

Dated

[ INSERT DATE ]

LENUS HEALTH LTD

&

[ INSERT CUSTOMER NAME ]

---

LICENCE AGREEMENT  
RELATING TO LENUS  
HEALTH PLATFORM AND  
RELATED SERVICE  
APPLICATIONS

## Contents

	<b>Clause</b>	<b>Page</b>
1	Definitions and Interpretation .....	1
2	Appointment .....	7
3	Duration .....	8
4	Services.....	8
5	Integration assistance .....	9
6	Training services .....	9
7	Project Plan .....	10
8	Licence .....	10
9	Development requirements .....	11
10	Delivery and Installation of Software .....	11
11	Milestones and Delays .....	11
12	Customer Dependencies .....	12
13	Customer policy compliance .....	12
14	Change .....	12
15	Non-solicitation.....	13
16	Contract management.....	13
17	Sub-contracting .....	13
18	Force majeure .....	13
19	Charges.....	13
20	Payment .....	14
21	Set-off.....	14
22	Tax .....	14
23	Intellectual Property Rights .....	14
24	Third Party Software.....	14
25	Intellectual Property Rights indemnity .....	15
26	Confidentiality.....	16
27	Announcements .....	17
28	Data protection .....	17
29	Termination .....	18
30	Consequences of expiry or termination.....	18
31	Warranties .....	19
32	Limitations on liability .....	19
33	Assignment.....	20
34	Rights of third parties .....	20
35	Entire Agreement .....	20
36	Notices .....	20
37	Dispute resolution.....	21
38	Further assurance .....	22
39	Relationship.....	22
40	Costs .....	23
41	Severance .....	23
42	Waiver .....	23
43	Counterparts and delivery .....	23
44	Governing law .....	24
45	Jurisdiction .....	24
	 Schedule 1	
	Software and Documentation .....	25

Schedule 2  
Project Plan .....26

Schedule 3  
Software Acceptance .....27

Schedule 4  
Support Services .....29

Schedule 5  
Applicable Customer Policies .....32

Schedule 6  
Change Control Procedure.....33

Schedule 7  
Customer dependencies .....37

Schedule 8  
Contract management.....38

This Agreement is made on

[ INSERT DATE ]

## Between

- (1) Lenus Health Ltd, a company incorporated in Scotland under number SC652563 whose registered office is at Leith Assembly Rooms, 43 Constitution Street, Edinburgh EH6 7BG (**Supplier**); and
- (2) [ Insert customer name, incorporation details and address ] (**Customer**)

(each of the **Supplier** and the **Customer** being a party and together the **Supplier** and the **Customer** are the parties).

## Whereas

- (A) The Customer wishes to be able to use the Supplier's Lenus Healthcare Platform (the **Platform**) and the Service Applications, and to procure integration, support and training services related to the Platform and the Service Applications.
- (B) The Customer has agreed to procure the Services from the Supplier and the Supplier has agreed to provide the Services to the Customer on the terms and conditions of this Agreement.

## It is agreed

### 1 Definitions and Interpretation

1.1 In this Agreement the following terms have the following meanings:

**Acceptance** means that the Customer confirms in writing that the Software has passed or is deemed to have passed the relevant Acceptance Tests, and **Accept** shall be construed accordingly;

**Acceptance Criteria** means the criteria to be satisfied to demonstrate that the Acceptance Tests have been successfully completed as determined pursuant to Schedule 3 (Software Acceptance);

**Acceptance Tests** means the various tests to ensure the Software complies with the relevant Acceptance Criteria applicable to such test, each of which are to be conducted by [the Customer] in accordance with Schedule 3 (Software Acceptance);

**Achieve** means achieve a Milestone and **Achieved** and **Achievement** shall be construed accordingly;

**Applicable Customer Policies** means the policies and procedures of the Customer described in Schedule 5 (Applicable Customer Policies) including changes and additions identified under clause 13.2 (Customer policy compliance);

**Applicable Law** means the laws of Scotland and any other laws or regulations, regulatory policies, statutes or industry codes which have mandatory effect and apply to the provision of the Services from time to time;

**Background IPR** means Intellectual Property Rights that belong to or are licensed to a party prior to the Commencement Date and/or that are generated or acquired by that party after the Commencement Date but excluding any Customisations;

**Business Day** means any day which is not a Saturday, Sunday or a public or bank holiday in Scotland;

**Business Hours** means the hours of 09.00–17.00 on any Business Day;

**Change** means any variation to the Services and/or to the terms of this Agreement;

**Change Control Procedure** means the procedure set out in Schedule 6 (Change Control Procedure);

**Charges** means the charges for the Services to be provided after expiry of the Initial Term;

**Commencement Date** means [insert date];

**Confidential Information** means any and all confidential information in whatever form (whether written, oral, visual, electronic, magnetic or other media), however conveyed or presented, disclosed by a party or its Related Persons to the other party and/or its Related Persons concerning the business, affairs, operations, customers, prospective customers, processes, budgets, pricing policies, products, strategies, opportunities, developments, trade secrets, know-how, designs, software, personnel and suppliers of the disclosing party or any member of the disclosing party's Group together with all information derived by the other party from any such information and any other information which ought reasonably be considered to be confidential or proprietary having regard to the nature of the information and the circumstances of the disclosure (whether or not it is marked 'confidential') including information relating to any patients of the Customer and their related health or medical records;

**Contract Managers** means the Customer's Contract Manager and the Supplier's Contract Manager;

**Contract Year** means a period of [insert number] months commencing on the Commencement Date or an anniversary of the Commencement Date;

**Customer Contract Manager** means the Customer's representative appointed in accordance with the provisions of Schedule 8 (Contract Management);

**Customer Dependency** means an activity set out or referred to in this Agreement (including in the Project Plan) to be performed by the Customer on which the Supplier's attainment of a Service Level, Achievement of a Milestone and/or performance of its other obligations under this Agreement may depend including those activities set out in Schedule 7 (Customer Dependencies);

**Customer Dependency Failure** means a failure by the Customer to fulfil a Customer Dependency except where such failure is due to an act or omission by the Supplier and/or the Supplier Personnel;

**Customer Environment** means any networks and network devices, servers, server hardware, storage systems, computer systems, file systems, print systems, applications, software or software components, database management systems and related systems, used by the Customer or its Group from time to time with which the Software shall connect, exchange data, interface or otherwise interoperate or communicate;

**Customer Procured Third Party Software** means Third Party Software licensed to the Customer which is to be integrated into the Platform;

**Customer's Premises** means the premises of the Customer;

**Customisations** means the software customisations referenced in Schedule 1 (Software and Documentation) and associated Documentation, each as more particularly described in the Technical Specification;

**Data Controller** has the meaning given to "Controller" under the Data Protection Act 2018.

**Data Privacy Laws** means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals and all laws implementing them, in each case as may be replaced, extended or amended, including, without limitation, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**Data Processor** has the meaning given to "Processor" under the Data Protection Act 2018.

