a lease the following provisions shall apply:
- 6.2.1 the Trust shall ensure that during the Term the Contractor has access to the Trust Premises without charge (except for costs incurred on water, power or other utilities);
 - 6.2.2 the Trust shall be entitled, on reasonable notice, to change the location of the Trust Premises to such alternative location as the Trust may reasonably determine;
 - 6.2.3 the Parties agree that the permission to enter and use the Trust Premises is not the grant of a tenancy and the Trust retains full possession and control over such premises at all times and the Contractor shall not receive exclusive possession of, or any estate or interest in, any such Trust Premises;
 - 6.2.4 the Contractor shall not alter or modify any part of the Trust Premises without the written permission of the Trust's Nominated Officer; and
 - 6.2.5 the Contractor shall keep the Trust Premises clean, tidy and properly secure.
- 6.3 In addition to the requests above, where the Agreed Premises are Trust Premises:
- 6.3.1 the Contractor shall provide its Staff with a form of identification that is acceptable to the Trust and which the Staff shall display on their clothing at all times when they are in the Trust Premises;
 - 6.3.2 the Contractor and the Staff shall confine themselves to the locality of their work and shall cause as little interference and disruption as possible with other personnel and activities at the Trust Premises; and

6.3.3 the Trust shall not be liable for loss of, or damage to, the personal property of the Staff, howsoever caused.

7 Price and Payment This Clause is not Relevant to this contract

7.1 The contractor shall, following the end of each Contract Month send to The Trust an invoice for the charges and any other sums due and payable to the Provider in accordance with this Agreement in respect of the relevant Contract Month and The Contractor shall pay all such undisputed amounts within thirty (30) days of receipt of such invoice.

7.2 The Trust shall pay to the Contractor by BACS or PGO all such undisputed amounts invoiced on the [15th] day (or, where that is not a Business Day, on the next Business Day) of each Month during the Term.

7.3 The Services/Supplies Fee shall be exclusive of VAT. Where VAT is applicable it shall be paid (at the prevailing rate in force from time to time) by the Trust in addition to such Services/Supplies Fee within a reasonable time from receipt of a valid tax invoice.

7.4 The only sums payable by the Trust to the Contractor for the provision of the Services/Supplies shall be the Services/Supplies Fee. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Agreement shall be the responsibility of the Contractor.

8 Review

8.1 The Contractor shall attend formal, minuted review meetings (each such meeting being a "Review"), as required by the Trust's Nominated Officer, to discuss the Trust's levels of satisfaction with the Services/Supplies provided under the Agreement and to agree any necessary action to address areas of dissatisfaction. The Contractor will not obstruct or withhold its agreement to any such necessary action and both Parties shall comply with any actions agreed at such Reviews. Such Reviews shall be attended by the Nominated Officers of both the Trust and the Contractor together with any other relevant attendees.

9 **Audit**

9.1 The Contractor shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including:

9.1.1 the Services/Supplies provided under it;

9.1.2 all expenditure reimbursed by the Trust; and

9.1.3 all payments made by the Trust.

9.2 The Contractor shall on request afford the Trust or the Trust's Nominated Officer such access to those records as may be required in connection with the Agreement.

10 **Indemnity**

10.1 The Contractor shall indemnify the Trust against all liabilities, costs, expenses, damages and losses (including any direct loss, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a "**Claim**") suffered or incurred by the Trust arising out of or in connection with:

10.1.1 any breach of the Contractor's warranty contained in clause 21;

10.1.2 the Contractor's breach or negligent performance or non-performance of this Agreement;

10.1.3 any Claim made against the Trust by a third party arising out of or in connection with the provision of the Services/Supplies, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Contractor, its Staff or Sub-Contractors;

10.2 This indemnity shall not cover the Trust to the extent that a Claim results from the Trust's negligence or wilful misconduct.

