

# **The University of Nottingham (PRIMIS)**

## **Terms and Conditions**

## SUBJECT TO CONTRACT

### SERVICES AGREEMENT

#### B E T W E E N :

- (1) **THE UNIVERSITY OF NOTTINGHAM** a body corporate incorporated by Royal Charter and registered with number RC000664, of University Park, Nottingham NG7 2RD ('University'); and
- (2) **[Customer Legal Title]** [(company registration number [no.])], whose **[registered OR administrative]** address is **[address]** ('Customer').

Each of the University and Customer may be referred to hereafter as '**Party**' or together as '**Parties**'.

#### W H E R E A S

- (A) The University has developed Primary Care Information Services ('**PRIMIS**') which is recognised as a national and international centre of excellence in primary care information.
- (B) The University, through PRIMIS, has certain skills and abilities the Customer wishes to make use of.
- (C) The University will provide the Services and the Customer will accept them on the basis of mutually agreed Work Orders (as hereinafter defined), and subject to all the terms and conditions of this Agreement.

#### A G R E E D

##### 1 Definitions

1.1 The defined terms below apply in relation to interpretation of this Agreement:

**'Agreement'** means this Services Agreement.

**'Agreement Period'** means the period commencing with the Effective Date and ending on **[INSERT DATE]** or on completion of the services, unless terminated earlier pursuant to clause 2 below. The Agreement Period may be extended by mutual agreement in writing by the Parties.

**'Background IP'** means any IP owned or controlled by either Party at the Effective Date; and any specific IP necessary to the provision of the Services which the owning or controlling Party agrees in writing to make available for the purposes of the Services.

**'Bribery Act'** means the Bribery Act 2010.

**'Clinical Code Groups'** means a list of SNOMED CT clinical codes to define a clinical concept or idea which can be developed, updated and/or converted.

**'CHART Software Tool'** (to include CHART-lite version) means a tool to process data from System Searches and display results in an effective manner.

**'CHART QI Tool'** (to include CHART-lite versions) means an audit used within CHART software relating to a specific topic (e.g. Diabetes), which can be developed or updated.

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**‘Confidential Information’** means any commercial, technical and other information and data (of whatever nature and form) in the possession or control of the Party disclosing it (the ‘Discloser’) which is directly or indirectly disclosed or made available by or on behalf of the Discloser to the other Party (the ‘Recipient’), whether in writing, orally, in drawings, by site visits, by access to computer software or data or in any other manner, and which at the time of disclosure is marked or identified as confidential or which, by reason of its nature or the circumstances surrounding its disclosure, would reasonably be understood as confidential.

**‘Customer's Equipment’** means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

**‘Customer Materials’** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the University in connection with the Services, including the items provided pursuant to Clause 4.7.4.

**‘Data Protection Legislation’** means the UK GDPR and any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

**‘Controller’, ‘Processor’, ‘Data Subject’, ‘Personal Data’, ‘Personal Data Breach’, ‘Data Protection Officer’** take the meaning given in the UK GDPR.

**‘Data Specification’** means a set of Clinical Code Groups and Logical Business Rules for implementation within a software solution for data extraction, reporting and messaging purposes, which can be developed, updated, validated and/or converted.

**‘Data Subject Access Request’** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**‘Effective Date’** means the commencement date of this Agreement, namely [date], notwithstanding dates of signature hereto.

**‘EIR’** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**‘FOIA’** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government departments in relation to such legislation.

**‘Intellectual Property’** or **‘IP’** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.

**‘Logical Business Rules’** means Clinical Code Groups and advisory text that define the way a specification is implemented within a data extraction tool which can be developed, updated and/or converted.

**‘PRIMIS QI tool delivery model’** means the project management, training and support services provided by PRIMIS to support the implementation of a PRIMIS CHART QI tool.

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**‘Process Developments’** means new tools, methods or concepts, techniques, adaptations and ideas of general application, or improvements to the University’s Background IP, developed by the University in the course of carrying out the Services, including but not limited to any developments in and to Software Tools, any specification criteria for created data extraction, post processing and display, including the design of the dashboards, the University’s data, or the Training Materials.