**Defect** means:

- (a) any error or failure of code within the Software which causes the Software to produce unintelligible or incorrect results; or
- (b) any failure to provide the performance features and functionality specified in the Technical Specification and the Documentation;

**Deliverable** means any information, data, drawings, documents, reports, designs, diagrams, plans and manuals, models, tools, Software which are delivered or to be delivered by the Supplier under this Agreement;

**Delivery** means the delivery (by whatever means) of the Software (or any Fix or Upgrade to the Software) and the Documentation to the Customer, and **Deliver** shall be construed accordingly;

**Deployment Services** has the meaning given in clause 4.1 (a);

**Development Services** means the development of the Customisations in accordance with clause 9 (Development requirements) and the other provisions of this Agreement;

**Dispute** means any dispute, disagreement or claim arising out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes and claims);

**Dispute Resolution Procedure** means the Dispute resolution procedure in clause 37 (Dispute resolution);

**Documentation** means any of the materials set out in Schedule 1 (Software and Documentation) and all designs, technical literature and other documentation which the Supplier is required to deliver to the Customer under this Agreement;

**Fix** means resolving a Defect so that the Software performs in accordance with the Technical Specification and the Documentation, or providing a work around for a Defect pending the release of an Upgrade which resolves the Defect;

**Force Majeure Event** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement other than the Customer's obligation to pay amounts due under this Agreement;

**Technical Specification** means the technical specification of the Software set out in Schedule 1 (Software and Documentation);

**Group** means in relation to any company, that company and every other company which is from time to time a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms **subsidiary** and **holding company** shall have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 but for the purposes of section 1159(1) a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company);

**Infrastructure Specification** means the specification of the hardware and infrastructure on which the Software will be installed and operate set out in Schedule 1 (Software and Documentation);

**Initial Term** has the meaning given to it in clause 3.1(Duration);

**Installation** means installing the Software in the Customer Environment at the Installation Sites, as the context so requires, and **Installing** and **Install** shall be construed accordingly;

**Installation Site** means the Customer's Premises as set out in the Project Plan and/or such other sites as the Customer shall from time to time agree in writing with the Supplier;

**Intellectual Property Rights** means any of the following rights existing in any part of the world: all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, rights in designs, semiconductor topography rights, trade and service marks, rights in get-up and trade dress, trade names, logos, goodwill and the right to sue for passing off or unfair competition, domain name registrations, database rights and rights in Confidential Information and all other intellectual property rights, in each case whether registered or unregistered; applications to register any of those rights; rights to apply for and be granted renewals or extensions of, and rights to claim priority from, any of those rights; and any similar or equivalent rights;

**IPR Claim** means any claim or allegation that the Customer infringes a third party's Intellectual Property Rights that arises out of, or in connection with, the receipt, use or supply of the Services or the Software in accordance with this Agreement;

**Licence** has the meaning given in clause 8 (Licence);

**Losses** means all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and reasonable legal and other professional costs;

**Milestone Date** means the date set against the relevant Milestone in the Project Plan by which the relevant Milestone shall aim to be Achieved;

**Milestones** means any milestones set out in the Project Plan;

**Object Code** means the machine-readable version of the relevant Software;

**Open Source Software** means any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative ([www.opensource.org/docs/osd](http://www.opensource.org/docs/osd)) at the date of this Agreement and any 'free software' as defined by the Free Software Foundation ([www.gnu.org/philosophy/free-sw.html](http://www.gnu.org/philosophy/free-sw.html)) at the date of this Agreement;

**Patient** means a patient residing in the Territory registered with the Customer;

**Personal Information** means any information which falls within the definition of "Personal Data" under the Data Protection Act 2018;

**Processing** has the meaning given under the Data Protection Act 2018 (and **Process**, **Processed** and **Processes** shall be construed accordingly).

**Project Plan** means the Project Plan for the delivery of the Software and the other Services to the Customer as set out in 0 (Project Plan), as may be supplemented, updated or amended in accordance with the Change Control Procedure;

**Regulatory Body** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the parties or either of them;

**Related Persons** has the meaning given in clause 26.2;

**Service Applications** means:

- (a) the software defined as such in Schedule 1 (Software and Documentation) (including any Third Party Software comprised within such software) and associated Documentation; and
- (b) all Fixes or Upgrades of the same;

**Service Level Failure** means a failure by the Supplier to supply the Support Services so as to meet the Service Levels);

**Service Levels** means the minimum standards to which the Support Services are to be performed as set out in the Service Level Agreement;

**Service Level Agreement** means the Supplier's service level agreement annexed to this Agreement;

**Services** means the services described in clause 4 (Services) and any other services which the Customer agrees to procure from the Supplier and the Supplier agrees to provide under this Agreement;

**Software** means:

- (a) the Platform
- (b) the Service Applications;
- (c) the Customisations;
- (d) all other Deliverables which are created or developed by the Supplier in connection with the provision of the Services; and
- (e) all Fixes and Upgrades of the same;



**Software Acceptance Test** means the various tests to ensure the Software complies with the relevant Acceptance Criteria applicable to such test, each of which are to be conducted by [the Customer] in accordance with Schedule 3 (Software Acceptance);

**Sub-Contract** means any contract between the Supplier and any Third Party pursuant to clause 17 (Subcontracting), whereby that Third Party agrees to provide the Services or any part of them;

**Sub-Contractor** means a sub-contractor of the Supplier engaged by the Supplier under a Sub-Contract, pursuant to clause 17 (Sub-contracting);

**Supplier Background IPR** means any Background IPR owned by or licensed to the Supplier;

**Supplier Personnel** means:

- (a) any Sub-Contractors, consultants, agents or other persons engaged from time to time by the Supplier in the supply of any of the Services or performance of any of its obligations under this Agreement; and
- (b) the employees (including the Supplier Contract Manager), staff, other workers, agents and consultants who are engaged by the Supplier or by any of those listed in the supply of any of the Services or performance of any of the Supplier's obligations under this Agreement;

**Supplier Contract Manager** means the Supplier's representative appointed in accordance with the provisions of Schedule 8 (Contract Management);

**Support Services** means the support services to be supplied by the Supplier in respect of the Software in accordance with Schedule 4 (Support Services);

**Territory** means the Customer's health board area;

**Third Party** means any person who is not a party to this Agreement, but excluding for these purposes any member of the Supplier's Group;

**Third Party Software** means any software (including any Open Source Software) the Intellectual Property Rights in which are owned by a Third Party and developed independently of this Agreement;

**Training Plan** means the training plan to be agreed between the parties in accordance with clause 6 (Training services);

**Training Services** means the tasks and activities to be performed by the Supplier pursuant to 6 (Training services) as set out in the Training Plan;

**Upgrade** means any enhancement to the Software (as distinct from a new product) made by or on behalf of the Supplier including patches and bug fixes correcting previously reported Defects; and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994 and any other tax of any jurisdiction based on sales of goods or services such as sales taxes and any similar, replacement or additional tax.

1.2 In this Agreement, unless otherwise specified, a reference to:

- (a) the singular includes the plural and vice versa and any gender includes the others;
  - (b) **a person** includes a natural person, company or unincorporated body (whether or not having separate legal personality);
  - (c) **company** includes any company, corporation or other body corporate, wherever and however incorporated or established;
  - (d) a clause or Schedule is to a clause of, or Schedule to, this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;
  - (e) **this Agreement** include its recitals and Schedules;
  - (f) this Agreement or any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time;
  - (g) Applicable Law or legislation are to that Applicable Law or legislation as amended, extended or re-enacted from time to time;
  - (h) a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
  - (i) **including, include, in particular** or any similar terms shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;
  - (j) **writing** or **written** does not include faxes or email; and
  - (k) days, months or years is to calendar days, months or years;
- 1.3 Obligations of the Supplier shall not be interpreted as obligations of any of the Supplier's Group.
- 1.4 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.5 This Agreement shall be binding upon, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.6 If there is a conflict or inconsistency between sections of this Agreement (or between a section of this Agreement and a document referred to in this Agreement), they shall be applied in the following order of precedence:
- (a) first, the clauses;
  - (b) secondly, the Schedules; and then
  - (c) any other documents referred to in this Agreement.

## **2 Appointment**

With effect from the Commencement Date, and subject to the terms of this Agreement, the Customer appoints the Supplier to supply the Services to the Customer.