10.3 If any third party makes a Claim, or notifies an intention to make a Claim, against the Trust which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Relevant Claim**"), the Trust shall:

- 10.3.1 as soon as reasonably practicable, give written notice of the Relevant Claim to the Contractor specifying the nature of the Relevant Claim in reasonable detail;
- 10.3.2 not make any admission of liability, agreement or compromise in relation to the Relevant Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Trust may settle the Relevant Claim after giving prior written notice of the terms of settlement (to the extent legally possible) to the Contractor, but without obtaining the Contractor's consent if the Trust reasonably believes that failure to settle the Relevant Claim would be prejudicial to it in any material respect;
- 10.3.3 give the Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, staff, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Trust so as to enable Contractor and its professional advisers to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the Relevant Claim; and
- 10.4 Nothing in this clause shall restrict or limit the Trust's general obligation at Law to mitigate a loss which it may incur as a result of a matter giving rise to a Claim.

11 Insurance

- 11.1 The Contractor shall maintain in force at its own cost such insurance policies as are reasonable and appropriate having regard to its obligations and liabilities under this Agreement. The terms of any insurance or the amount of cover shall not relieve either Party of any liabilities under the Agreement. Within a reasonable period following a request from the Trust (from time to time) the Contractor shall produce documentary evidence that the policies are in place and properly maintained.

12 Interest

- 12.1 If a Contractor fails to make any payment due to the Trust under this Agreement by the due date for payment, then, without limiting the Trust's remedies under clause 14, the Trust may charge the Contractor interest on the overdue amount at the rate of 4% per annum above National Westminster Bank's base lending rate from time to time.

Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest immediately on demand by the other Party.

13 Set-Off

- 13.1 The Trust may at any time set off any liability of the Contractor to the Trust against any liability of the Trust to the Contractor whether any such liability is present or future, liquidated or unliquidated, under this Agreement or not and irrespective of the currency of its denomination. If the liabilities to be set off are expressed in different currencies, the Trust may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Trust of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

14 Termination

- 14.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either Party may at any time terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 14.1.1 [the other Party fails to pay any amount due under this Agreement, and such amount is not in dispute, on the due date for payment and remains in default not less than 40 Business Days after being notified in writing to make such payment; or]
 - 14.1.2 the other Party commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so; or
 - 14.1.3 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - 14.1.4 the other Party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- 14.1.5 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- 14.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party (being a Contractor) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party (being a Contractor); or
- 14.1.8 a floating charge holder over the assets of that other Party (being a Contractor) has become entitled to appoint or has appointed an administrative receiver; or
- 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party; or
- 14.1.10 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 14.1.11 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.4 to clause 14.1.10 (inclusive); or

- 14.1.12 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 14.1.13 any warranty given in clause 21 of this Agreement is found to be untrue or misleading.
- 14.2 The Parties acknowledge and agree that any breach of clauses 4, 7 and 21 and paragraph 3 of Schedule 4 shall constitute a material breach of a material term for the purposes of this clause.
- 14.3 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Trust may terminate this Agreement on giving not less than [3] Months' written notice to the Contractor

15 Consequences of Termination

- 15.1 Other than as set out in this clause, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 15.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clauses 10, 41 and 37 and Schedule 4 shall remain in full force and effect.
- 15.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 15.4 Notwithstanding its obligations in clause 15, if a Party is required by Law or any Regulatory Body to retain any documents and/or materials which it would otherwise be required to return or destroy under clause 15, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 15.5 On termination of this Agreement for any reason, each Party shall, as soon as reasonably practicable after termination:
 - 15.5.1 return or destroy (as directed in writing by the other Party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other Party for the purposes of this Agreement] If required by the other Party, it shall provide written evidence (in the form of a letter signed by its [National Repository Manager/ Julian Baker] no later

than 30 Business Days after termination that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in Schedule 4, paragraph 3;

- 15.5.2 delete any proprietary software belonging to the other Party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other Party. Each Party shall provide written confirmation (in the form of a letter signed by its [National Repository Manager/ Julian Baker]) no later than 30 Business Days after termination of this Agreement that this software has been deleted;
- 15.5.3 return all of the other Party's equipment and materials, failing which, the other Party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the Contractor shall be solely responsible for their safe-keeping.

16 Breach Notice and Remedial Notices

- 16.1 Without prejudice to clause 14 in the event of a party (the "Defaulting Party") being in breach of this Agreement the other party (the "Innocent Party") may take the following action:
 - 16.1.1 serve a Breach Notice or a Remedial Notice (as appropriate) on the Defaulting Party; and/or
 - 16.1.2 request a meeting with the Defaulting Party. Such meeting shall take place within two weeks of the Innocent Party's request and shall include the Nominated Officers and representatives of the parties responsible for the provision and receipt of the particular Services/Supplies which have been under performed.