**‘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 by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the University.

**‘Request for Information’** means a request for information made (or deemed to be made in accordance with the FOIA or the EIR as the case may be) under the FOIA or the EIR.

**‘Results’** means the results produced by the carrying out of the Services.

**‘Services’** means the services described in Annex 1 [additional annex numbers here] to be carried out by the University pursuant to this Agreement.

**Software Tools’** means software and associated products used by the University in carrying out the Services, which are owned by or licensed to the University and used by the University in carrying out the Services

**‘System Searches’** are searches that run on a Clinical System (EMIS Web, TPP S1, Vision Outcomes Manager) to extract data.

**‘Territory’** means [the United Kingdom or insert territory].

**‘Training Materials’** means the Training materials and supporting documentation (in support of online learning or face to face delivery).

**‘UK GDPR’** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**‘University’s Equipment’** means any equipment, including tools, systems, cabling or facilities, provided by the University to the Customer and used directly or indirectly in the supply of the Services.

**‘University’s Policies and Procedures’** means the published policies and procedures of the University (as amended from time to time).

**‘Work Order’** means the work order attached at Schedule 1 and any subsequent work order in the same form and attached hereto made during the Agreement Period and signed by the authorised signatories of the Parties setting out *inter alia* the scope of work and the price and payment details for Services.

**“Working Days”** means any day except Saturday or Sunday or any bank holiday in England and any other day on which the University is officially closed for business.

“The rules of interpretation in this clause 1 apply to this Agreement (unless the context requires otherwise).

1.2 The headings in this Agreement are inserted for convenience only and will not affect its construction.

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- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Any reference to any enactment, order, regulation, directive or other similar instrument incorporating or enacting any European Union regulation or directive, shall include any equivalent or substantially equivalent or other superseding legislation enacted by the UK government.
- 1.5 Unless the context otherwise requires, a reference to one gender will include a reference to the other genders.
- 1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.7 A person includes a corporate or unincorporated body (whether or not having separate legal personality).
- 1.8 Any phrase introduced by the words including, includes, in particular or for example or similar will be construed as illustrative and will not limit the generality of the related general words.
- 1.9 Any schedules to this Agreement form part of (and are incorporated into) this Agreement.

## **2 Duration and Termination**

- 2.1 This Agreement shall become effective on the Effective Date and will continue during the Agreement Period.
- 2.2 Either Party may terminate this Agreement forthwith if the other Party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other Party's undertaking or assets or there are reasonable grounds for anticipating the imminent occurrence of any of these events.
- 2.3 In the event that either Party commits any breach of or default in any of the terms or conditions of this Agreement, and fails to remedy such default or breach within thirty (30) days after the receipt of written notice from the other Party, the Party giving notice may at its option terminate this Agreement by sending notice of termination in writing to the other Party to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 2.4 Without affecting any other right or remedy available to it, the University may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [14] days after being notified in writing to make such payment.
- 2.5 On termination or expiry of this agreement:
  - 2.5.1 the Customer shall immediately pay to the University all of the University's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the University may submit an invoice, which shall be payable immediately on receipt;

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2.5.2 the Customer shall, return all of the University's Equipment. If the Customer fails to do so, then the University may enter the Customer's premises and take possession of the University's Equipment. Until the University's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and

2.5.3 the University shall on request return any of the Customer Materials not used up in the provision of the Services.

2.6 The following provisions shall survive the termination of this Agreement for whatever reason: clauses 1, 2.3, 2.4, 4.4, 4.5, 4.9, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16.

### **3 Not used**

## **4 Obligations of the Parties**

4.1 During the Agreement Period the University will use its reasonable endeavours to provide the Services in accordance with any Work Order and in compliance with all applicable laws and regulations, including but not limited to Data Protection Legislation and any subsequent legislation. The University will provide the Services to the standards of a reasonable university carrying out such work.

