



SAMPLE

**Agreement for the Provision of Services**

**Cover Sheet**

This Cover Sheet is subject to the General Terms and Conditions attached at Schedule 1. The Cover Sheet and the General Terms and Conditions (together the "Agreement") are made between the Supplier and the Customer (each as defined below) on the date specified below.

Words and expressions used in this Cover Sheet shall have the meaning ascribed to them in the General Terms and Conditions.

<b>The Supplier</b>	DEM DX Limited a company incorporated and registered in England and Wales with company number 09573122 whose registered office is at 7 Crane Grove, London, United Kingdom, N7 8LB
<b>The Customer</b>	
<b>Representatives</b>	<p><b><u>Supplier Representative</u></b> Contact: Lorin Gresser Address: Finsbury Business Centre, 40 Bowling Green Lane EC1R 0NE, UK Email address: <a href="mailto:lorin.gresser@demdx.com">lorin.gresser@demdx.com</a> and <a href="mailto:sav@demdx.com">sav@demdx.com</a></p> <p><b><u>Customer Representative</u></b></p>
<b>Details for service of notices</b>	<p><b><u>Supplier Representative</u></b> Contact: Lorin Gresser Address: Finsbury Business Centre, 40 Bowling Green Lane EC1R 0NE, UK Email address: <a href="mailto:lorin.gresser@demdx.com">lorin.gresser@demdx.com</a></p> <p><b><u>Customer Representative</u></b></p>
<b>Number of End Users</b>	

## **TERM**

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<b>Commencement Date</b>	
<b>Initial Term</b>	
<b>Renewal Term</b>	

## **ACCESS TO SERVICES**

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Access to the Dem Dx portal will be provided by registered username and password and a weblink to a private institutional account.

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## **CHARGES AND PAYMENT TIMETABLE**

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<b><u>Fee</u></b>	<b><u>Amount</u></b>	<b><u>Payment timetable</u></b>
Set up Fee		
Licence Fee		

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<u>SIGNED on behalf of</u> <u>Dem DX Limited</u>	<u>SIGNED on behalf of</u>
Signed:	Signed: .....
Print name:	Print name:
Position:	Position:
Date:	Date:

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**General Terms and Conditions**

## 1. Interpretation and Definitions

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

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### **Agreement**

1 these terms and conditions, including the schedules and the Cover Sheet.

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### **Change**

2 any change to this Agreement, including (for the avoidance of doubt) changes to the Services, Service Levels or Charges (excluding changes to Charges pursuant to Clause 6.2 and Clause 5.4).

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### **Charges**

3 the fees for the Services as detailed in the Cover Sheet.

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### **Commencement Date**

4 the commencement date as set out in the Cover Sheet.

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### **Confidential Information**

5 all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including the terms of this Agreement, any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs,

customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party and any information or analysis derived from Confidential Information. Confidential Information shall exclude information: (a) generally available to the public (other than as a result of breach of confidentiality obligations); (b) available or which comes available to the receiving party on a non-confidential basis before disclosure; or (c) independently developed without access to such Confidential Information.

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**Customer Data**

- (a) the data supplied by the Customer or the End Users to the Supplier pursuant to this Agreement;
  - (b) any Personal Data for which the Customer is the Data Controller; and
  - (c) User Content
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**Customer Marks**

logos (or other brand identity), trademarks or trade names provided by or used by the Customer.

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**Customer Materials**

the Customer Data together with any materials, designs, domain names, documentation, processes and procedures, information, programs, software and codes supplied by (or on behalf of) the Customer to the Supplier in connection with this Agreement.

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**Data Protection Laws**

1 means, as applicable and binding on the parties and/or Services: (a) in the United Kingdom: (i) the Data Protection Act 1998 and any laws or regulations implementing (Directive 95/46/EC) and/or (ii) the General Data Protection Regulation (Regulation 2016/679)

("GDPR")) and the Privacy and Electronic Communication Directive (Directive 2002/58/EC) and national legislation implementing or supplementing such legislation in the United Kingdom. (b) in member states of the European Union: the Directive 95/46/EC or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them.

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**Disclosing Party**

7 a party to this Agreement which discloses or makes available directly or indirectly Confidential Information.

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**Dispute Resolution Procedure**

8 the procedure for dealing with disputes as set out in Clause 19.

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**End User(s)**

9 an employee, or staff of the Customer that uses the Services.

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**EULA**

10 the end user licence terms at Schedule 2.

**Extended Term**

11 as set out in Clause 17.1.

**Force Majeure Event**

12 any event outside the reasonable control of either party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including

acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster or any action taken by a third party in relation to any third party software.

**GDPR Date**

13 means 25 May 2018 or such other date as the GDPR becomes effective in the UK.

**Initial Term**

14 the period set out in the Cover Sheet starting on the Commencement Date.

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**Intellectual Property Rights**

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15 patents, utility models, rights to inventions, copyright (including Source Code) and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

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**Indemnity Claim**

16 as set out in Clause 15.3.

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**Losses** 17 all losses, liabilities, costs, expenses and damages.

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**Permitted Purpose** 18 as set out in Clause 11.1.1.

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**Public Networks** a public communications network established and operated by a telecommunications provider, including the internet, wireless and mobile technologies.

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**Recipient** 19 a party to this Agreement who receives or obtains directly or indirectly Confidential Information.

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**Representatives** 20 employees, workers, agents, officers, advisers and other representatives of that party including in the case of the Customer, the End Users.

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**Restricted Person** 21 means a person that is (a) listed on, or owned and controlled by a person on any Sanctions list, (b) located in or incorporated under the laws of or owned or controlled by or acting on behalf of a person located in or incorporated under the laws of a country or territory which is the subject of Sanctions Legislation or (c) otherwise the target of Sanctions Legislation.

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<b>Sanctions Legislation</b>	22 means all and any legislation of the UK or the United States of America relating to sanctions of individuals, companies, other legal persons or countries.
<b>Services</b>	23 the provision of the Subscription Services and the Support Services, in accordance with the terms of this Agreement.
<b>Service Levels</b>	24 as set out in Schedule 1.
<b>Site</b>	25 the cloud hosted site made available in accordance with the terms of this Agreement.
<b>Specification</b>	26 the description of the Support Services and Subscription Services as detailed in Schedule 1.
<b>Subscription Services</b>	27 means access to and use of the Site in accordance with the terms of this Agreement.
<b>Supplier Materials</b>	28 any materials, designs, logos (or other brand identity), domain names, documentation, processes and procedures, information, programs, software and codes supplied by the Supplier to the Customer through the use of the Site or

otherwise.