### **3 Duration**

- 3.1 This Agreement shall commence on the Commencement Date and (unless terminated earlier in accordance with this Agreement) shall continue for a minimum period of 15 months from the Commencement Date (**Initial Term**).
- 3.2 If the Customer wishes to extend the period of this Agreement beyond the expiry of the Initial Term, the Customer shall give the Supplier notice in writing of its wish to do so, at least 3 months prior to the expiry of the Initial Term. The Supplier may agree in writing prior to the expiry of the Initial Term to extend the period of the Agreement beyond the expiry of the Initial Term provided that the parties agree in writing the Charges which are to apply in respect of the provision of the Services following the expiry of the Initial Term. If the parties agree such Charges and the Supplier agrees to extend the period of the Agreement beyond the expiry of the Initial Term, this Agreement may be terminated at any time following expiry of the Initial Term by either party giving to the other party at least 3 months' notice in writing.
- 3.3 The Development Services shall be provided from the Commencement Date.
- 3.4 The Support Services shall be provided from the date of successful completion of the Acceptance Tests and, (unless terminated earlier in accordance with this Agreement), and shall continue to be provided until the expiry of the Initial Term, or in the event that the period of the Agreement is extended after the expiry of the Initial Term in accordance with clause 3.2, until the date of termination of this Agreement unless they are terminated earlier by either party with effect from any subsequent anniversary of the date of expiry of the Initial Term by giving the other party not less than 3 months' notice in advance of such anniversary.

### **4 Services**

- 4.1 The Supplier shall supply:
- (a) the Deployment Services which shall consist of:
    - (i) the supply of Development Services in accordance with clause 9 (Development Requirements);
    - (ii) the Delivery and Installation of the Software in accordance with clause 10 (Delivery and Installation of Software);
    - (iii) the integration of the Software in accordance with the Project Plan, the Infrastructure Specification and Technical Specification to be fully operational and functional within the Customer Environment;
    - (iv) cooperation with the Customer in performing the Acceptance Tests in accordance with Schedule 3 (Software Acceptance); and
    - (v) the Training Services in accordance with the Training Plan, and
  - (b) the Support Services in accordance with Schedule 4 (Support Services).
- 4.2 The Supplier shall supply the Services:
- (a) so as to attain the Service Levels;
  - (b) with reasonable skill and care; and

(c) in accordance with Applicable Laws.

## **5 Integration assistance**

5.1 The Supplier shall co-operate with, and provide reasonable assistance to the Customer and/or all Third Party service providers engaged by the Customer in services that interface or interoperate with the Services or the Platform (each being a **Customer Service Provider**) in accordance with Schedule 1 (Software and Documentation). Any co-operation and assistance that is not expressly set out in Schedule 1 (Software and Documentation) shall be a separately chargeable activity that the parties shall agree in accordance with the Change Control Procedure.

5.2 Where the Supplier's performance of its obligations under this Agreement may require input from, or the involvement of, a Customer Service Provider, the Customer shall procure the timely assistance and input of the Customer Service Provider to enable the Supplier to perform the Services in accordance with the Project Plan.

5.3 The Customer shall provide all reasonable assistance to the Supplier to meet its obligations under clause 5.2 and to mitigate delays in the performance of its obligations including by:

(a) providing the Supplier with the appropriate details of the obligations of the Customer Service Provider under any relevant contractual arrangements, subject to confidentiality considerations;

(b) allowing the Supplier to attend project meetings, where appropriate, between the Customer Service Provider and the Customer in respect of the performance of the required inputs or delivery of the requirements for the Platform and the Service Applications; and

(c) working with the Supplier to resolve any Customer Service Provider issues escalated to the Customer.

5.4 To the extent the Customer sources hardware from a Third Party to form part of the Customer Environment and with which the Software shall integrate or onto which the Software shall be installed, the Customer shall ensure that such hardware meets the minimum hardware requirements specified by the Supplier.

5.5 The Customer shall be responsible for all costs related to the provision of the hardware and infrastructure on which the Software will be installed and operate in accordance with the Infrastructure Specification.

## **6 Training services**

6.1 The parties agree that it is their intention that the training provided in accordance with this clause 6 shall give the Customer a sufficient knowledge base to be able to use the Platform and the Service Applications autonomously from the Supplier.

6.2 The parties acknowledge and agree that the Training Services shall be provided on a 'train-the-trainer' basis unless specified in the Training Plan or otherwise agreed by the parties.

6.3 The Supplier and the Customer shall jointly design a Training Plan that is sufficiently detailed to enable the Customer to use the Platform and the Service Applications, and induct future Customer personnel to perform such activities.

- 6.4 The Supplier shall:
- (a) submit the proposed final Training Plan to the Customer for its approval; and
  - (b) promptly make any amendments to the proposed final Training Plan as reasonably requested by the Customer, and re-submit it to the Customer for its approval.
- 6.5 The Supplier shall provide the Training Services set out in the Training Plan to the Customer's nominated personnel in accordance with the Training Plan.
- 6.6 The details and timing of the delivery of training shall be set out in the Training Plan and shall be provided in the locations set out in the Training Plan (unless otherwise agreed by the parties).
- 6.7 Any training sessions not held at the Supplier's training facility shall be held in a venue that is safe and suitable for the required training. The cost of external venues, facilities and communications, if requested by the Customer, shall be the responsibility of the Customer.
- 6.8 The training for the Customer's nominated personnel shall be provided on the dates specified in the Training Plan.
- 6.9 The Supplier shall be entitled to charge for any training session which is cancelled or postponed by the Customer on less than [insert number] Business Days' prior written notice.

## **7 Project Plan**

- 7.1 The Supplier shall provide the Deployment Services in accordance with the Project Plan.
- 7.2 Any Change to the Project Plan (including any changes to a Milestone Date) shall be subject to the Change Control Procedure.

## **8 Licence**

- 8.1 Subject to clauses 8.2 and 8.4, the Supplier grants to the Customer for the period of this Agreement a non-exclusive, non-transferable licence (or sub-licence, if applicable) to:
- (a) use the Platform in the Territory; and
  - (b) use the Service Applications (and the Customisations) in the Territory;
  - (c) use the Customisations in the Territory;
  - (d) sub-license use of the Service Applications (and the related Customisations) to Patients in the Territory;
  - (e) use any operating manuals, user instructions, technical instructions and all other Documentation in the Territory;
  - (f) integrate Customer Procured Third Party Software with the Platform in the Territory, subject to such Customer Procured Third Party Software meeting the standards set for the Platform by the Supplier,

in each case to enable Patients to use the Service Applications (and the related Customisations) for the purpose of the Customer delivering health and medical services, including the exchange and analysis of health related data, to Patients and for no other purpose whatsoever (**Licence**).

- 8.2 The Customer shall be entitled to permit [x] concurrent users to use the Platform at any time and acknowledges that it shall be required, without prejudice to any other rights and remedies to which the Supplier may be entitled, to pay the Supplier at the Supplier's then-current rates for any additional usage of the Platform.
- 8.3 The Customer shall procure that each Patient shall comply with the terms of any sub-licence granted by the Customer to use the Service Applications (and the related Customisations) and shall be liable to the Supplier for any Losses suffered by the Supplier arising from any non-compliance with the terms of such sub-licence by any Patient.
- 8.4 The Parties may agree to extend the scope of the Licence to permit use of the Platform and Service Applications (including Customisations) in areas outside of the Territory, subject to the Charges which are to apply in respect of such use being agreed in writing.

## **9 Development requirements**

- 9.1 The Supplier shall:
- (a) configure and develop the Software (including the Customisations) to meet the Technical Specification;
  - (b) write the Documentation in a form that is readily understandable to non-technically astute readers; and
  - (c) provide to the Customer such assistance as it may reasonably require to carry out the Acceptance Tests,
- (together the **Development Services**).

## **10 Delivery and Installation of Software**

- 10.1 The Supplier shall Deliver the Software to the Customer at the Installation Site and Install the Software on the hardware provided by the Customer in accordance with the Infrastructure Specification, all in accordance with the Project Plan.
- 10.2 Unless otherwise agreed by the Contract Managers, each Delivery and Installation shall be effected during Business Hours.
- 10.3 The Software shall be subject to the Acceptance Tests in accordance with the provisions of Schedule 3 (Software Acceptance).