For the purposes of this clause 16.1 a Breach Notice shall be appropriate where the Defaulting Party's breach of the Agreement cannot be remedied and a Remedial Notice shall be appropriate in all other circumstances.

- 16.2 Where the Innocent Party serves a Breach Notice it shall:
 - 16.2.1 specify details of the breach; and

- 16.2.2 require the Defaulting Party not to repeat the breach.
- 16.3 Where the Innocent Party serves a Remedial Notice it shall specify:
 - 16.3.1 details of the breach;
 - 16.3.2 the steps the Defaulting Party must take to the satisfaction of the Innocent Party (acting reasonably) in order to remedy the breach; and
 - 16.3.3 a reasonable period during which the steps must be taken.
- 16.4 Where as a result of the meeting pursuant to clause 16.1.2 the parties agree remedial actions and a timescale for those actions the Innocent Party shall be deemed to have served upon the Defaulting Party a Remedial Notice containing those agreed terms. Where the Innocent Party has already served upon the Defaulting Party a Remedial Notice in relation to the breach which is the subject of that meeting the Remedial Notice that is deemed to have been served pursuant to this clause 16.4 shall replace that earlier Remedial Notice.
- 16.5 If, following a Breach Notice or a Remedial Notice the Defaulting Party:
 - 16.5.1 repeats the breach that was the subject of the Breach Notice or the Remedial Notice; or
 - 16.5.2 (in the case of a Remedial Notice) fails to take all of the steps required by the Remedial Notice during the period specified in that noticethe Innocent Party may serve notice on the Defaulting Party terminating the Agreement with effect from such date as may be specified in that notice.

17 Information Governance

- 17.1 The Parties shall comply with:
 - 17.1.1 the Data Protection Legislation; and
 - 17.1.2 the provisions of Schedule 4.
- 17.2 The Contractor shall not perform its obligations under this Agreement in such a way as to cause the Trust to breach any of its applicable obligations under the Data Protection Legislation.

18 Intellectual Property

18.1 The Contractor agrees to indemnify and keep indemnified the Trust against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process, article, matter or thing supplied under this Agreement that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

19 Inadequacy of Damages

19.1 Without prejudice to any other rights or remedies that the Trust may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Contractor. Accordingly, the Trust shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

20 Remedies

20.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

21 Warranty of Authority

21.1 Each of the Parties warrants that it has full power and authority to enter into and perform this Agreement.

21.2 The Contractor warrants and undertakes that it is not aware as at the date of this Agreement of anything within its reasonable control which might or will adversely affect its ability to fulfil its obligations under this Agreement.

22 Equality, non-discrimination and human rights

22.1 The Contractor shall not:

22.1.1 engage in any prohibited conduct as defined in part 2 chapter 2 of the Equality Act 2010 (the "**Equality Act**") in relation to any protected characteristic (as defined in section 4 of the Equality Act) where this would contravene any provisions of the Equality Act, including part 3 (goods and services) and part 5 (employment); or

- 22.1.2 do (or omit to do) anything else that would amount to a contravention of the Equality Act including part 8 (prohibited conduct ancillary) and part 5 chapter 3 (equality of terms).
- 22.2 The Contractor shall notify the Trust immediately of any investigation of or proceedings against the Contractor, whether under the Equality Act or any predecessor legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 22.3 In addition to its obligations under this clause 22 relating to the Equality Act, the Contractor shall:
- 22.3.1 ensure that it complies with all other current employment legislation and, in particular, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551), the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) or any other relevant legislation relating to discrimination in the employment of employees. The Contractor shall take all reasonable steps (at its own expense) to ensure that any Staff do not unlawfully discriminate within the meaning of this clause 22.3 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this clause 22.3; and
- 22.3.2 in the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with the Trust in light of the Trust's obligations to comply with its statutory equality duties whether under part 11 of the Equality Act or otherwise. The Contractor shall take such steps as the Trust considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age.
- 22.4 The Contractor shall indemnify the Trust against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Trust arising out of or in connection with any investigation conducted or any proceedings brought under the under the Equality Act or any predecessor legislation due directly or

indirectly to any act or omission by the Contractor, its Staff, or Sub-Contractors in connection with the provision of the Services/Supplies.