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**Support Services**

29 any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Site, as well as any other support or training services provided to the Customer under this Agreement and as detailed in the Cover Sheet, but which does not constitute a New Version.

**Term**

30 the Initial Term together with any Extended Term.

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**User Content**

31 means content uploaded by End Users as further described in the EULA.

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**VAT**

32 value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

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**Working Days**

33 a day (other than a Saturday or Sunday or bank and/or public holiday in England or Wales).

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- 1.2. In the case of conflict or ambiguity between the provisions of this Agreement and the Cover Sheet then the terms of the Cover Sheet shall take precedence.
- 1.3. Unless the context otherwise expressly requires,

references to:

- 1.3.1. **"including"** or **"includes"** shall be deemed to have the words "without limitation" inserted after them;
  - 1.3.2. **"writing"** or **"written"** includes e-mail;
  - 1.3.3. references to any applicable laws (including to the Data Protection Laws and each of them) and to terms defined in such applicable laws shall be replaced with or incorporate (as the case may be) references to any applicable laws replacing, amending, extending, re-enacting or consolidating such applicable law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such applicable laws, once in force and applicable; and a reference to a law includes all subordinate legislation made under that law; and
  - 1.3.4. a time shall be GMT or BST (as applicable).
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- 1.4. Clause and Schedule headings do not affect the interpretation of this Agreement.

## 2. Licence

- 2.1. In relation to the Site and as part of the Subscription Services the Supplier hereby grants to the Customer a non-exclusive, non-transferable licence to allow End Users to access the Site for the Term provided that:
  - 2.1.1. the Customer adheres to the terms and conditions of this Agreement and procures that End Users shall adhere to the terms and conditions of this Agreement and in particular the terms of the EULA;
  - 2.1.2. the Customer shall be liable for all acts and omissions of any End User and shall indemnify the Supplier against all Losses incurred or suffered by the Supplier, or for which the Supplier may become liable, arising out of any act or omission of any End User;
  - 2.1.3. all Charges are paid on or before the due date;

- 2.1.4. access to the Site for the purpose of receiving the Subscription Services is only in accordance with the agreed access detailed in the Cover Sheet; and
- 2.1.5. the Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Site or Services and notify the Supplier promptly of any such unauthorised access or use.

### **3. The Services**

- 3.1. The Supplier shall use commercially reasonable endeavours to make the Services available in accordance with the Service Levels and the Specification.
- 3.2. The Supplier shall use commercially reasonable endeavours to make the Services available from the Services Commencement Date in accordance with the Service Levels and the Specification.
- 3.3. If the Supplier breaches any of the Services Levels the Customer shall be entitled to the Service Credits.
- 3.4. Service Credits shall be the Customers sole and exclusive remedy for breach of the Service Levels.
- 3.5. The Services may be unavailable in the following circumstances:
  - 3.5.1. As a result of scheduled maintenance being undertaken on the Site. The Supplier shall provide the Customer with reasonable notice of such maintenance; and
  - 3.5.2. As a result of emergency maintenance at any time to preserve the security and reliable operation of the Site and Subscription Services.
- 3.6. The Supplier shall not be liable for the Site being unavailable as a result of the circumstances under Clause 3.5
- 3.7. The Customer assumes all risk for selection and use of the Site and Services.

### **4. Customer Obligations**

4.1. The Customer shall:

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- 4.1.1. provide the Supplier with all necessary co-operation and access to such information, documentation and data as may reasonably be required by the Supplier in order to provide the Services;
  - 4.1.2. be responsible for obtaining any necessary import licences, permits, notifications or certifications necessary for the use of the Services. The Customer shall be responsible for any customs duties, clearance charges, taxes and other amounts payable;
  - 4.1.3. comply with all applicable laws and regulations (as updated and amended from time to time,) and maintain all necessary licences, permits, authorisations and consents in connection with this Agreement and its use of the Services;
  - 4.1.4. carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner;
  - 4.1.5. promptly perform all its obligations set out in this Agreement;
  - 4.1.6. appoint the Customer Representative for the Term to serve as primary contact with the Supplier;
  - 4.1.7. promptly notify the Supplier of any demonstrable failure by the Supplier to deliver the Services in accordance with the Service Levels;
  - 4.1.8. not make any representation, warranty, guarantee or other commitment or statement relating to the Services (including in relation or connected to features, specifications and capabilities) other than those expressly set out in this Agreement or as agreed in writing between the parties from time to time; and
  - 4.1.9. If the Customer becomes aware that an End User's use of the Site or Services breaches the EULA, the Customer shall:
    - 4.1.9.1. *remove the relevant offensive or infringing User Content; and/or*
    - 4.1.9.2. *suspend the relevant End-User Account and that End-User's access to the Site and Services.*

for so long as the relevant breach remains unremedied, without liability or prejudice to its other rights and without prior notice to the Customer or the relevant End-User.

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4.2. In relation to the End Users, the Customer undertakes that:

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- 4.2.1. the named End Users are employees or contractors of the Customer;
  - 4.2.2. each End User shall keep a secure password for his/her use of the Services, that such password shall be changed no less frequently than monthly and that each End User shall keep his password confidential;
  - 4.2.3. it shall permit the Supplier to audit the Services in order to establish the name and password of each End User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - 4.2.4. if any of the audits referred to in Clause 4.2.3 reveal that any password has been provided to any individual who is not an End User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
  - 4.2.5. if any of the audits referred to in Clause 4.2.3 reveal that the Customer has underpaid Charges to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with this Agreement within [10] Working Days of the date of the relevant audit.

4.3. The Supplier shall not be held liable for any breach of this Agreement to the extent that such breach is caused by the Customer's breach of this Clause 4.