## **11 Milestones and Delays**

- 11.1 The Supplier shall use reasonable endeavours to Achieve the Milestones by the applicable Milestone Dates. However, time shall not be of the essence.
- 11.2 The Supplier shall notify the Customer in writing promptly on becoming aware that the Supplier shall not be able to Achieve a Milestone by the applicable Milestone Date and provide a plan showing how the Supplier proposes to minimise the consequences of the delay and to remedy the issue (**Corrective Action Plan**).
- 11.3 The Supplier shall comply with a Corrective Action Plan and the Customer shall perform its responsibilities (if any) set out in the Corrective Action Plan.

## **12 Customer Dependencies**

12.1 The Customer, at no cost to the Supplier, shall:

- (a) provide all information, assistance and access to appropriately experienced and skilled personnel as may be necessary on a timely basis to assist the Supplier to perform the Services;
- (b) perform each of its responsibilities set out in the Project Plan and elsewhere in this Agreement in accordance with the timescales set out in the Project Plan or as otherwise specified in this Agreement;
- (c) comply with the Customer Dependencies;
- (d) comply with all reasonable instructions and directions of the Supplier in connection with Supplier's performance of the Services;
- (e) ensure that all written information given by it to the Supplier is accurate and comprehensive when given and remains so in all material respects; and
- (f) obtain and maintain in full force all necessary consents, approvals, authorisations, licences and permissions which are required to enable the Customer to perform its obligations under this Agreement and/or under Applicable Law.

12.2 The Supplier shall not be in breach of this Agreement or be treated as having committed a Service Level Failure if, and to the extent that, the Supplier's failure is caused by a Customer Dependency Failure.

12.3 The Supplier shall be entitled to charge the Customer for all costs and expenses (including the cost of wasted resource based on the Supplier's standard rate card for such resource) arising from a Customer Dependency Failure and shall be entitled to charge the Customer for all additional work effort required to deliver the Services in accordance with the Project Plan notwithstanding a Customer Dependency Failure. The parties (each acting reasonably) shall agree such extension of time as may be reasonable in the circumstances and shall make any consequential revisions to the applicable Milestone Dates and the Project Plan.

## **13 Customer policy compliance**

13.1 The Supplier shall comply in all material respects with the Applicable Customer Policies to the extent that the same are reasonable.

13.2 The Customer shall make all Applicable Customer Policies available to the Supplier (by providing copies or informing the Supplier where they may be viewed). The Customer shall advise the Supplier of any change to an (or any additional) Applicable Customer Policy so far as that change is relevant to the Supplier's obligations under this Agreement. The implementation of any change to an Applicable Customer Policy shall be dealt with through the Change Control Procedure.

## **14 Change**

14.1 The Change Control Procedure shall apply to all Changes and no Change shall be valid unless made in accordance with the Change Control Procedure.

## **15 Non-solicitation**

During the term of this Agreement and for one year thereafter, neither the Customer nor any of member of the Customer's Group shall, directly or indirectly, solicit the services of any individual who is employed or engaged, within the preceding 12 months, by the Supplier or any member of the Supplier's Group in respect of the provision of any of the Services, unless and until the Customer pays to the Supplier, as liquidated damages and not as a penalty, an amount equal to the aggregate remuneration paid by the Supplier or any member of the Supplier's Group to such individual during the 12 months prior to the date such individual is employed or engaged by the Customer.

## **16 Contract management**

The parties shall comply with Schedule 8 (Contract Management).

## **17 Sub-contracting**

The Supplier may enter into any Sub-Contract in respect of the performance of any of its obligations under this Agreement at its sole discretion provided that it shall remain responsible for the acts and omissions of its Sub-Contractors in breach of the terms of this Agreement.

## **18 Force majeure**

18.1 A party (the **Affected Party**) shall not be liable to the other party or be in breach for delay or failure to perform any of its obligations under this Agreement arising from or attributable to a Force Majeure Event.

18.2 On the occurrence of a Force Majeure Event, the Affected Party shall give prompt notice to the other party's Contract Manager. The parties shall consult with each other and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate continued performance of this Agreement.

18.3 If the performance of all or a material part of the Affected Party's obligations under this Agreement is delayed or prevented by a Force Majeure Event for a continuous period of 30 days, the other party may terminate this Agreement by giving 30 days' written notice to the Affected Party.

## **19 Charges**

19.1 Subject to clause 21.2, in consideration of the Supplier supplying the Services, the Customer shall pay the Charges on and subject to the terms of this Agreement.

19.2 No Charges shall be payable in respect of the Services provided during the Initial Term.

19.3 In the event that the Agreement continues beyond the expiry of the Initial Term, the parties will agree in writing the Charges which will be payable by the Customer in respect of the Services provided after the expiry of the Initial Term and the Supplier will be under no obligation to provide any Services after such date unless the Charges have been agreed.

19.4 The Supplier shall be entitled to increase the Charges at the end of each Contract Year following the expiry of the Initial Term by giving the Customer notice in writing of such increased Charges at least 3 months prior to the end of the relevant Contract Year. In the event that the Customer does not accept such increase, it must give notice in writing to the Supplier to terminate this



Agreement no later than 20 Business Days prior to the expiry of the Contract Year, failing which it will be deemed to have accepted the increase in the Charges notified by the Supplier.

## **20 Payment**

- 20.1 The Customer shall pay each invoice of the Supplier within [30] days of the date of the invoice.
- 20.2 If, acting in good faith, the Customer disputes any item within an invoice, it shall raise such dispute by written notice to the Supplier within [14] days of receipt of the invoice.
- 20.3 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then the other party may charge the defaulting party interest on the overdue amount at the rate of 4% per annum above The Royal Bank of Scotland's base rate from time to time. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest against the other party's invoice in respect of such interest.
- 20.4 In relation to payments disputed in good faith, interest under clause 20.3 is payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

## **21 Set-off**

The Supplier shall be entitled to set off an amount owed to it, or any member of its Group, by the Customer, against an amount which the Supplier owes to the Customer, present or future, and which arises under this Agreement.

## **22 Tax**

- 22.1 The Customer shall pay VAT in addition to the Charges at the rate prevailing on the date of the invoice.
- 22.2 All sums payable by the Customer to the Supplier under or in respect of this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims, save only as may be required by law. Should the Customer be required by law to make a deduction or withholding from any such sum the Customer shall pay to the Supplier such sum as shall, after the deduction or withholding has been made, leave the Supplier with the same amount as the Supplier would have received had no deduction or withholding been made.

## **23 Intellectual Property Rights**

- 23.1 All Background IPRs shall remain vested in that party or the relevant member of the Customer's or the Supplier's Group.
- 23.2 All Intellectual Property Rights in the trade marks and brands owned by or licensed to the Customer may be used by the Supplier to perform its obligations under this Agreement in compliance with the Customer's brand guidelines or other reasonable written instructions.
- 23.3 All Intellectual Property Rights in any Customisations shall remain vested in the Supplier.

## **24 Third Party Software**

- 24.1 All Third Party Software incorporated within the Software is identified in Schedule 1 (Software and Documentation).

24.2 The Customer is responsible for procuring the licences required in respect of all Customer Procured Third Party Software and shall indemnify and hold harmless the Supplier from and against any claims, Losses or liabilities arising from the Customer's failure to procure such licences on terms that enable the Supplier to perform its obligations under this Agreement in accordance with the timescales set out in the Project Plan.

24.3 Customer Procured Third Party Software shall not be integrated with the Platform unless it complies with the Supplier's standards for integration with the Platform and the Customer pays the Supplier's connection fee of £350 plus VAT and for any required customisation at the Supplier's then-current rates.

## **25 Intellectual Property Rights indemnity**

25.1 The Supplier shall:

(a) indemnify the Customer against any damages finally awarded by a court of competent jurisdiction against the Customer arising out of or in connection with any IPR Claim or any settlement sum agreed between the Supplier and the claimant relating such IPR Claim; and

(b) conduct or (at its option) settle any IPR Claim (at no cost to the Customer).

