**Document No 03b**

**Invitation to offer for NHS National Framework Agreement for the supply of Inhalation Anaesthetics and Vaporisers**

**Offer reference number: CM/PHR/24/5717**

**Period of Framework Agreement: 1st February 2025 to 31st January 2027, with an option or options to extend (at the discretion of the Authority) for a period or periods of up to 24 months.**

**Agreement for the Supply of On-loan Vaporisers**

**November 2024**

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#### NHS Agreement for the supply of loan vaporisers

AN AGREEMENT

made the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 202 \_\_\_\_\_\_\_

BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

whose registered office is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

whose principal place of business is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IT IS AGREED as follows:

The supplier agrees to supply vaporisers on loan to the authority as specified in part I of schedule A, in consideration of the authority agreeing to purchase the inhaled anaesthetic product(s) for a minimum period specified in schedule B and in accordance with the terms and conditions as specified in this agreement.

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for and on behalf of the authority for and on behalf of the supplier

Name (caps) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name (caps) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Interpretation

1 In these conditions of contract the following definitions shall apply:

*Acceptance* means the acceptance of the goods by the authority as evidenced by the completion of the acceptance form set out in part II of schedule A.

*The* *authorised representative* means the person nominated from time to time by the authority as the authorised representative.

*The authority* means all or any of the bodies listed in Appendix One of the Framework and any successor to any such body together with all other NHS trusts, health authorities, NHS Foundation Trusts and Primary Care Trusts, whether acting individually, or on behalf of or as part of a Consortium.

*The contract* means the agreement concluded between the authority and the supplier, including all specifications, supplier’s patterns, samples, plans, drawings and other documents incorporated or referred to therein.

*The goods* means the goods, materials or articles described in part I of schedule A and includes all accessories, additions, substitutions, replacements, modifications, amendments, spare parts, manuals, certificates and other documents supplied with the goods.

*In writing* or *written* shall be interpreted to include manuscript typescript and communication by electronic and digital text (email) and facsimile but excluding mobile telephone text messages.

*The supplier* means the person who by the contract undertakes to provide on loan the goods to the authority as provided for in the contract. Where the supplier is an individual or partnership the expression shall include the personal representatives of that individual or of the partners.

*Supplier group* means the supplier and any subsidiary or holding company from time to time of the supplier and any subsidiary from time to time of any holding company of the supplier.

*Total loss* means any loss, theft or destruction of the goods or any damage which in the opinion of the insurers of the goods is uneconomic to repair.

2 Unless the context otherwise requires it, reference to any statute, order, regulation or other similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended or re-enacted by any subsequent statute, order, regulation or instrument. The headings to these conditions shall not affect their interpretation.

3 Any decision, act or thing that the authority is required or authorised to take or do under the contract may be taken or done by any person authorised, either generally or specifically, by the authority to take or do that decision, act or thing, provided that upon receipt of a written request the authority shall inform the supplier of the name of any person so authorised.

**Variation of conditions**

4 The goods shall be supplied solely in accordance with these conditions. All other contractual terms which in any way add to, vary or contradict these conditions upon which the supplier may seek to rely or otherwise impose on the authority shall be excluded and not form part of the contract (whether or not such other contractual terms post-date these conditions) unless the authority has specifically agreed in writing to be bound by any of such other contractual terms.

5 No later variation shall be binding unless it has been agreed in writing and signed by an authorised representative of the authority and the supplier.

### Contract period

6 The supplier shall supply the goods on loan to the authority for the period specified in part I of schedule B which shall commence on the date specified in part I of schedule B or in the absence of such date being specified, on the date of acceptance of the goods by the authority.

7 This contract shall terminate on the expiry of the contract (as determined by reference to part I of schedule B) unless extended by written agreement signed by the authorised representative of the authority and the supplier.

8 At any time, the authority shall have the option to terminate this contract with the supplier's prior written consent (such consent not to be unreasonably withheld or delayed) and shall return the goods to the supplier in accordance with the return conditions.