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## 5. Charging and invoicing

- 5.1. The Customer shall pay the Charges to the Supplier in accordance with this Clause 5.
- 5.2. The Customer shall provide the Supplier with the latest available total number of patients registered with the practice, ahead of every quarter that will be used for the quarterly invoice; in the absence of the Customer supplying this number, the Supplier retains

the right to source the information from the publically available site : <https://digital.nhs.uk/data-and-information/data-tools-and-services/data-services/general-practice-data-hub/patients-registered-at-a-gp-practice>

- 5.3. Subject to Clause 14, the Customer shall make payment of each invoice within 30 days of the date of the invoice.
- 5.4. All fees, charges and other payments to be made by the Customer are exclusive of VAT and all other relevant taxes, for which the Customer shall be responsible.
- 5.5. All Charges shall be paid in the currency stated in the Cover Sheet. If no currency is detailed then all Charges shall be paid in pound sterling (£/GBP).
- 5.6. The Supplier can increase the Charges to a maximum of 30% compared to the previous payment term:
  - 5.6.1. to reflect any increase in costs of third party software on giving not less than 30 days prior written notice to the Customer; and
  - 5.6.2. after the Initial Term on 30 days written notice to the Customer. If the Customer does not accept the price increase they can terminate the Agreement by giving the Supplier 14 days written notice, such notice to be issued before the end of the 30 day notice period of the increase in Charges.
- 5.7. The Charges are to be paid by the Customer in full and the Customer is not entitled by reason of set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to the Supplier.
- 5.8. If any sum is not paid on or before the due date under this Agreement, the Customer shall pay the Supplier interest on the outstanding amount until payment is received in full and cleared funds at a rate equal to 4% above the Bank of England base rate from time to time in force, whether before or after judgement until the date actual payment is received. Such interest shall be compounded monthly.
- 5.9. If the Customer wishes to dispute an invoice, the basis of that dispute together with any supporting evidence must be sent to the Supplier in writing within 10 Working Days of the date of invoice. The parties shall work together in good faith to resolve such dispute. In the event that the parties are unable to resolve the

dispute then the provisions of Clause 19 shall apply.

## 6. Change

- 6.1. Save pursuant to Clause 6.2 and Clause 5.4, all Changes shall be subject to agreement in writing signed by the parties.
- 6.2. Provided that such changes do not adversely affect the functionality of the Services, the Supplier shall be entitled to make changes to the Services and Site from time to time.
- 6.3. In addition to its rights under Clause 6.2 the Supplier shall be entitled to make changes to the Services from time to time for the purpose of:
  - 6.3.1. maintaining the security and/or performance and/or availability of the Site and/or Services; or
  - 6.3.2. complying with all applicable laws, statute, regulation, order, regulatory policy, guidance or industry code in any jurisdiction.
- 6.4. Any changes implemented in accordance with Clause 6.3 shall be notified to the Customer as soon as reasonably practicable. If the Customer does not accept the change they shall be entitled to terminate the Agreement on 14 days' notice provided such notice is issued within 30 days from the date the Customer is notified on the proposed change.

## 7. Audit

- 7.1. Subject to being given at least five Working Days prior written notice (or if the Supplier reasonably believes, in its sole discretion, that the Customer may have breached a term of this Agreement or if required by applicable law or a regulator such shorter notice as is reasonable), the Customer shall permit the Supplier and its authorised independent auditors to have reasonable access during normal business hours to



copies of relevant documents, data and information (each as are relevant in the circumstances) for the sole purpose of ensuring that the Customer and its End Users are complying with this Agreement including the EULA.

- 7.2. Unless the Supplier reasonably believes, in its sole discretion, that the Customer may have breached a term of this Agreement or if required by applicable law or a regulator, the Supplier shall not conduct an audit more than once in any twelve (12) month period.
- 7.3. The Supplier shall, when conducting an audit ensure that all of its employees, agents and advisers are under a duty of confidence in relation to any information disclosed or made available to them for the purpose of such audit.

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## 8. Intellectual property rights

- 8.1. All Intellectual Property Rights in the Customer Materials and Customer Marks are, and shall remain, the property of the Customer. The Supplier acknowledges and accepts that it acquires no rights in or to Customer Materials other than those expressly granted by this Agreement.
- 8.2. All Intellectual Property Rights in the Site, Services, Supplier Materials and all other Intellectual Property Rights arising out of the performance of the Supplier's obligations under this Agreement ("**Supplier IPRs**") are, and shall remain, the property of the Supplier or its licensors. The Customer acquires no rights in or to such Supplier IPRs other than those rights expressly granted by this Agreement.
- 8.3. The Customer shall at the request and expense of the Supplier do, and shall use all reasonable endeavours to procure that any necessary third party shall do, all necessary acts and execute all documents that the Supplier may reasonably request to perfect the right, title and interest of the Supplier in the Supplier IPRs.
- 8.4. The Customer shall promptly report to the Supplier any infringement of the Supplier IPRs that comes to its attention. Without prejudice to the generality of the foregoing, the Customer shall ensure that each End User, prior to use of the Services and the Supplier Materials, is made aware that the Services and the

Supplier Materials are proprietary to the Supplier.

- 8.5. Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this Agreement shall prevent or restrict the Supplier from exploiting and or licensing any of the Supplier IPRs to any third party.

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## 9. Licence to use Customer trade marks and materials

- 9.1. The Customer hereby grants the Supplier with a non-exclusive, worldwide, royalty free, non-transferable and sub licensable licence during the Term to use:

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- 9.1.1. the Customer Materials solely and to the extent necessary to provide the Services; and
- 9.1.2. the Customer Marks on the Site.

- 9.2. The parties acknowledge that the Supplier is entitled to use any User Content under any separate terms agreed directly with the End User.

## 10. Data protection

- 10.1. Each party shall:

- 10.1.1. at all times during the term of this Agreement, comply with the applicable Data Protection Laws; and
- 10.1.2. to the extent applicable under the Data Protection Laws, obtain and maintain all appropriate registrations required in order to allow that party to perform its obligations under this agreement.