25.2 In relation to any IPR Claim which comes to its attention the Customer shall:

(a) promptly notify the Supplier of the IPR Claim;

(b) procure any authorisation reasonably required for the Supplier to conduct or settle the IPR Claim;

(c) provide the Supplier (at the Supplier's cost) with all reasonable assistance to conduct or settle the IPR Claim; and

(d) not admit, compromise or settle any part of the IPR Claim without first obtaining the Supplier's written agreement.

25.3 In respect of any Service or component of the Software that is the subject of an IPR Claim the Supplier shall (at no cost to the Customer) use its reasonable endeavours to either:

(a) procure the right for the Customer to continue to use that Service component in accordance with this Agreement; or

(b) modify or replace the Service or Software component so that it no longer infringes any third party's Intellectual Property Rights provided that in doing so the scope, functionality and performance of the Service or Software (as applicable) are not materially adversely affected.

25.4 The Supplier shall not indemnify the Customer under clause 25.1 to the extent that the IPR Claim arises from:

(a) any modification to the relevant Deliverable made by the Customer or requested by the Customer from the Supplier or any Third Party but only to the extent that the requirements contained within such request cause such infringement;

- (b) the Customer using any Deliverable otherwise than as expressly permitted by this Agreement and in accordance with the Supplier's instructions;
- (c) the combination of any Deliverable, or interfacing the relevant Deliverable with, any Third Party Software product.

25.5 The remedies set out in this clause 25 shall be the sole and exclusive remedies of the Customer in respect of any IPR Claim.

## **26 Confidentiality**

26.1 During the term of this Agreement and thereafter each party, in relation to the Confidential Information of the other party that it receives or has received, shall, save as expressly permitted by this clause 26:

- (a) keep the Confidential Information confidential;
- (b) not make (other than for its own use where needed to exercise its rights or perform its obligations under this Agreement) or release copies of the Confidential Information;
- (c) not disclose the Confidential Information to any other person other than with the prior written consent of the other party;
- (d) not use the Confidential Information for any purpose except the performance of its obligations and/or the exercise of its rights under this Agreement; and
- (e) not use any Confidential Information so as to procure any commercial advantage over the other party.

26.2 During the term of this Agreement a party may disclose the Confidential Information of the other party to its Group, employees, officers, shareholders, representatives, agents, consultants, suppliers and advisers (**Related Persons**), but only to the extent reasonably necessary to perform properly its obligations and/or exercise its rights under this Agreement and provided that:

- (a) before disclosure of any of the Confidential Information to any of the Related Persons it procures that each such Related Person is aware that the Confidential Information is confidential and of the obligations in clause 26.1 and that each such Related Person undertakes to observe substantially equivalent obligations to those in this clause 26; and
- (b) it shall be responsible for any failure by any of the Related Persons to observe the obligations in this clause 26 as though it were a breach of this clause 26 committed by that party.

26.3 The obligations contained in clauses 26.1 and 26.2 shall not apply to any Confidential Information which:

- (a) is or becomes generally available to the public other than through breach of this Agreement by the party receiving the Confidential Information (the **Receiving Party**);
- (b) can be shown by the Receiving Party to the reasonable satisfaction of the other party to have been known by, or available (on a basis that did not require it to be maintained as confidential) to, the Receiving Party before it was disclosed by the other party;

- (c) subsequently comes lawfully into the possession of the Receiving Party from a person who has not derived it directly or indirectly from the other party, who is rightfully in possession of such Confidential Information and who is not bound as to its use or disclosure by an obligation of confidence or secrecy to the other party; or
- (d) the parties agree in writing is not confidential or may be disclosed.

26.4 A party may disclose Confidential Information to the extent such disclosure is required by:

- (a) any Applicable Law or by any Regulatory Body or by an order of any court or other authority of competent jurisdiction; or
- (b) regulations of any recognised investment, stock or securities exchange on which that party's securities are traded or by the Panel on Takeovers and Mergers or other Regulatory Body,

provided that, to the extent legally permitted, that party gives the other party as much notice and detail of such disclosure as possible and consults the other party on the need for such disclosure and how it may be avoided or limited and as to its content.

26.5 Each party acknowledges and agrees that if the Confidential Information of the other party or any member of its Group is used or disclosed other than in accordance with the provisions of this Agreement, damages alone would not be an adequate remedy and the party (or member of its Group) whose Confidential Information has been used or disclosed shall, without proof of special damage, be entitled to an interdict or interim interdict for any threatened or actual breach of the provisions of this clause 26 in addition, and without prejudice, to any damages or other remedy to which it may be entitled.

26.6 On expiry or earlier termination of this Agreement each party shall return to the other party all documents and materials containing the other's Confidential Information and shall (if reasonably possible) erase all the other's Confidential Information from its computer and other software or media storage systems, provided that a Receiving Party may retain materials containing Confidential Information to the extent required by Applicable Law or any Regulatory Body. Each party shall continue to be bound by clause 26 in relation to any Confidential Information it has retained pursuant to this clause 26.6.

26.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information are granted to the other party or to be implied from this Agreement.

26.8 The provisions of this clause 26 shall apply during the term of this Agreement and indefinitely following its expiry or termination.

## **27 Announcements**

The Supplier shall be entitled to publicise the execution of this Agreement and the provision of Services to the Customer by way of press release, provided that the Customer has given its prior approval to the content of the press release, such consent not to be unreasonably withheld or delayed.

## **28 Data protection**

28.1 The Customer confirms that the Supplier shall not be required to Process any Personal Information as part of the Services and that the Customer is the Data Controller and Data

Processor of all Personal Information relating to Patients which is Processed using the Platform and the Service Applications.

28.2 The Customer shall comply with all Data Privacy Laws in respect of the Processing of all Personal Information relating to Patients using the Platform and the Service Applications.

28.3 The Customer shall indemnify the Supplier in respect of all Losses incurred by the Supplier arising from any breach by the Customer of clause 28.2 or any claim made by any Patient or any other person (including any Regulatory Body) in respect of the Processing of their Personal Information by the Customer using the Platform or the Service Applications.

## **29 Termination**

29.1 Either party may terminate this Agreement with immediate effect on giving notice to the other party if the other party:

- (a) commits a material breach of this Agreement which is incapable of remedy;
- (b) commits a material breach of this Agreement which is capable of remedy (including a failure to pay an amount due under this Agreement) but fails to remedy that breach within 30 days of being notified of the breach;
- (c) has a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee, supervisor or other similar officer appointed in respect of itself or any of its assets under the law of any jurisdiction or notice is given of the intention to make any such appointment;
- (d) in the reasonable opinion of the terminating party, is unable to pay its debts as they fall due or, in the reasonable opinion of the terminating party, the aggregate value of all its assets is less than that of all its liabilities (including its contingent and prospective liabilities); or
- (e) suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

29.2 The Customer may terminate this Agreement in accordance with clause 19.4.

## **30 Consequences of expiry or termination**

30.1 Expiry or termination of this Agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties under this Agreement existing at expiry or termination.

30.2 The provisions of clauses 1 (Definitions and interpretation), 21 (Set-off), 23 (Intellectual Property Rights), 24 (Third Party Software), 25 (Intellectual Property Rights indemnity), 26 (Confidentiality), 27 (Announcements), 28 (Data protection), 30 (Consequences of expiry or termination), 32 (Limitations on liability), 33 (Assignment), 34 (Rights of third parties), 35 (Entire Agreement), 36 (Notices), 37 (Dispute resolution), 38 (Further assurance), 39 (Relationship), 41 (Severance), 42 (Waiver), 43 (Governing law), 44 (Jurisdiction) and any other provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Agreement, shall remain in full force and effect after such expiry or termination.

30.3 On expiry or termination of this Agreement:

- (a) each party shall comply with clauses 26 (Confidentiality) and 28 (Data protection) of this Agreement; and
- (b) at the disclosing party's option, the other party shall return to the disclosing party all Confidential Information, and copies of it such format as the disclosing party may require or securely dispose of the Confidential Information.