23 Human Rights

23.1 The Contractor shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.

23.2 The Contractor shall undertake, or refrain from undertaking, such acts as the Trust requests so as to enable the Trust to comply with its obligations under the Human Rights Act 1998.

24 Waiver

24.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

25 Force Majeure

25.1 A Party, provided that it has complied with the provisions of clause 25.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to clause 25.4 the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:

25.1.1 Acts of God, flood, earthquake, windstorm or other natural disaster;

25.1.2 epidemic or pandemic;

25.1.3 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

25.1.4 terrorist attack, civil war, civil commotion or riots;

25.1.5 nuclear, chemical or biological contamination or sonic boom;

- 25.1.6 compliance with any Law or any action taken by a government or public Trust, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
 - 25.1.7 fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the Party seeking to rely on this clause or companies in the same group as such Party) or accidental damage;
 - 25.1.8 loss at sea;
 - 25.1.9 extreme adverse weather conditions;
 - 25.1.10 interruption or failure of utility service, including but not limited to electric power, gas or water;
 - 25.1.11 any labour dispute, including but not limited to strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same Group as such Party);
 - 25.1.12 non-performance by suppliers or subcontractors (other than by companies in the same Group as the Party seeking to rely on this clause); and
 - 25.1.13 collapse of building structures, failure of plant machinery, machinery, computers or vehicles.
- 25.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Party first affected by the Force Majeure Event.
- 25.3 Any Party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 25.3.1 it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - 25.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - 25.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any

way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

- 25.4 If the Force Majeure Event prevails for a continuous period of more than two Months, the Party not affected by the Force Majeure Event may terminate this Agreement by giving 15 Business Day's written notice to all the other Party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

26 Language

- 26.1 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language text shall prevail.
- 26.2 Any notice given under or in connection with this Agreement shall be in the English language. All other documents provided under or in connection with this Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language text shall prevail.

27 No Partnership or agency

- 27.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

28 Assignment

- 28.1 Subject to clause 28.3, this Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 28.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

28.3 The Contractor may assign, transfer or subcontract any or all of its rights and obligations under this Agreement to a member of its Group for so long as that Contractor remains a member of the assignor's Group. The assignor shall procure that such Contractor assigns any rights assigned to it in accordance with this clause 28.3 back to the assignor or another member of the assignor's Group immediately before it ceases to be a member of the assignor's Group.

28.4 Notwithstanding Schedule 4, paragraph 3, a Party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other Party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 28.4 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

29 Publicity

29.1 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

30 Costs

30.1 Unless expressly agreed otherwise in writing by the Parties, each Party shall bear its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement.

31 Entire Agreement

31.1 This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

31.2 Each Party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

31.3 Nothing in this clause shall limit or exclude any liability for Fraud.

32 Conflict with other documents

32.1 If there is an inconsistency between any of the provisions of this Agreement and the Schedules, the provisions of this Agreement shall prevail.

33 Variation

33.1 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

34 Severance

34.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

34.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

35 Notice

35.1 A notice or other communication given to a Party under or in connection with this Agreement:

35.1.1 shall be in writing and in English or accompanied by a properly prepared translation into English;

35.1.2 shall be signed by or on behalf of the Party giving it;

35.1.3 shall be sent to the Party for the attention of the person, at the address or fax number specified in this clause (or to such other person or to such other address or fax number as that Party may notify to the others, in accordance with the provisions of this clause)[, any such change to take effect [five] Business Days after the notice is deemed to have been received or, if later, on the date specified in that notice]; and

35.1.4 may be:

- (i) delivered personally; or
- (ii) sent by commercial courier; or
- (iii) sent by pre-paid first-class post or recorded delivery; or
- (iv) sent by fax; or
- (v) sent by airmail requiring signature on delivery; or

35.2 The addresses for delivery of a notice or other communication are as follows:

35.2.1 The Trust:

- (i) address: **NOTTINGHAM UNIVERSITY HOSPITALS NHS TRUST**
The National Repository Centre, Post Graduate Education Centre,
City Hospital, Hucknall Road, Nottingham NG5 1PB
- (ii) for the attention of: Mr John Garnham-Davies
- (iii) email: john.garnham-davies@nuh.nhs.uk
- (iv) Telephone number: 0115 993 4988