- 10.2. In this Clause 10 the terms "personal data", "process" and "processor" shall have the meanings given in the applicable Data Protection Legislation. In relation to all personal data provided or made available to the

Supplier by or on behalf of the Customer, to the extent that the Supplier is the data processor of such personal data, the Supplier shall:

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- 10.2.1. from the GDPR Date process the Customer Data in accordance with the applicable Data Protection Laws;
  - 10.2.2. unless required to do otherwise by applicable laws, only process the Personal Data in accordance with the Customer's instructions;
  - 10.2.3. taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
  - 10.2.4. be allowed to authorise a third party to process the Personal Data;
  - 10.2.5. not engage, from the GDPR Date, any new sub-processors for carrying out any processing activities in respect of the Customer Data without the Customer's authorisation (such authorisation not to be unreasonably, withheld, conditioned or delayed);
  - 10.2.6. not, without the prior written consent of the Customer, transfer any such personal data to a country or territory outside the European Economic Area unless adequate contractual or other assurances have first been put in place such as will enable each party to comply with the requirements of the Data Protection Laws;
  - 10.2.7. take reasonable steps to ensure the reliability of its personnel who have access to any such personal data and ensure that such personal data shall only be accessible by its personnel to the extent they need to know or require access for the purpose of properly performing their duties in relation to this Agreement and who, are contractually bound to maintain its confidentiality;
  - 10.2.8. from the GDPR Date shall not engage any sub-processor for carrying out any processing activities in relation to this Agreement without the prior written consent of the Customer and then only on the basis of a written contract between the Supplier and the sub-processor which imposes on the sub-processor terms no less onerous than the provisions of this Clause 10 the Supplier shall be directly liable to the Customer for any breach of the same;
  - 10.2.9. notify the Customer without undue delay of any breach of the provisions of this Clause 10 and provide reasonable assistance to the Customer in respect of any such breach;
  - 10.2.10. subject to paying the Supplier's reasonable costs (unless prohibited by applicable law), provide such cooperation and assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) in ensuring compliance with:

10.2.10.1. *the Customer's obligations to respond to any complaint or request from any applicable data protection authority or data subjects seeking to exercise their rights under any Data Protection Laws, including by promptly notifying the Customer of each subject access request the Supplier receives;*

10.2.10.2. *from the GDPR Date, the Customer's obligations set out under Articles 32 – 36 of the GDPR to:*

10.2.10.2.1. ensure the security of the processing;

10.2.10.2.2. notify the relevant supervisory authority and any data subjects, where relevant, of any personal data breach;

10.2.10.2.3. carry out any data protection impact assessments ("DPIA") on the impact of the processing on the protection of personal data; and

10.2.10.2.4. consult the relevant supervisory authority prior to any processing where a DPIA indicates that the processing would result in a high risk in the absence of measures taken by the Customer to mitigate the risk.

10.3. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to process Personal Data (for the avoidance of doubt this includes ensuring appropriate privacy notices are in place and ensuring that Personal Data is processed accordingly). Consequently, the Supplier will not be liable for any claim brought by a Data Subject or a relevant regulatory authority and the Customer shall indemnify and keep indemnified the Supplier against all Losses arising out of or in connection with any such claim whatsoever by a Data Subject or relevant regulatory authority.

10.4. The Customer warrants, represents and undertakes, that all:

10.4.1. Customer Data provided by the Customer to the Supplier for use in conjunction with the Services shall comply in all respects, including in terms of its collection, storage and processing, with Data Protection Laws; and

10.4.2. instructions given by it to the Supplier in respect of Customer Data shall at all times be in accordance with Data Protection Laws.

- 10.5. The Customer shall procure that the End Users consent to the Supplier holding and processing data relating to him/her for the purposes of carrying out the Services and any other legal, administrative and management purposes.
- 10.6. The Supplier shall inform the Customer without undue delay if the Supplier believes that a processing instruction infringes Data Protection Laws, provided that:

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10.6.1. to the maximum extent permitted by mandatory law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any Losses arising from or in connection with any processing in accordance with the Customer's unlawful processing instructions; and

10.6.2. this Clause 10.5 shall only apply from the GDPR Date;

- 10.7. The Customer shall indemnify and keep indemnified the Supplier in respect of all Losses suffered or incurred by, awarded against or agreed to be paid by, the Supplier and any sub-processor arising from or in connection with any:

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10.7.1. non-compliance by the Customer with the Data Protection Laws;

10.7.2. processing carried out by the Supplier or any sub-processor pursuant to any unlawful processing instruction that infringes any Data Protection Law; or

10.7.3. breach by the Customer of any of its obligations under this Clause 10.

- 10.8. If a party receives a compensation claim from a person relating to processing of Personal Data received from the other party, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

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10.8.1. make no admission of liability nor agree to any settlement or

compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

- 10.8.2. consult fully with the other party in relation to any such action[, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible for paying the compensation.

- 10.9. The parties agree that the Customer shall not be entitled to claim back from the Supplier any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify the Supplier in accordance with Clause 25.7.

- 10.10. This Clause 10 is intended to apply to the allocation of liability for data protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

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- 10.10.1. to the extent not permitted by applicable law (including Data Protection Laws); and

- 10.10.2. that it does not affect the liability of either party to any Data Subject.

## 11. Confidentiality

- 11.1. Each party shall keep the other party's Confidential Information confidential and shall not:

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- 11.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or

- 11.1.2. disclose such Confidential Information (in whole or in part) to any third party, except as expressly permitted by this Clause 11.

- 11.2. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
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- 11.2.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 11.2.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause.

11.3. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that (to the extent it is legally permitted to do so), it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.4. On termination of this Agreement, each party shall on request from the other party:

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- 11.4.1. return to the other party or destroy all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - 11.4.2. erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - 11.4.3. certify in writing to the other party that it has complied with the requirements of this Clause,

provided that the Recipient may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by Applicable Law or applicable governmental or regulatory authority. The provisions of this Clause shall continue to apply to any such documents and materials retained by the Recipient.

11.5. Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

## 12. Publicity

12.1. The Supplier shall be entitled to use the Customer's name, the fact that they work with the Customer and

what Services they provide to the Customer in its marketing and promotional material (whether digital or paper format). Any additional information including case studies or press releases must have the Customer's prior written consent).

- 12.2. The Customer commits to working with the Supplier during the course of the initial term to assess the Service's clinical and economic benefits in the Primary Care setting. Any associated case studies and research publications can be used by both parties in their respective marketing and promotional material.