### **31 Warranties**

31.1 The Supplier warrants that the Services shall be performed with reasonable care and skill.

31.2 Each party warrants to the other that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by a duly authorised representative of that party;
- (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- (d) once duly executed, this Agreement shall constitute its legal, valid and binding obligations.

### **32 Limitations on liability**

32.1 Nothing in this Agreement shall limit or exclude the liability or remedy of either party or any other person:

- (a) for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
- (b) for fraud or fraudulent misrepresentation;
- (c) for any act, omission or matter, liability for which may not be excluded or limited under any Applicable Law.

32.2 Nothing in this Agreement shall limit or exclude the liability of the Customer in respect of the indemnities given by the Customer in clauses 24.2 (Customer Procured Third Party Software) and 28.3 (Data protection).

32.3 Subject to clauses 32.1 and 32.2, each party's total aggregate liability arising under or in connection with this Agreement in any Contract Year, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, shall in all circumstances be limited to the greater of:

- (a) 125% of the Charges paid or payable in aggregate under this Agreement in respect of the Services provided during that Contract Year; and
- (b) £ [ insert value ].

32.4 Subject to clauses 32.1 and 32.2 and except as expressly provided to the contrary in this Agreement, neither party shall be liable to the other for any of the following losses (regardless as to whether or not in the contemplation of the parties when entering into this Agreement):

- (a) loss of profits or revenue;
- (b) lost opportunity or contracts;
- (c) loss of anticipated savings;
- (d) harm to reputation or loss of goodwill;
- (e) loss of, or corruption to, data; or
- (f) any indirect, special or consequential damage.

32.5 Except as expressly stated in this Agreement, and subject to clauses 32.1 and 32.2, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

### **33 Assignment**

33.1 The Supplier may at any time assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement, provided that it gives prior written notice to the Customer.

33.2 Except as expressly permitted by this Agreement, the Customer shall not assign, transfer, subcontract, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement, in whole or in part, without the Supplier's prior written consent.

### **34 Rights of third parties**

A person who is not a party to this Agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any of its provisions.

### **35 Entire Agreement**

35.1 This Agreement and the documents referred to in this Agreement constitute the entire agreement and understanding of the parties and supersede and extinguish all previous drafts, agreements and understandings between them, whether oral or in writing, relating to its subject matter.

35.2 Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, warranty or understanding made by or on behalf of a party (whether made innocently or negligently) which is not expressly set out in this Agreement.

35.3 Neither party shall have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

### **36 Notices**

36.1 Any notice or similar communication under this Agreement shall be in writing, in English, and shall be delivered personally, sent by pre-paid registered post or recorded delivery (or pre-paid registered air mail if overseas) to the recipient party at its address set out at the beginning of this Agreement or such other address or fax number as that party may specify by notice to the other party.

- 36.2 Notices and similar communications shall be deemed to have been received:
- (a) if delivered personally, at the time of delivery to the address;
  - (b) if sent by pre-paid registered post or recorded delivery, at 9 am on the second Business Day after posting;
  - (c) if sent by pre-paid registered air mail, at 9 am on the fifth Business Day after posting.
- 36.3 Email and other electronic communications are not valid notices under this Agreement.
- 36.4 For the purposes of clause 36.2:
- (a) references to time are to local time in the place of deemed receipt; and
  - (b) if deemed receipt would occur in the country of deemed receipt on a Saturday or Sunday or a public holiday in that country or a day on which banks are not open for business in that country (**Local Non-Working Day**), receipt is deemed to take place at 9 am on the next day which is not a local non-working day.
- 36.5 Clauses 36.1 to 36.4 do not apply to the service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution other than clause 37 or to routine reports pursuant to this Agreement, which may be given in any usual written form.

### **37 Dispute resolution**

- 37.1 The parties shall procure that the Contract Managers shall meet and use their reasonable endeavours to resolve any Dispute. If the Dispute is not resolved between the Contract Managers within 5 Business Days of receipt of a written request from either party (**Dispute Notice**), the Dispute shall be referred to a director of each of the parties within 5 Business Days of the date of receipt of the Dispute Notice to attempt to settle the Dispute in good faith. If the Dispute is not resolved within a further period of 10 Business Days from the date of receipt of the Dispute Notice, either party may by written notice to the other (**Mediation Notice**) elect to attempt to settle the Dispute by mediation in accordance with clause 37.2.
- 37.2 If a Mediation Notice is given under clause 37.1 the following provisions shall apply:
- (a) the parties shall promptly refer the Dispute to mediation under the Model Mediation Procedure (MMP) of the Centre for Effective Dispute Resolution (CEDR) for the time being in force;
  - (b) the parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
  - (c) to the extent not provided for by the MMP, the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of Agreement, appointed by CEDR.
- 37.3 If a Dispute relates to any aspect of the technology underlying the Services and the Dispute has not been resolved between the parties through the procedure provided for under clause 37.1, then either party may request by notice in writing to the other that the Dispute be referred to a



relevantly qualified expert (**Expert**) for determination. Where both parties so agree, the Dispute shall then be referred to an Expert for determination and the remaining provisions of this clause 37 shall apply. Where the parties fail to agree on the referral of a Dispute to an Expert, such Dispute shall not be referred to an Expert and may be resolved via court proceedings.

37.4 Where the parties refer a Dispute to an Expert pursuant to clause 37.3, such Expert shall be appointed by agreement in writing between the parties. If the parties fail to agree which person should be appointed as Expert within 5 Business Days of such notice or if the person appointed is unable or unwilling to act, the Expert shall be appointed by the British Computer Society (or such association understood by the parties to have replaced it).

37.5 The Expert appointed under clause 37.4 shall act on the following basis:

- (a) the Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure by the Expert) be final and binding on the parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make its determination in writing within 20 Business Days after their appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide such determination as the Expert shall require for the purposes of the determination;
- (d) any amount payable by one party to another as a result of the Expert's determinations shall be due and payable within 10 Business Days of the Expert's determination being notified by the parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including the fees and expenses of the Expert, are to be paid.

37.6 Save in relation to interlocutory relief, neither party may commence any court proceedings or arbitration in relation to any Dispute until it has attempted to settle the Dispute in accordance with clause 37.1, and/or 37.3. For the avoidance of doubt, the commencement of a mediation under clause 37.2 shall not prevent the parties commencing or continuing court proceedings or arbitration.

37.7 Subject to clause 37.3, if and to the extent that the parties do not resolve the Dispute or any related issue in accordance with clauses 37.1 to 37.2 inclusive, either party may commence court proceedings in respect of such unresolved Dispute or issue.

### **38 Further assurance**

Each party (at its own cost) shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

### **39 Relationship**

39.1 This Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties.

39.2 Neither party shall have, nor represent that it has, any authority to make or enter into any commitments on the other's behalf or otherwise bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power).

#### **40 Costs**

Each party shall (save as expressly stated otherwise in this Agreement), pay its own costs relating to the negotiation, preparation, execution, performance and implementation by it of this Agreement.

#### **41 Severance**

41.1 If any provision, or part of a provision, of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable (a **Void Provision**):

- (a) such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect;
- (b) if a Void Provision would be valid, legal and enforceable if some part of it were deleted, that Void Provision shall apply with such modification as may be necessary to make it valid, legal and enforceable;
- (c) if a Void Provision cannot be made valid, legal and enforceable under clause 41.1 (b), the parties shall negotiate in good faith to amend the Void Provision to be valid, legal and enforceable whilst achieving, to the greatest extent possible, the parties' original commercial intention; and
- (d) if a Void Provision cannot be made valid, legal and enforceable under clause 41.1 (b) or 41.1 (c), the Void Provision shall be deemed to be deleted.