**Possession and risk**

9The goods shall at all times remain in the ownership of the supplier and the authority will have no rights in the goods other than as mere bailee.

10 The authority shall from the date of acceptance bear the risk of loss or damage to the goods however caused and whether insured or not, except for loss or damage caused by the negligence of the supplier or its agents.

11 The authority shall keep the goods in its possession at the location specified in schedule A and shall not move them without the written consent of the supplier, such consent not to be unreasonably withheld, provided that the authority may move the goods from such location for the purpose of repair or maintenance without obtaining any consent unless such repair or maintenance is to be undertaken outside the United Kingdom.

12 If the authority complies with all the terms of the contract the supplier shall give the authority quiet possession of the goods.

13 The supplier may at their own cost fit nameplates of a reasonable size to the goods indicating that the goods are on loan from the supplier and the authority shall make sure that the nameplates are not removed or hidden from view.

### Maintenance and upgrades

14 The authority shall keep the goods serviced, maintained and repaired and in good working order and shall supply and fit any necessary replacement parts, all at the authority’s own expense. The authority shall maintain appropriate service records and make these available on written request by the supplier.

15 All replacement parts fitted to the goods and all substitutions for the goods shall become the property of the supplier and subject to the contract.

16 The authority shall ensure that the goods are safe and without risk to health when properly used.

17 The authority shall ensure that throughout the duration of the hiring under the contract, and on termination, the goods comply with the requirements conditions 28 -30 inclusive.

18 If requested by the supplier the authority shall use its reasonable endeavours to ensure that the landlord of any land upon which buildings or premises are situated shall give the supplier a waiver of any right to the goods and, subject to prior appointment, a right to enter upon the land in order to inspect or recover the goods.

19 The supplier may at any time on giving reasonable notice in writing to the authority enter the premises of the authority in which the goods are located for the purposes of inspecting the goods and checking that the authority is complying with its obligations under this contract.

### Default by authority and repossession

20 The supplier may terminate the contract and repossess the goods by giving 28 days written notice to the authority at any time if:

* the authority does not observe any of its other obligations under the contract and fails to remedy the situation to the reasonable satisfaction of the supplier within 30 days of the date on which the supplier brought the situation to the attention of the authority, or
* the authority is dissolved or a liquidator, receiver, administrative receiver, administrator or person with substantially similar powers and duties to any such person is appointed in respect of the authority (except on terms whereby all of its then current and future rights, obligations and liabilities under the contract are, in accordance with all applicable statutes and laws, fully and effectively transferred to or vested in a person legally able and bound to perform and discharge the same in accordance with the terms of the contract), or
* there occurs in relation to any other agreement between the parties any event (including breach) that could put in jeopardy the supplier’s ownership or other rights in the goods.

21 If repossessing the goods would cause danger to or adversely affect the health, safety or welfare of any person then the supplier shall delay repossession for up to 60 days during which time the authority shall make arrangements to remedy the situation to the supplier’s satisfaction.

22 The authority shall on termination of the contract allow the supplier to collect the goods from the authority and for this purpose enter, by appointment, any building in which the goods are located. If the supplier fails to remove the goods within fourteen days from the date of notification of termination the authority may charge the supplier for the cost of storage from the date of termination.

**Return Conditions**

23 Upon the expiry or termination of this agreement the authority shall at its own expense ensure the safe and proper storage of the goods until the goods are collected by the supplier (or its nominated representative) for a maximum period of 14 days.

24 The authority shall:

* ensure that the goods are in working order and in a similar condition as when installed, due allowance having been made for fair wear and tear. The authority shall be responsible for the cost of such improvements which may be required to bring the goods up to the requisite standard
* permit collection of the goods, including all maintenance and repair records to the supplier provided that the supplier provides reasonable notice of any such collection
* allow the supplier (or its duly authorised agent provided always that the supplier shall remain responsible to the authority for the acts and/or omissions of any such agent) to properly disassemble, crate and prepare for transport in accordance with any instructions issued by the manufacturer (if such instructions exist) at the supplier's expense.

