

OFFICIAL SENSITIVE - COMMERCIAL



NHSEI
XXXXXX
XXXXXX

22nd December 2021



LETTER OF INTENT ("LOI") – EMS Group Solutions Ltd

I am writing to you on behalf of NHS England & NHS Improvement ("NHSEI") to acknowledge your support of the Vaccination Programme and to set out the Parties intent going forward.

As you know we are intending to put in place a contract between NHSEI and EMS Group Solutions Ltd (**EMS**) (the "**Parties**") for 3 Articulated Trailer Units and 4 Containers (the "**Contract**").

In order to meet the NHSEI's Vaccination timetable, we require you to start scaling up in order to be able to meet the requirement for the Contract.

Accordingly, this LOI records:

- (1) The Parties' intention to enter into the Contract;
- (2) NHSEI's commitment to cover the costs incurred by EMS of preparing the 7 units for deployment.

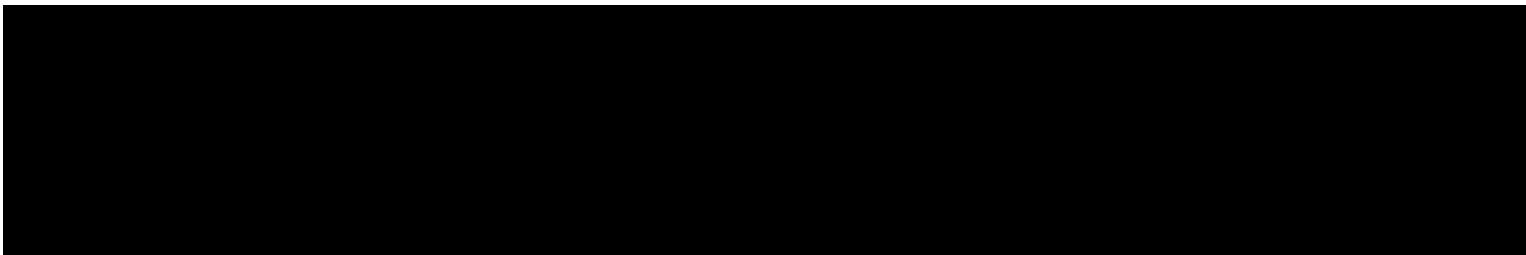
This LOI shall be effective from the date of NHSEI's counter signature of this LOI.

1. Intention to enter into the Contract and supply of LOI Goods

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- 1.1 It is the Parties' intention to enter into the Contract by no later than 14th January 2022 ("**LOI Long Stop Date**"). The Parties agree to use their best endeavours and to act in the utmost good faith and without delay, to enter into the Contract as soon as is reasonably practicable but, in any event, no later than the LOI Long Stop Date.
- 1.2 The Parties agree that acting in utmost good faith means that both Parties shall:
 - 1.2.1 adhere to the spirit of this LOI and the intention to enter into the Contract as soon as is reasonably practicable but by no later than the LOI Long Stop Date;
 - 1.2.2 observe reasonable commercial standards of fair dealing when negotiating and finalising the Contract and in complying with this LOI;
 - 1.2.3 be faithful to the agreed common purpose of executing the Contract as soon as is reasonably practicable but by no later than the LOI Long Stop Date;
 - 1.2.4 act consistently with the justified expectations of the other Party when negotiating and finalising the Contract;
 - 1.2.5 prevent action that frustrates the purpose of the Parties executing the Contract as soon as is reasonably practicable but by no later than the LOI Long Stop Date;
 - 1.2.6 disclose all material facts and information to the other Party whilst negotiating and finalising the Contract;
 - 1.2.7 not knowingly lull the other Party into a false belief; and
 - 1.2.8 not provide false information upon which the other Party will rely.

2. Reimbursement of EMS for the costs of the Units

- 2.1 Ahead of executing the Contract, NHSEI urgently require EMS to proceed with deploying the Units set out below ("**LOI Goods**") so as not to delay the delivery of the Units and thereby support NHSEI with meeting its COVID-19 Vaccination Programme timetable:
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- 2.2 Title and risk in the LOI Goods shall remain with EMS during the term of this LOI.
- 2.3 If the Parties have not executed the Contract before the LOI Long Stop Date then, no later than two (2) Business Days before the LOI Long Stop Date, the NHSEI shall confirm in writing to EMS either that:
- 2.3.1 NHSEI cannot proceed with executing the Contract (including, without limitation, as a result of receiving a complaint or challenge by an economic operator pursuant to the Public Contract Regulations 2015); or
 - 2.3.2 NHSEI would like to extend the LOI Long Stop Date: in such circumstances the Parties shall act in good faith to agree and record in writing a revised LOI Long Stop Date.
- 2.4 If the NHSEI confirms in writing that it cannot proceed with executing the Contract pursuant to 2.3.1 above, then this LOI shall immediately terminate and, subject to EMS's compliance with the terms of this LOI, NHSEI shall reimburse EMS for such costs as EMS can demonstrate to NHSEI's reasonable satisfaction have been properly incurred by EMS in preparing the LOI Goods up to the date of termination of this LOI, plus an additional 4 weeks hire for the 7 units (the "**LOI Costs**").
- 2.5 Upon agreement by the Parties of the LOI Costs pursuant to 2.4 above, NHSEI shall reimburse EMS in respect of such agreed LOI Costs within ten (10) Business Days of receipt by DHSC of a valid invoice in respect of the same.

3. General

- 3.1 This LOI, its contents, the matter to which it relates, and information exchanged pursuant to it is confidential. Neither Party shall make any public announcement concerning this LOI without obtaining the other party's prior written permission unless it is required to do so by operation of law or relevant stock exchange regulations.
- 3.2 This LOI sets out the entire agreement between the Parties, and overrides any prior correspondence or representations relating to its subject matter.
- 3.3 This LOI and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature) shall be governed by, and construed in accordance with, English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties irrevocably submit.
- 3.4 A person who is not a party to this LOI has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this LOI.

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I should be grateful if you would sign the enclosed duplicate letter and return it to me to confirm your acceptance of this LOI. NHSEI will then countersign the LOI and the LOI shall be effective from the date of NHSEIs counter signature.

Yours sincerely,