### 13. Warranties

- 13.1. The Supplier warrants and represents to the Customer that:

- 
- 13.1.1. it owns or has obtained all necessary rights or licences (as applicable) in and to the Site necessary to grant access to the Site to receive the Subscription Services as set out in this Agreement; and
  - 13.1.2. the Customer's use of the Site in accordance with this Agreement does not infringe the Intellectual Property Rights of any third party.

- 13.2. The sole remedies for breach of the warranties in Clause 13.1 is set out in Clause 15.

- 13.3. The warranties set out in Clause 13.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement and the Services. Without limitation, the Supplier specifically denies any implied or express representation that the Site will operate:

- 
- 13.3.1. in conjunction with any hardware items, software (including operating systems), any third party services; or
  - 13.3.2. uninterrupted or error-free.



13.4. The Customer warrants and represents to the Supplier that:

- 
- 13.4.1. it owns or has obtained all necessary rights or licenses (as applicable) in and to the Customer Materials and Customer Marks necessary to perform its obligations and grant the licenses set out in this Agreement;
  - 13.4.2. the Supplier's use of the Customer Materials and Customer Marks in accordance with this Agreement does not infringe the Intellectual Property Rights of any third party;
  - 13.4.3. it will use the Services and Site only in accordance with this Agreement; and
  - 13.4.4. it is not and will not be a Restricted Person and does not at any time act on behalf of a Restricted Person and it will procure that, so far as it is aware, each End User is not at any time a Restricted Person and does not at any time act on behalf of a Restricted Person.

13.5. Each party warrants that it has full capacity and authority to enter into this Agreement and that those signing this Agreement are duly authorised to bind the party for whom they sign.

## 14. Anti-Bribery

14.1. Both parties shall:

- 14.1.1. comply with all applicable laws, statutes relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("Relevant Requirements");
- 14.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 14.1.3. have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and shall enforce them where appropriate;
- 14.1.4. promptly report to the other party any request or demand for any

undue financial or other advantage of any kind received by it in connection with the performance of this Agreement; and

- 14.1.5. immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party and/or acquires a direct or indirect interest in its company (and the parties warrant and represent that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of this Agreement).

## 15. Indemnities

- 15.1. Subject to Clause 15.3, the Supplier agrees to defend Customer against any third party claim that Customer's use of the Services or Site in accordance with this Agreement directly infringes a third party's copyright or issued patent or directly misappropriates a trade secret (but only to the extent such misappropriation is not a result of Customer's actions) and shall indemnify, defend and hold harmless Customer from the resulting costs and damages finally awarded against the Customer to such third party by a court of competent jurisdiction.
  - 15.2. Subject to Clause 15.3, the Customer shall indemnify and keep indemnified the Supplier against all Losses suffered or incurred by the Supplier arising out of or in connection with :
    - 15.2.1. any claim made against the Supplier alleging infringement of a third party's Intellectual Property Rights arising out of the Supplier's use of Customer Materials or Customer Marks save to the extent that such is a result of the Supplier's use of the Customer Materials not in accordance with this Agreement; and
    - 15.2.2. the Customer (or its End Users) use of the Site or Services.
  - 15.3. If any third party makes a claim, or notifies an intention to make a claim against the indemnified party, which may reasonably be considered likely to give rise to a liability under Clause 15.1 or Clause 15.2 (as applicable) ("**Indemnity Claim**"), the indemnified party shall:
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- 15.3.1. immediately give written notice of the Indemnity Claim to the indemnifying party, specifying the nature of the Indemnity Claim in reasonable detail;
  - 15.3.2. not make any admission of liability, agreement or compromise in relation to the Indemnity Claim; and
  - 15.3.3. allow the indemnifying party to conduct all negotiations and proceedings and will provide the indemnifying party with such reasonable assistance, documents, records and information as required by the indemnifying party regarding the Indemnity Claim.
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15.4. If an Indemnity Claim is made (or the indemnifying party reasonably anticipates an Indemnity Claim is reasonably likely to be made) the indemnifying party may, if applicable, either:

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- 15.4.1. procure for the indemnified party the right to continue using the relevant item which is subject to the Indemnity Claim; and/or
  - 15.4.2. replace or modify the relevant item with non-infringing substitutes.
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15.5. Nothing in this Clause shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this Clause 15.

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## **16. Limitation of liability**

- 16.1. This Clause 16 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its Representatives and including any settlements) to the Customer and its End Users in respect of any breach of this Agreement, any representation statement or tortious act or omissions (including negligence) arising under or in connection with this Agreement or any other liability to the other party whatsoever.

- 16.2. Nothing in this Agreement limits or excludes the liability of either party for:
- 

- 16.2.1. death or personal injury resulting from negligence;
  - 16.2.2. any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or
  - 16.2.3. any other liability which is incapable of being excluded or limited by law.
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- 16.3. Subject to Clause 16.2, the Supplier's total aggregate liability of all other Losses whether arising from contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) shall in no event exceed the lower of
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- 16.3.1. the aggregate amount paid by the Customer to the Supplier in the 12 months preceding a claim; or
- 16.3.2. £1,000

- 16.4. Subject to Clause 16.2 except where expressly stated in this Agreement the Supplier shall not have any liability to the Customer (howsoever arising, including any liability in tort) under or in connection with this Agreement for any:
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- 16.4.1. loss of profits or anticipated savings;
- 16.4.2. loss of revenue;

- 16.4.3. loss or damage to reputation or goodwill;
- 16.4.4. loss of opportunity;
- 16.4.5. any loss or corruption of data or information,

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and in each case whether direct, indirect, special and/or consequential loss or damage; or

- 16.4.6. for any other indirect, special and/or consequential loss or damage.