35.2.2 The Contractor:

- (i) address: **JULIAN BAKER t/a FUNCTIONAL FACSIA.**
126B, London Road West, Bath, BA1 7DD
- (ii) for the attention of: Mr Julian Baker
- (iii) email: julianmarkbaker@gmail.com
- (iv) Telephone number: 07778 641171

35.3 If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

35.3.1 if delivered personally, at the time of delivery; or

35.3.2 if delivered by commercial courier, on the date and at the time of signature of the courier's receipt; or

- 35.3.3 if sent by pre-paid first-class post or recorded delivery, [9.00 am] on the [second] Business Day after posting; or
- 35.3.4 if sent by fax, at the time of transmission; or.
- 35.3.5 if sent by airmail, [9.00 am] on the [fifth] Business Day after posting; or.]
- 35.4 For the purposes of this clause:
 - 35.4.1 all times are to be read as local time in the place of deemed receipt; and
 - 35.4.2 if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice [or other communication] is deemed to have been received when business next starts in the place of receipt.
- 35.5 To prove service, it is sufficient to prove that:
 - 35.5.1 if sent by pre-paid first-class post, the envelope containing the notice [or other communication] was properly addressed and posted; or
 - 35.5.2 if sent by fax, the notice [or other communication] was transmitted by fax to the fax number of the Party; or
- 35.6 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 35.7 A notice or other communication required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.

36 Prohibited Acts

- 36.1 The Contractor warrants and represents that:
 - 36.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following (referred to hereafter as "**Prohibited Acts**"):
 - (i) offered, given or agreed to give any officer or employee of the Trust 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 of performance of this or any other agreement with the Trust or for showing or not showing

favour or disfavour to any person in relation to this or any other agreement with the Trust; or

- (ii) in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Trust; and
- (iii) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

36.2 If the Contractor, its Sub-Contractors, or Staff (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 Contractor in relation to this or any other agreement with the Trust, the Trust shall be entitled:

36.2.1 to terminate this Agreement and recover from the Contractor the amount of any loss resulting from the termination;

36.2.2 to recover from the Contractor the amount or value of any gift, consideration or commission concerned; and

36.2.3 to recover from the Contractor any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

36.3 Any termination under clause 36.2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Trust.

36.4 Notwithstanding clause 37 (Dispute Resolution), any dispute relating to:

36.4.1 the interpretation of clause 36; or

36.4.2 the amount or value of any gift, consideration or commission,

shall be determined by the Trust and the decision shall be final and conclusive.

37 Dispute Resolution

37.1 If any dispute arises in connection with this agreement initially the Nominated Officers of the Parties will meet in a good faith effort to resolve the dispute.

- 37.2 If the dispute is not resolved at that meeting the directors or other senior representatives of the Parties, with Trust to settle the dispute will, within [10] Business Days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.
- 37.3 If the dispute is not resolved at that meeting, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than [20] Business Days after the date of the ADR notice.
- 37.4 No Party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

38 Nominated Officers

- 38.1 The Nominated Officers (and deputies) for each of the Parties are as follows:-

For the Trust:

Officer

Deputy

Name: John Garnham-Davies

Name: John Mulligan

Address: **NOTTINGHAM UNIVERSITY HOSPITALS NHS TRUST**

The National Repository Centre, Post Graduate Education Centre,

City Hospital,

Hucknall Road, Nottingham NG5 1PB

Tel: 0115 993 4988

Tel: 0115 962 7683

email: john.garnham-davies@nuh.nhs.uk

email:john.mulligan@nuh.nhs.uk

For the Contractor:

Officer

Deputy

Name: Julian Baker

Name: Jane Baker

Address: **JULIAN BAKER t/a FUNCTIONAL FASCIA.**

126B, London Road West

Bath BA1 7DD

Tel: 0115 987 1237

Tel: 0115 987 1237

email: julianmarkbaker@gmail.com

email: jane@functionalfascia.com

38.2 Either Party may change its Nominated Officer by giving written notice to the other. Such change shall be effective from the date that the notice is served on the other Party.

38.3 The Nominated Officer for each Party (or their deputy if the Nominated Officer is not available) shall be the key point of contact to whom the other Party may refer all queries and day to day communications regarding the operation of this Agreement in the first instance.