25 In the case of any dispute between the parties about their respective obligations under these return conditions, an expert jointly appointed and approved by both parties shall assess and report on the condition of the goods. Such “decision” shall be binding on both parties. The costs of this exercise shall be borne by the party against whom the expert makes his award.

**Total loss payments**

26 In the event of total loss of the goods the authority shall pay to the supplier an amount calculated in accordance with the mechanism contained within the Framework Agreement.

27 Where the contract is extended in accordance with condition 7, the authority and the supplier shall agree a new maximum total loss sum that would be applicable in the event of total loss during the period of extension.

### Indemnity

28 The authority shall indemnify the supplier in respect of events arising during the contract period and at any time in which the goods are in the possession or control of the authority against each of the following:

* all costs and expenses of operating and maintaining the goods and of replacing or renewing the goods or any part of the goods together with all outgoings of whatsoever nature in connection with the goods or the ownership or the hiring of the goods under the contract
* all actions, claims, costs, damages, demands, liabilities, losses, proceedings, judgement awards or other sanctions and expenses of whatsoever nature that may be made against the supplier and are caused by the negligence of the authority, its employees or agents.

**Insurance**

29 The authority shall participate in an appropriate scheme administered by the NHS Litigation Authority pursuant to section 21 of the NHS and Community Care Act 1990 (as amended).

### Miscellaneous terms

30 If any term of the contract is invalid it will not affect the validity of the remaining terms and the contract will continue to be enforceable.

31 The authority shall not:

* modify, replace or alter the goods without the supplier’s consent, such consent not to be unreasonably withheld
* use the goods as security for a loan or any other obligation
* do anything that interferes with the supplier’s ownership of or other rights in the goods
* claim capital allowances for the goods.

32 The authority shall not sell, attempt to sell, assign, mortgage, pledge, part with possession of or otherwise deal with the goods or any interest in it or allow the creation of any charge or lien over it or create or allow to be created any right for a third party to retain the goods.

33 The authority shall not assign or try to assign any rights under the contract without the previous written consent of the supplier, such consent not to be unreasonably withheld or delayed.

34 The supplier may sell the goods or transfer to its parent or any subsidiary all or any of its rights under the contract without the authority’s consent. Subject to the foregoing the supplier may not sell the goods or assign any or all of its rights under the contract to a third party without the previous written consent of the authority, such consent not to be unreasonably withheld or delayed.

### Notices

35 Any notice given in relation to the contract shall be in writing and shall be adequately served if sent to the addressee at its address shown in the contract by facsimile or first class letter post or email. In the case of the authority, any letter or facsimile given in relation to the contract shall be addressed to the authorised representative and any email shall be sent to the email address of the authorised representative. Notices sent by facsimile shall be treated as received at the time they are sent and notices sent by first class letter post shall be treated as received 48 hours after posting and notices sent by email shall be treated as received on the same day as that on which the electronic mail is sent provided that a hard copy of the notice is also sent by first class post on the same day as that on which the electronic mail is sent.

**Third party rights**

36 Save as otherwise provided herein, a person who is not a party to this contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

### Law

37 The parties shall accept the non-exclusive jurisdiction of the English courts and agree that the contract is to be governed and construed according to English law.

**Schedule A part I: The goods**

##### Description and quantity of loan vaporisers

***New or refurbished (please indicate)***

**Location(s)**

***Quantity and serial number(s)***

**Schedule A part II: Acceptance form for vaporisers**

The authority hereby confirms acceptance of the goods referred to in the contract dated \_\_\_\_\_\_

made between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the supplier”) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“the authority”) and that the goods

have been inspected and conform to the relevant acceptance criteria (if any).

**Schedule B part I: Contract period**

The period of the contract shall be ...................... year(s) ..................... month(s)

from [insert date] to [insert date] unless extended under condition 7

SIGNED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[position] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [position] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
for and on behalf of the authority for and on behalf of the supplier

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_