- 16.5. The Customer acknowledges and accepts that:
- 16.6. the Services are directed for use by healthcare professionals, and students in healthcare, and not lay users;
- 16.7. the Services provide reference information to help train or enable a healthcare professional to make a clinical decision. As a healthcare professional the Customer and its End Users will ultimately rely at all times on their own knowledge to make a clinical decision; and
- 16.8. if used in a clinical setting, the Services are intended as a general resource, to make general recommendations and suggestions and are not adapted for the Customer and its End Users to input any specific patient related data and the Customer and its End Users will not input any such data.
- 16.9. The Customer acknowledges and accepts that the Services are subject to the limitations and issues inherent in the use of the internet (including denial of service attacks (whether direct or indirect)) and telephony connections and the Supplier is not responsible for and shall not be liable to the Customer for breach of this Agreement due to any problems or other damages resulting from such limitations or issues or fault with the Public Network or any faults within their own systems or software or that provided by third parties.

## **17. Commencement and duration**

- 17.1. This Agreement shall commence on the Commencement Date and continue for the Initial Term (unless terminated earlier in accordance with Clause 18). The Agreement shall automatically extend for the period of the Extended Term at the end of the Initial Term and at the end of each Extended Term thereafter, unless either party gives written notice to the other party, not later than three months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 17.2. The Customer may terminate this Agreement by giving 14 days written notice within 6 months of the Commencement date.
- 17.3. Without prejudice to any rights or remedies that have accrued under this Agreement, either party may at any time terminate this Agreement (or any part thereof) with immediate effect by giving written notice to the other party if:

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- 17.3.1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 60 Working Days after being notified in writing to do so; or
  - 17.3.2. is dissolved, becomes insolvent, fails or is unable or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgement of insolvency; has a resolution passed for its winding up or liquidation; seeks or becomes the subject of the appointment of an administrative receiver or similar official in respect of its assets or enters into any arrangement or composition with its creditors.

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- 17.4. Without prejudice to any rights or remedies that have accrued under this Agreement, the Supplier may at any time terminate or suspend this Agreement, in whole or in part:
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17.4.1. with immediate effect by giving written notice to the Customer if:

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- 17.4.1.1. *the Customer is in breach of any Applicable Law;*
  - 17.4.1.2. *any amount due under this Agreement is outstanding for 30 Working Days following the applicable due date to make such payment;*
  - 17.4.1.3. *in the Supplier's reasonable opinion, the security or integrity of the Site and/or Services has been, or may be, compromised or is otherwise at risk; OR*
  - 17.4.1.4. *required by a regulatory authority.*

17.5. Clauses 8, 11, 15, 16, 19, 22, 24, 25, 27 and 29 shall survive expiry or termination of this Agreement.

17.6. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

17.7. On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any services that it has supplied or work completed, but for which no invoice has been submitted, and the Customer shall pay these invoices in accordance with Clause 5.2.

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## 18. Dispute resolution

18.1. Any dispute that may arise between the parties concerning the Agreement, including any question regarding its existence, validity or termination, shall be determined as provided in this Clause 19.

18.2. For the purpose of this Clause 19, a dispute shall be deemed to have arisen when one party notifies the other in writing stating that such is a dispute notice for the purposes of the Agreement and setting out the nature of the dispute ("**Dispute Notice**").

18.3. After a Dispute Notice has been issued the following procedure shall be followed by the parties (all time periods specified in this paragraph 19.3 may be

amended by mutual agreement):

- 18.3.1. within 10 Working Days of the date of the Dispute Notice, The Supplier Representative and Customer Representative shall attempt to settle the dispute; and
- 18.3.2. if the dispute cannot be resolved by the representatives within 30 Working Days from the date of the Dispute Notice, a senior manager authorised to settle the dispute of each of the parties shall meet within the following 20 Working Days to attempt to settle the dispute.

- 18.4. Nothing in this Clause 19 shall prevent either party from seeking injunctive relief at any time.

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## **19. Assignment and novation**

- 19.1. The Customer shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 19.2. The Supplier may assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement provided it gives written notice of such to the Customer as soon as reasonably practicable after such has occurred.

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## **20. Waiver**

- 20.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.

## **21. Entire agreement**



- 21.1. This Agreement (together with any non-disclosure agreement signed by the parties in respect of the subject matter of this Agreement) constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 21.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

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## **22. Variation**

- 22.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **23. Severance**

- 23.1. 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.

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## **24. Third-party rights**

- 24.1. No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

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## **25. Force majeure**

- 25.1. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.
- 25.2. If a Force Majeure Event prevents or delays the Supplier or the Customer in their respective performance of a material part of their obligations under this Agreement for a period exceeding 90 days (or such other period as may be agreed between the parties), the party not affected by the Force Majeure Event may terminate this Agreement immediately on written notice to the other. Where this is the case, the Customer shall not be obliged to pay any Charges to the extent the Supplier was unable to perform Services after the date the Force Majeure Event first occurred, and the Supplier will refund to the Customer a corresponding proportion of Charges paid in advance which relate to Services which the Supplier was unable to perform.

## 26. Notices

- 26.1. Any notice required to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by prepaid post (by airmail post if to an address outside the country of posting), or by email to the relevant party at the address set out at the beginning of this Agreement or any other address as either party notifies to the other in writing from time to time.
- 26.2. A notice shall be deemed to have been received:

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- 26.2.1. if delivered personally, at the time of delivery; or
  - 26.2.2. in the case of pre-paid first class post, three Working Days (or five Working Days if to an address outside the country of posting) from the date of posting; or
  - 26.2.3. in the case of email, at the time the sender receives a read receipt from the recipient. Notwithstanding the foregoing in the case of any

invoice sent by email, at the time the email entered the intended recipient's information systems provided that no error message indicating failure to deliver has been received by the sender.

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## **27. Counterparts**

- 27.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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## **28. Governing law and jurisdiction**

- 28.1. This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
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## Schedule 1 - Service Levels and Specification

### Service Levels

**"Severity Level 1"** means the Site is down or major malfunction resulting in an inoperative system. End Users unable to reasonably perform their normal functions. The specific functionality is mission critical to the business and the situation is considered an emergency.

**"Severity Level 2"** means critical loss of functionality or performance resulting in high number of End Users unable to perform their normal functions. Major failure; inconvenient workaround or no workaround exists. The Site is usable but severely limited.

**"Severity Level 3"** means moderate loss of functionality or performance resulting in multiple End Users impacted in their normal functions. Minor failure, convenient workaround exists/minor performance degradation/not impacting use of the Site.