#### **42 Waiver**

42.1 A failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law:

- (a) shall not constitute a waiver of that, or any other, right, power or remedy; and
- (b) shall not, and nor shall any single or partial exercise of any such right, power or remedy, preclude the further exercise of that, or any other, right, power or remedy.

42.2 Any waiver of any right under this Agreement is only effective if it is in writing and it shall apply only to the party to whom the waiver is addressed and to the circumstances for which it is given.

#### **43 Counterparts and delivery**

43.1 This Agreement may be executed in any number of counterparts and used by the Parties on separate counterparts.

43.2 Where executed in counterpart:

- (a) this Agreement shall not take effect until all counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the Parties agree a date on which the counterparts are to be treated as delivered; and

- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

**44 Governing law**

This Agreement and any Dispute shall be governed by and construed in accordance with the law of Scotland.

**45 Jurisdiction**

Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any Dispute.

**Agreed** by the parties on the date set out at the head of this agreement

Signed by [insert full name of director/authorised signatory]	.....
for and on behalf of	[Director OR Authorised signatory]
Lenus Health Ltd	

and

Signed by [insert full name of director/authorised signatory]	.....
for and on behalf of	[Director OR Authorised signatory]
[ Insert customer name ]	

## Schedule 1

### Software and Documentation

#### The Platform

The Supplier's Lenus Health Platform

#### Service Applications

The following applications of the Supplier:

(a) [ insert service name ]

(b) [ insert service name ]

(c) [ insert name ]

#### Customisations

[Insert description of the customisation work that will be undertaken by the Supplier.][e.g. NHS branding]

#### Technical Specification

[Insert details of technical specification for Platform and Service Applications and Customisations]

#### Infrastructure Specification

[Insert details of Azure infrastructure specification]

#### [Third Party Software]

[Insert details of all Third Party Software, including software name, version, supplier, key licence terms]

#### [Customer Procured Third Party Software]

[Insert details of all Third Party Software (including software name and version) that is to be separately procured by the Customer]

#### Documentation

[Insert description of the user documentation and other materials that will be provided by the Supplier e.g. training materials.]

**Schedule 2**

**Project Plan**

**[Attach or refer to a controlled version of the Project Plan]**

## Schedule 3

### Software Acceptance

#### 1 Acceptance Tests preparation

- 1.1 The Supplier shall, in accordance with the Project Plan (or if no date is specified in the Project Plan, in sufficient time prior to the date set out in the Project Plan for Acceptance against that Acceptance Test), prepare and submit to the Customer the Software in Object Code form and the Documentation.
- 1.2 The Customer shall develop Acceptance Criteria against which the Acceptance Tests shall be conducted. The relevant Acceptance Criteria shall, in the context of the particular Acceptance Test, demonstrate compliance of the Software with the Technical Specification.
- 1.3 The Supplier may review the Acceptance Criteria before the Acceptance Tests are carried out, and the Customer shall amend the Acceptance Criteria to reflect the comments provided by the Supplier on any Acceptance Criteria which the Supplier reasonably considers to extend the scope of the Acceptance Tests materially beyond testing whether the Software complies with the Technical Specification. This paragraph shall not prejudice either party's right to invoke the Dispute Resolution Procedure should any Dispute arise at any point during the Acceptance Tests process.
- 1.4 Each Acceptance Test shall test whether the Software attains the relevant Acceptance Criteria applicable to the particular Acceptance Test.

#### 2 Software acceptance testing

- 2.1 The Customer shall carry out each set of the Acceptance Tests in accordance with the Project Plan.
- 2.2 If the Software does not pass any of the Acceptance Tests, the Customer may, by notice to the Supplier, either:
  - (a) require the Supplier, at no cost to the Customer, to rework the Software to pass repeat Acceptance Tests within [20] Business Days of the previous Acceptance Test failure (or such other period as the parties may agree in writing) and the provisions of this paragraph 2 shall apply to the repeat Acceptance Tests; or
  - (b) consider the Software to have passed the relevant Acceptance Tests and allow the Software to progress to the next stage.
- 2.3 Acceptance of the Software against the Acceptance Tests shall occur when all the Acceptance Tests have been completed and passed (or are considered by the Customer to have passed in accordance with paragraph 2.2 (b)) and the Customer has issued written confirmation of such to the Supplier or the Customer is deemed to have Accepted the Software which shall occur if either:
  - (a) the Customer uses the Software in a production environment; or
  - (b) within five days of the performance of the relevant Acceptance Test the Customer fails to issue written confirmation of Acceptance of the Software or provide the Supplier with written notice of the failure of the Software to achieve Acceptance.

- 2.4 If the Contract Managers are unable to agree whether any Acceptance Criteria have been satisfied, the Dispute shall immediately be referred to the Dispute Resolution Procedure.
- 2.5 If the Customer considers the Software to have passed the relevant Acceptance Tests in accordance with paragraph 2.2 (b) but the Software has not passed all of the Acceptance Tests, the Supplier shall if the Customer reasonably requests, at no cost to the Customer, remedy any defects so as to ensure it passes the Acceptance Tests as soon as is practically possible.

## Schedule 4

### Support Services

#### 1 Support Services

1.1 The Supplier's Web Ops team will provide the following support services for the Platform and the Service Applications.

1.2 Hours of support: [insert hours] (Hours of Support)[Is this to be capped at a maximum of 4 days [4 x 8 or 24 hours? per month]

[Examples of Support Services could include:]

- (a) [proactively identifying Defects in the Software, advising the Customer of the same and providing Fixes;
- (b) providing telephone assistance to the Customer in the analysis and correction of Defects in the Software;
- (c) timely analysis and correction of all Defects (remotely or by attendance on Site) in the Software;
- (d) detail around severity levels, remote access, on-site fixes, exclusions, requested upgrades.]

#### 1.3 [Priority Level

Each Defect shall be assigned a 'Priority Level' by the Supplier in consultation with the Customer when the Customer reports the problem (or when the Supplier reports a problem), in accordance with the Priority Levels set out in the table below.

The Priority Level assigned shall determine the nature of the Supplier response (i.e. the type of Fix) and the response times and Fix times as set out in the Service Levels.

Priority Level	Typical Impact
1	[Software not usable for any purpose.]  [Defect prevents uninterrupted and fault-free live operation so that work cannot continue without resolution.]  [Software corruption which is critical to the Customer's business.]
2	[Major degradation of software performance.]  [Defect causes major inconvenience and no work-around exists.]
3	[Minor degradation of Software performance].  [Defect causes major inconvenience and some alternative work-around exists.]
4	[Defect causes minor inconvenience].



Priority Level	Typical Impact
	[Less frequent Software Defect.]

1.4 **[Mode of response**

Remote Access—Modem Support

On-Site Fix]

1.5 **Exclusions**

The Supplier is not obliged to Fix Defects which arise:

- (a) from any modifications to the Software made by any person other than the Supplier or its agents or subcontractors unless such modifications have been approved in writing by the Supplier; or
- (b) from use of the Software other than in accordance with the relevant Documentation; or
- (c) from the use of any Customer Procured Third Party Software or the integration of any Customer Procured Third Party Software with the Platform.

1.6 **[Amendments to Documentation**

Following the supply of a Fix or Upgrade, the Supplier shall deliver to the Customer appropriate amendments to the Documentation specifying the nature of the Fix or Upgrade and providing instructions as to the proper use of the amended or enhanced version of the Software.]

**2 Service Levels**

The Supplier shall provide the Support Services to meet the Service Levels.

Priority Level	Service Levels	
	Response time during Hours of Support	Fix time during Hours of Support
1	[insert]	[insert]
2	[insert]	[insert]
3	[insert]	[insert]

**3 Monitoring and reporting against Service Levels**

3.1 The Supplier shall monitor its performance against the Service Levels and within  Business Days after the end of each month shall prepare and submit to the Customer a report showing in detail its performance against the Service Levels in the previous month.