39 Counterparts

39.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

40 Third Party Rights

40.1 No person other than a Party to this Agreement, and their respective successors and permitted assigns, shall have any rights to enforce any term of this Agreement.

41 Governing Law and Jurisdiction

- 41.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 41.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation including non-contractual disputes or claims.
- 41.3 The Contractor irrevocably appoints [Julian Baker] of [Functional Fascia, 126b London Road West, Bath, BA1 7DD] [email:Julian@functionalfascia.com] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 41.2. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Contractor) and shall be valid until such time as the Trust has received prior written notice from the Contractor that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Contractor shall forthwith appoint a substitute acceptable to the Trust and deliver to the Trust the new agent's name, address and fax number within England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1

Services/Supplies

Include full details of the Services/Supplies and any standards, policies, procedures etc with which the Contractor must comply.

The Service to be provided will meet and be compliant with the Quality standards of the Human Tissue Authority (HTA).

1. The Contractor will agree with the CSC & NRC Manager dates for training.
2. The Contractor will agree in advance dates for soft fixing specimens and provide the necessary chemicals to carry out the procedure.
3. The Contractor must ensure that the premises are left in a clean & tidy order when training or soft fixing specimens is complete.
4. The Contractor must ensure that all delegates are aware of local policies and procedures and sign in on a daily basis. The Contractor must highlight the need to treat all Donors with dignity and respect.

Schedule 2

Services/Supplies Fee

Insert details of the "Services/Supplies Fee" this is the fee payable to the Contractor for the Services/Supplies. All such undisputed amounts invoiced for Services/Supplies Fee is paid on the 15th of each month (see clause 7.2)

Also include any provisions dealing with annual price increases and changes to price for under/over performance

1. The contractor shall, following the end of each Contract Month send to The Trust an invoice for the charges and any other sums due and payable to the Contractor in accordance with this Agreement in respect of the relevant Contract Month and The Trust shall pay all such undisputed amounts within thirty (30) days of receipt of such invoice.
2. All payments under this Agreement shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made and/or any relevant credit note.

3. The charges for the Services shall be index linked and increased with effect from 1 April of each year of this Agreement.
4. Where applicable, Value Added Tax shall be payable by the Trust to the contractor upon receipt of a valid Value Added Tax invoice therefore.

Schedule 3

Agreed Premises

1. The Clinical Skills and National Repository Centre (PGEC & NUH Mortuary City Campus West Corridor) City Hospital, Hucknall Road Nottingham NG51PB

Schedule 4

Information Governance

1 Definitions

1.1 For the purposes of this Schedule 4, the following definitions apply:

“Codes” means the Codes of Practice on Access to Government Information and/or on Discharge of Public Authorities’ Functions and/or the Management of Records;

“Commercially Sensitive Information” means the information identified in writing by the Contractor as “commercially sensitive information”, comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has otherwise indicated to the Trust in writing that, if disclosed by the Trust, would cause the Contractor significant commercial disadvantage or material financial loss;

“Confidential Information” means information, data and material of any nature which either Party may receive or obtain in connection with the conclusion and/or operation of the Agreement and:

- (a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his or her treatment or medical history; or

- (b) the release of which is likely to prejudice the commercial interests of the Trust and/or the Contractor respectively; or
- (c) which is a trade secret; or
- (d) in the case of the Contractor's Confidential Information, any Commercially Sensitive Information;

"Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Trust;

"Data Controller" has the same meaning as set out in the DPA;

"Data Processor" has the same meaning as set out in the DPA;

"Data Subject" has the same meaning as set out in the DPA;

"DPA" means the Data Protection Act 1998;

"EIR" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the EIR;

"FOIA" means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Information" has the same meaning as set out in section 84 of FOIA;

"Personal Data" has the same meaning as set out in the DPA;

"Process" has the same meaning as set out in the DPA;

"Regulatory Body" any government department and regulatory, statutory and other entity, committee and body which, whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in this Agreement;

"Request for Information" means a request for information or an apparent request under the Code, FOIA or the EIR; and

“**Sensitive Personal Data**” has the meaning as set out in the DPA.

2 Data Protection

2.1 With respect to the Parties' rights and obligations under this Agreement, where the Contractor is processing personal data on behalf of the Trust, the Parties agree that the Trust is the Data Controller and that the Contractor is the Data Processor.