**"Severity Level 4"** means minor loss of functionality, how-to questions. The issue consists of "how-to" questions including issues related to one or multiple modules and integration, installation and configuration inquiries, enhancement requests, or documentation questions.

<b>Availability</b>	<b>24x7x365 via email</b>
<b>Support Hours</b>	<b>9am-5pm weekdays.</b>
<b>Procedure For Reporting Issues</b>	Email to the Service Representatives
<b>Minimum System Requirements</b>	The Service can be accessed from all main browsers (Firefox, Safari, Chrome, IE). Any Windows, Apple, Linux browser client should be sufficiently powerful to run the Service, but a minimum 4GB memory and a modern processor (manufactured post 2010) recommended

The Supplier shall use all reasonable endeavours to fix any incidents in accordance with the response and resolution times below:

<b>Severity</b>	<b>Target Response Time</b>	<b>Target Resolution Time</b>
Severity Level 1	24 hours	3 working days
Severity Level 2	24 hours	5 working days
Severity Level 3	5 working days	90 working days

Severity Level 4	10 working days	90 working days
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## **Specification**

### **Schedule 2**

#### **End User Licence Agreement (EULA)**

##### **About our terms of use and services**

These terms of use apply to your use of our site and the services provided through our site which include accessing content and information ("**Content**") from our site (the "**Services**").

We reserve the right to change the terms of this EULA from time to time and we will notify you of such changes the next time you access the Site. These terms and conditions were last updated on 4<sup>th</sup> February 2019. Your continued access or use of this Site after such change signifies your acceptance of the updated or modified EULA.

The Services are provided by Dem DX Limited (we, us and our). We are a limited company, registered in England. Our registered company number is 09573122, and our registered office is at 7 Crane Grove, London, United Kingdom, N7 8LB. Our VAT registration number is 9573122.

We may make these Services available to you by a third party (such as your university or your employer) or you may download our app directly from a third party app store onto your mobile, tablet or other electronic device ("**App**"). You are responsible complying with any terms governing your use of the third party app store. These terms shall apply to you as an individual whether you access our site by downloading our App or otherwise through online access provided via a third party (our "**Site**").

You will be assumed to have obtained permission from the owner of any device that is controlled, but not owned, by you to download our App or any Content to that device. You accept responsibility, in accordance with this EULA, for all access to, and use of, any App and Content by you on any device, whether or not it is owned by you.

You acknowledge that the mobile service provider for the device to which you download, or on which you access or use, our App may charge for internet access (including mobile data usage) on that device.

BY DOWNLOADING OUR APP OR OTHERWISE ACCESSING AND/OR USING OUR SERVICES OR SITE, YOU CONFIRM THAT YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS AND ACKNOWLEDGE THAT THEY CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN US AND YOU. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU ARE NOT PERMITTED TO ACCESS OR USE OUR APP, SERVICES, SITE OR CONTENT AND YOU SHOULD NOT PROCEED FURTHER.

##### **Making changes to the Site**

We reserve the right to change the design, features and/or functionality of any App, the Site and the Content at any time. We will either make the updated Site available for you by downloading an updated App or, where your device settings permit it, by automatic delivery of updates. You are not obliged to download any updated App, but we may cease to provide and/or update Content to prior versions of Apps and,

depending on the nature of the update, in some circumstances you may not be able to continue using an App until you have downloaded the updated version.

### **The Services and Content**

The Services are directed for use by healthcare professionals, including students in healthcare, and not lay users.

The Services provide reference information to help train or enable a healthcare professional to make a clinical decision. As a healthcare professional you will ultimately rely at all times on your own knowledge to make a clinical decision.

If used in a clinical setting, the Services are intended as a general resource, to make general recommendations and suggestions and are not adapted for the user to input any specific patient related data and you will not input any such data.

The Services are only a tool to be used as a learning aid in conjunction with your medical training, clinical skills, experience and knowledge and in conjunction with other resources and information. The Services and Content should not be relied on for accuracy of diagnosis or to determine any form of treatment for patients. You may review Content and make on the Site in accordance with the guidelines on User Content below for personal purposes provided you do not share that Content with third parties or publish or modify it in any way other than sharing the summary page of Content in accordance with the facility on the Site. If you share the summary page you must not remove any disclaimers or copyright marks and must at all times acknowledge that the Content is owned by us.

We do not guarantee the accuracy or reliability of the Content although we do ensure the Content does come from well-regarded professionals in the medical industry. We make or give no representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, quality or fitness for purpose of any Content and, to the fullest extent permitted by law, all implied warranties, conditions or other terms of any kind are hereby excluded. To the fullest extent permitted by law, we accept no liability for any loss or damage of any kind incurred as a result of you or anyone else relying on the Content unless we have fraudulently misrepresented the Content.

We will provide the Services with reasonable skill and care.

We cannot and do not guarantee the continuous, uninterrupted or error-free operability of our App, Site or our Services.

### **Restriction on accessing our Site**

You shall not:

- distribute or transmit any virus through the Site;
- attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Site or the Content except to the extent expressly set out in this EULA or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- attempt to reverse compile, disassemble, reverse engineer or otherwise reduce

to human-perceivable form all or any part of the Site, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

- circumvent any of the technical limitations of the Site, or decompile or otherwise reconstruct the Site;
- not use the Site in a way that could damage, disable, overburden, impair or compromise the Services or the Site;
- not collect or harvest any information or data from the Site or Services or attempt to decipher any transmissions to or from the Site;
- access, monitor or copy any content or information of this Site using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;
- access all or any part of the Site in order to build a product or service which competes with the Site or Services;
- use the Site or Services to provide services to third parties or allow third parties to use the Services;
- attempt to obtain, or assist third parties in obtaining, access to the Site;
- create a database using the Content;
- infringe our intellectual property rights or those of any third party in relation to your use of the App or Service, including by the submission of any User Content (to the extent that such use is not licensed by these terms);
- copy, publish or otherwise make available to third parties any of the Content; or
- use the Content or Site for commercial purposes. The Site should only be used for your personal use and as one tool to aid and assist your learning.