3.2 The Supplier shall at the Customer's request provide details of its performance against the Service Levels more frequently than monthly, if the Customer, acting reasonably, has a concern as to Service quality or any other aspect of the Supplier's performance of this Agreement. The

parties may also agree more frequent reporting in order to generate data that can be used by both parties to identify and implement opportunities to improve performance.

## Schedule 5

### Applicable Customer Policies

[List all applicable customer policies e.g. health and safety, information security, data protection and expenses]

## Schedule 6

### Change Control Procedure

#### 1 Interpretation

In this Schedule, **Change Control Note** or **CCN** means the form used by the parties to set out the details of an agreed Change and which shall be substantially in the form shown at the end of this Schedule.

#### 2 General principles of the Change Control Procedure

2.1 This Schedule sets out the rules and procedures for dealing with Changes.

2.2 Under this Change Control Procedure:

- (a) either party may request a Change in accordance with paragraph 3 (Change Requests);
- (b) each party shall respond to a request for a Change in accordance with paragraph 4 (Responding to Change Requests);
- (c) the parties shall discuss and endeavour to agree Changes in accordance with paragraph 5 (Agreeing Changes);
- (d) any agreed Changes shall be recorded in accordance with paragraph 6 (Recording the agreed Change); and
- (e) the Supplier shall implement and report on the progress of Changes in accordance with paragraph 7 (Implementing and tracking Changes).

2.3 Until a CCN has been signed in accordance with paragraph 5 (Agreeing Changes) and unless the parties agree otherwise in writing:

- (a) any work undertaken by the Supplier which has not been authorised in accordance with this Change Control Procedure shall be undertaken entirely at its own risk, expense and liability;
- (b) the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement; and
- (c) any discussions, negotiations or other communications which may take place between the Customer and the Supplier in connection with any proposed Change shall be without prejudice to each party's other rights and obligations under this Agreement.

#### 3 Change Requests

Either party may request a Change by giving notice in writing to the other describing the Change and the reasons for requesting it in sufficient detail to enable the other party to understand the possible impact of the proposed Change (the **Change Request**).

#### 4 Responding to Change Requests

4.1 If either party reasonably requires any clarification or further information in order for it to respond to a Change Request, it shall promptly notify the other party and the relevant time period shall be extended by the time taken by the other party to provide that clarification or information.

- 4.2 Each party shall respond to any request for clarification or further information as soon as reasonably practicable.
- 4.3 Within [ten] Business Days of receiving a Change Request from the Customer (or at the time of making its own Change Request), the Supplier shall (at no cost to the Customer) provide an estimate (the **Estimate**) to the Customer in writing which sets out:
- (a) whether the Change is technically feasible;
  - (b) whether relief from compliance by the Supplier with its obligations under this Agreement is required, including the obligation to meet the Service Levels, during the implementation of the Change;
  - (c) any impact of the Change on the supply of the Services;
  - (d) any amendment required to this Agreement as a result of the Change;
  - (e) any regulatory approvals which are required to make the Change;
  - (f) any proposed amended or new Service Levels applicable to the Change together with all associated changes to Schedule 4 (Support Services);
  - (g) the period within which the Change can be implemented; and
  - (h) any proposed increase or reduction in the Charges as a result of the Change.

## **5 Agreeing Changes**

- 5.1 As soon as practicable after the Customer receives the Estimate, the parties shall discuss and seek to agree the matters set out in the Change Request and the Estimate.
- 5.2 Where required by the Customer, the Supplier Contract Manager (or other authorised representative of the Supplier) shall attend face to face meetings to discuss the proposed Change at dates and locations nominated by the Customer.
- 5.3 If the Contract Managers have not agreed a Change Request and Estimate within [15] Business Days of receipt of the Estimate it shall be deemed to be a Dispute which may be referred to the Dispute Resolution Procedure.

## **6 Recording the agreed Change**

- 6.1 Where the parties agree to make a Change under paragraph 5 (Agreeing Changes) or following the resolution of a Dispute under the Dispute Resolution Procedure, the Supplier shall promptly prepare two copies of a CCN bearing a unique identifying number and recording the approved Change, which a duly authorised representative of the Supplier shall sign and deliver to the Customer Contract Manager for its signature.
- 6.2 Following receipt by the Customer of a properly completed and signed CCN, a duly authorised representative of the Customer shall sign both copies and return one copy to the Supplier.
- 6.3 A CCN signed by duly authorised representatives of the Customer and the Supplier shall constitute a binding and enforceable instrument evidencing the variation of this Agreement to reflect the agreed Change.
- 6.4 Neither party shall be bound by a Change until it is included in a signed CCN.

## **7 Implementing Changes**

- 7.1 Following a CCN being signed by both parties, the Supplier shall implement the Change to which it relates in accordance with the CCN.

## Change Control Note

<b>CCN no:</b>	<b>Title:</b>	<b>Date raised:</b>
----------------	---------------	---------------------

This CCN relates to the licence agreement entered into between Lenus Health Ltd (**Supplier**) and **[insert customer name]** (**Customer**) on **[insert date]** (**Agreement**).

### Background

**[insert details]**

Any defined terms used but not separately defined in this CCN shall have the same meanings as in the Agreement.

### Changes agreed

By signing this CCN, the parties have agreed the Changes set out below:

Change to	Description of Change agreed
<b>Services</b>	<b>[Include here a detailed description of agreed Changes to the Services]</b>
<b>Service Levels</b>	<b>[Include here details of: (a) any Changes applicable during the development/integration; and (b) any revised Service Levels applicable in respect of the Support Services]</b>
<b>Charges</b>	<b>[Include here details of: (a) any implementation costs agreed (amount or basis for calculation); and (b) any revised Charges following implementation ]</b>
Other	<b>[Include here details of any Change to other elements of the Agreement]</b>
<b>Effective from</b>	<b>[Include Change commencement date]</b>

### Implementation

The parties have agreed to implement the Changes as follows:

**[Insert details of the implementation plan and any milestones]**

<b>Signed on behalf of the Supplier:</b>	<b>Signed on behalf of the Customer:</b>
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

## Schedule 7

### Customer dependencies

[insert details]



## Schedule 8

### Contract management

#### 1 Supplier contract management

1.1 The Supplier shall appoint a Supplier Contract Manager who the Supplier shall ensure:

- (a) has overall responsibility for delivery of the Services to the Customer and performance of the Supplier's other obligations under this Agreement;
- (b) has authority to deal with any issues arising at the meetings and as part of the escalation process as detailed in clause 37 (Dispute resolution) of the Agreement; and
- (c) has authority to sign Change Requests and Change Control Notes in accordance with the Change Control Procedure.

1.2 As at the date of this Agreement, the Supplier Contract Manager is:

Full name	Contact number	Email address
[insert]	[insert]	[insert]

1.3 The Supplier shall provide the Customer with not less than [10] days' written notice of any change to the Supplier Contract Manager.

#### 2 Customer contract management

2.1 The Customer shall appoint a Customer Contract Manager who the Customer shall ensure:

- (a) has overall responsibility for receipt of the Services from the Supplier;
- (b) has authority to deal with any issues arising at the meetings and as part of the escalation process as detailed in clause 37 (Dispute resolution) of the Agreement; and
- (c) has authority to sign Change Requests and Change Control Notes in accordance with the Change Control Procedure.

2.2 As at the date of this Agreement, the Customer Contract Manager is:

Full name	Contact number	Email address
[insert]	[insert]	[insert]

#### 3 Meetings and reviews

3.1 The Contract Managers shall meet at least once every [quarter] (and at any time on request from either party) to discuss and review matters relating to the Services and performance of this Agreement. Meetings shall be at the Customer's Premises unless the parties agree otherwise.

3.2 The Contract Manager meetings shall discuss, without limitation:

- (a) progress against the Project Plan and Milestones;
- (b) Service Level performance;

- (c) key risks and issues;
- (d) people resources and performance; and
- (e) financial reporting.