2.2 The Contractor shall:

2.2.1 Process the Personal Data only in accordance with instructions from the Trust;

2.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services/Supplies or as is required by Law or any Regulatory Body;

2.2.3 warrant to the Trust that it has and will continue to have in place appropriate technical and organisational measures for the Processing of Personal Data and to prevent against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the Personal Data and to the processing equipment to be used to process the Personal Data, and that any persons whom it authorises to have access to the Personal Data shall respect and maintain all due confidentiality;

2.2.4 a level of security programmes and procedures which reflect:

(i) the level of damage that might be suffered by a Data Subject to whom the Personal Data relates as a result of unauthorised or unlawful possession of the Personal Data or the loss or destruction of or damage to the Personal Data;

(ii) the state of technological development and the costs of implementing such programmes and procedures; and

- (iii) as required by the Data Protection Legislation, such security programmes and procedures which specifically address the nature of any Sensitive Personal Data;
- 2.2.5 promptly provide to the Trust all information in its possession concerning any unauthorised or accidental disclosure or access made by any Staff or any other identified or unidentified third party;
- 2.2.6 comply with any relevant changes in the Data Protection Legislation in respect of the Personal Data.
- 2.2.7 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 2.2.8 obtain prior written consent from the Trust in order to transfer the Personal Data to any third party;
- 2.2.9 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 2 of Schedule 4;
- 2.2.10 ensure that no Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Trust;
- 2.2.11 notify the Trust (within five Business Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Trust's obligations under the Data Protection Legislation;
- 2.2.12 provide the Trust with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Trust with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Trust's instructions;

- (iii) providing the Trust with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Trust); and
 - (iv) providing the Trust with any information requested by the Trust;
 - 2.2.13 permit the Trust or the Trust's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 9 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Trust to enable the Trust to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;
 - 2.2.14 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Trust); and
 - 2.2.15 not, without the Trust's prior written consent, do or omit to do anything which would cause any Personal Data to be transferred to a third party or outside the European Economic Area or to a country which was not at the time of transfer one recognised by the European Commission as providing an adequate level of protection of Personal Data.
- 2.3 The Contractor shall be responsible for any costs it incurs in complying with its obligations pursuant to this paragraph 2.

3 Confidentiality and Information Security

- 3.1 Except to the extent set out in this paragraph 3 of Schedule 4 or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 3.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 3.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 3.2 Paragraph 3.1 of this Schedule 4 shall not apply to the extent that:
- 3.2.1 such disclosure is a requirement of Law, including the FOIA, the Codes, and the EIR, placed upon the party making the disclosure;

- 3.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 3.2.3 such information was authorised for disclosure by the prior written consent of the party to which the Confidential Information belongs;
 - 3.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement or other acts or omissions of the disclosing party; or
 - 3.2.5 it is independently developed without access to the other party's Confidential Information.
- 3.3 The Contractor may only disclose the Trust's Confidential Information and any other information provided to the Contractor by the Trust in relation to the provision of the Services, to the Contractor's Staff who are directly involved in the performance of the Contractor's obligations under this Agreement, and shall ensure that such Staff are aware of and shall comply with obligations in this paragraph 3.3 of Schedule 4 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and at the Trust's written discretion destroyed securely or returned to the Trust when it is no longer required. The Contractor shall not, and shall procure that its Staff do not, use any of the Trust's Confidential Information received otherwise than for the purposes of performing the Contractor's obligations in this Agreement.
- 3.4 The Contractor will ensure that all Staff involved in handling information, including Personal Data, are suitably vetted, trained and supervised in proportion to the sensitivity and/or confidential nature of such information handled by such Staff.
- 3.5 The Contractor will ensure it has an information security plan in place that is appropriate to the Services and the obligations placed on the Contractor under this Agreement and such plan will incorporate all relevant aspects of the Trust's information security plan and implement best practice including the relevant principles in the OGC's *Procurement Policy Note: Data Handling Review 13/08*.
- 3.6 The Contractor shall notify the Trust forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of

confidentiality or actual information security breaches) in line with the Trust's procedures as notified to the Contractor by the Trust from time to time.