In your use of the Services, you shall:

- 
- comply with all applicable laws and regulations (as updated and amended from time to time,);
  - be responsible for your use of the Services and Content including your access to the Site; and
  - comply with any rules, regulations or codes that are imposed by the third party that makes the Site available to you, such as your employer, association or university.

### **User Content**

Our Site allows you to submit user-generated content in the form of personalised notes, bookmarks to interesting pages you may want to refer back to, photos of pathologies to add to our extensive image collection ("**User Content**"). We do not control or review User Content and will not be in any way responsible or liable for such User Content. You are solely responsible for User Content as submitted by you

and you acknowledge that User Content submitted by others expresses the views of its respective authors, and not our views. User Content cannot be seen by other users of the Site unless you share it with them.

If you submit any User Content, you must not submit any User Content that:

- is racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- contains any viruses and/or other code that has contaminating or destructive elements;
- contains any personal data and if you do you shall be wholly responsible for any breach of applicable data protection legislation in doing so;
- contains private information of any third party, including, without limitation, surname (family name) addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- is unsolicited promotions, mass mailings or "spamming", transmission of "junk mail", "chain letters", political campaigning, advertising, contests, raffles, or solicitations
- is false, unlawful, misleading, libelous, defamatory;
- not impersonate, or misrepresent an affiliation with, any person or entity.

You agree that, by submitting any User Content, you grant us and our affiliates a perpetual, worldwide, non-exclusive, royalty-free and fully sub-licensable right and licence to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content (in whole or part) and/or to incorporate it in other works in any form, media or technology, and you waive any moral rights you may have in, or to be identified as the author, of such User Content. However please note that if User Content contains any personal data we will only use this in accordance with our Privacy Policy.

Whilst we do not pre-screen User Content, we reserve the right, in our sole discretion, to delete, edit or modify any User Content submitted by you and/or to close any discussion topic, at any time without notice to you.

### **Your use of the Site**

As a condition of your use of the Site, you warrant that (i) all User Content supplied by you on the Site is true, accurate, current and complete, (ii) if you have user log in details, you will safeguard your account information and will supervise and be completely responsible for any use of your account by anyone other than you, (iii) you are 18 years of age or older and (iv) you possess the legal authority to enter into this EULA and to use this Site in accordance with all the terms and conditions herein.



### **Intellectual Property Rights**

All intellectual property rights in the Site, Services and Content (including text, graphics, software, photographs and other images, videos, sound, trade marks and logos), are owned by us or our licensors. Except as expressly set out here, nothing in this EULA gives you any rights in respect of any intellectual property owned by us or our licensors and you acknowledge that you do not acquire any ownership rights by downloading any App or Content or accessing our Site.

We grant you a limited and personal license to use our Services and Content via the Site in accordance with this EULA.

You agree not to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or re-sell any information, software, products, or services obtained from or through this Site, including the Content.

### **Termination of this EULA**

We may end your rights to use the Site and Services at any time by contacting you if you have broken these terms in a serious way.

If we end your rights to use the Site and Services:

- You must stop all activities authorised by these terms, including your use of the Site and any Services.
- You must delete or remove the App from all devices in your possession and immediately destroy all copies of the App or your access details which you have and confirm to us that you have done this.
- We may remotely access your devices and remove the App from them or deactivate your account and cease providing you with access to the Services.

### **Your personal information**

Use of your personal information submitted to us (whether via our App, Site or provided by a third party on your behalf) is governed by our [Privacy and Cookies Policy](https://demdx.com/privacy/) <https://demdx.com/privacy/> Additionally, by using our Site, you acknowledge that internet transmissions are never completely private or secure and that it is always possible that any message or information you send using our Site or by emailing us may be read or intercepted by others.

### **External links**

Our Site may, from time to time, include links to external sites, which may include links to third party offers and promotions. We include these to provide you with access to information, products or services that you may find useful or interesting. We do not control these sites and are not responsible for the content of these sites or for anything provided by them and do not guarantee that they will be continuously available. The fact that we include links to such external sites does not imply any endorsement of, or association with their operators or promoters.

### **Our liability**

Nothing in this EULA shall limit or exclude our liability to you:

- for death or personal injury caused by our negligence;

- for fraudulent misrepresentation;
- for breach of any term implied by the Consumer Rights Act 2015 and which, by law, may not be limited or excluded; or
- for any other liability that, by law, may not be limited or excluded.

We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking these terms or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these terms, both we and you knew it might happen.

This Site, Services and Content are only available for your personal use and in no event shall we be liable to you for any business losses, or for any loss of profit, revenue, contracts, data, goodwill or other similar losses.

If defective digital content that we have supplied damages a device or digital content belonging to you, we will either repair the damage or pay you reasonable compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

Any liability we do have for losses you suffer is strictly limited to losses that were reasonably foreseeable and shall not, in aggregate, exceed the higher of £100 or the Fees paid by you to us in the 12 months preceding a claim.

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations that is caused by events outside our reasonable control. We recommend that you back up any content and data used in connection with the App, to protect yourself in case of problems with the App or the Service

## **General**

You may not transfer or assign any or all of your rights or obligations under this EULA.

All notices given by you to us must be given in writing to the address set out at the beginning of this EULA.

If we fail to enforce any of our rights, that does not result in a waiver of that right.

If any provision of this EULA is found to be unenforceable, all other provisions shall remain unaffected.

These terms and conditions may not be varied except with our express written consent.

These terms and conditions and any document expressly referred to in them represent the entire agreement between you and us in relation to their subject matter. We are required by law to advise you that any contract formed on the terms of this EULA may be concluded in the English language only and that no public filing requirements apply.

This EULA does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **Jurisdiction and governing law**

These terms and conditions shall be governed by English law, and you agree that any dispute between you and us regarding them or any Application will only be dealt with by the English courts, provided that, if you live in a part of the United Kingdom other than England or outside the United Kingdom, the applicable law of that part of the United Kingdom or the applicable country or state in which you live will govern and any dispute will only be dealt with by the courts there. Nothing shall prevent us from bringing proceedings to protect our intellectual property rights before any competent court.

**Contacting us, support and complaints**

If you have any questions, require support in respect of your use of the Site and Services or if you think the Site or Services are faulty or mis-described, please contact us by emailing: [info@demdx.com](mailto:info@demdx.com).