3.7 Upon becoming aware of any actual, potential or attempted breach of confidentiality, the Contractor shall take all reasonable steps to:

3.7.1 remedy such breach;

3.7.2 mitigate the effects of such breach; and

3.7.3 prevent an equivalent breach in the future including the use of disciplinary procedures in serious cases.

3.8 To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Contractor shall provide such evidence to the Trust as the Trust may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with paragraphs 3.3 and 3.7 of this Schedule 4, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

3.9 The Contractor shall not, and shall procure that Staff do not, use any of the Trust's Confidential Information received otherwise than for the purposes of this Agreement.

3.10 Nothing in this Agreement shall prevent the Trust from disclosing the Contractor's Confidential Information:

3.10.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

3.10.2 to any consultant, contractor or other person engaged by the Trust;

3.10.3 for the purpose of the examination and certification of the Trust's accounts

- 3.10.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Trust has used its resources..
- 3.11 The Trust shall use reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to paragraph 3.10 of this Schedule 4 is made aware of the Trust's obligations of confidentiality.
- 3.12 Nothing in this paragraph 3 of Schedule 4 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.
- 3.13 This paragraph 3 of Schedule 4 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in this Contract, this paragraph 3 of Schedule 4 shall remain in force for a period of 10 years after the termination or expiry of this Contract.

4 Freedom of Information

- 4.1 The Contractor acknowledges that the Trust is subject to the requirements of, and that the provisions of paragraph 3 of this Schedule 4 are subject to the Trust's obligations under the Codes, FOIA and the EIR and the Contractor shall assist and cooperate with the Trust to enable the Trust to comply with its Information disclosure obligations.
- 4.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- 4.2.1 transfer to the Trust all Requests for Information that it receives as soon as practicable and in any event within [two] Business Days of receiving a Request for Information;
- 4.2.2 to the extent applicable by Law, provide the Trust with a copy of all Information in its possession, or power in the form that the Trust requires within five Business Days (or such other period as the Trust may specify) of the Trust's request;

- 4.2.3 provide all necessary assistance as reasonably requested by the Trust to enable the Trust to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR; and
- 4.2.4 ensure that all Information is retained for disclosure and stored in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA and shall permit the Trust to inspect such records as requested from time to time.
- 4.3 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Trust.
- 4.4 The Contractor acknowledges and agrees that the Trust shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of any of the Codes, FOIA or the EIR.
- 4.5 The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Regulations, the content of this Agreement is not Confidential Information. The Trust shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Regulations.
- 4.6 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Trust to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Regulations redacted), including from time to time agreed changes to the Agreement, to the general public.
- 4.7 The Trust may, at its sole discretion, redact information from the Agreement prior to publishing for one or more of the following reasons:
 - 4.7.1 national security;
 - 4.7.2 Personal Data;

- 4.7.3 information protected by intellectual property law;
 - 4.7.4 third party confidential information;
 - 4.7.5 IT security; or
 - 4.7.6 prevention of Fraud.
- 4.8 The Trust may consult with the Contractor to inform its decision regarding any exemptions and/or redactions of this Agreement but the Trust shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Trust to enable the Trust to publish this Agreement.
- 4.9 The Contractor acknowledges that (notwithstanding the provisions of paragraph 3.1 of this Schedule 4) the Trust may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Functions Code**"), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services:
- 4.9.1 in certain circumstances without consulting the Contractor; or
 - 4.9.2 following consultation with the Contractor and having taken their views into account;
- provided always that where paragraph 4.9.1 of this Schedule 4 applies the Trust shall, in accordance with any recommendations of the Functions Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 4.10 The Contractor acknowledges that the designation of certain information as Commercially Sensitive Information is of indicative value only and that the Trust may be obliged to disclose it in accordance with paragraph 4.9 of this Schedule 4.
- 4.11 The Contractor shall be responsible for any costs it incurs in complying with its obligations pursuant to paragraph 4 of this Schedule 4.

5 Continuation in force

- 5.1 The provisions of this Schedule 4 shall survive termination of this Agreement

Signed for and on behalf of
**NOTTINGHAM UNIVERSITY HOSPITAL
NHS TRUST**

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Name:

Signed for and on behalf of
**Julian Baker trading as
Functional Fascia.**

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Director

Name:

.....

Director/Contractor Secretary

Name.....