4.2 The University will use its reasonable endeavours to meet with time frames specified under any Work Order. The University shall use its reasonable efforts to achieve the objectives of the Services efficiently and expeditiously by allocating sufficient effort, equipment, facilities, skilled personnel and other resources to complete such activities successfully and on time, providing that the Customer provides information and data to the University in a timely manner to enable the provision of the Services by the University.

4.3 During the performance of Services, the Parties shall meet as reasonably necessary to discuss the progress of the Services. The University shall submit to the Customer progress reports at the end of each milestone identified in a Work Order, which reports shall include a summary of all work done. The University shall issue a final written report to the Customer on completion of the Services, including a comprehensive summary of the Services undertaken.

4.4 The University may publish at its sole discretion its Background IP and the Process Developments, and publish and make available to third parties the Results to the extent that this does not disclose the Confidential Information of the Customer.

4.5 For the avoidance of doubt nothing in this Agreement, subject to clauses 6 and 8, shall be construed as preventing the University carrying out services of a similar nature on behalf of any other entity.

4.6 Where the Services are provided at the Customer's premises, the Customer shall ensure that any member of staff or agent of the University attending is properly instructed in all matters relating to health and safety and is provided with a safe working environment.

4.7 The Customer shall:

4.7.1 co-operate with the University in all matters relating to the Services;

4.7.2 appoint a manager in respect of the Services to be performed under each Work Order, such person as identified in the Work Order. That person shall have authority

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to contractually bind the Customer on all matters relating to the relevant Services (including by signing Change Orders);

- 4.7.3 provide, for the University, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the University including any such access as is specified in a Work Order;
- 4.7.4 provide to the University in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Work Order or otherwise reasonably required by the University in connection with the Services and ensure that they are accurate and complete [in all material respects];
- 4.7.5 inform the University of all health and safety and security requirements that apply at the Customer's premise;
- 4.7.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used [in relation to the Services] and conforms to all relevant United Kingdom standards or requirements;
- 4.7.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the University to provide the Services, including in relation to the installation of the University's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;
- 4.7.8 keep, maintain [and insure] the University's Equipment in accordance with the University's instructions from time to time and not dispose of or use the University's Equipment other than in accordance with the University's written instructions or authorisation; and
- 4.7.9 comply with any additional responsibilities of the Customer as set out in the relevant Work Order.

4.8 If the University's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the University shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

4.9 The Customer shall not, without the prior written consent of the University, at any time from the date on which any Services commence to the expiry of [12] months after the completion of such Services, solicit or entice away from the University or employ or attempt to employ any person who is, or has been, engaged as an employee [, consultant or subcontractor] of the University in the provision of such Services.

## 5 Fees and expenses

5.1 In consideration of the Services the Customer shall pay the University the fees specified in Schedule 1 and in accordance with the payment schedule set out in Schedule 1. All amounts payable by the Customer under this Agreement shall be:

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- 5.1.1 exclusive of any applicable VAT or sales tax, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 5.1.2 paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.2 Where specified in Schedule 1, the Customer will also reimburse the University for reasonable, necessary and verifiable out-of-pocket expenses incurred by the University in connection with the Services upon submission of receipts or other evidence of the same.
- 5.3 Within thirty (30) days after receipt by the Customer of invoice, the Customer will make payment to the University. The Customer shall be responsible for its own bank charges and shall not deduct such charges from sums due to the University under this Agreement. Until further notice payment shall be made directly into the bank account specified on the invoice or as otherwise notified to the Customer by the University.
- 5.4 If the Customer fails to make any payment by the due date, the University may, without prejudice to its other rights and remedies:
  - 5.4.1 charge the Customer interest in respect of the sum overdue in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 from the due date for payment to the date of actual payment (both dates inclusive) and the reimbursement of all expenses (including legal fees) incurred with respect to collection of overdue fees; such interest shall be payable on demand in addition to sums due under the Agreement; and/or
  - 5.4.2 suspend any further performance of the Services.

## **6 Intellectual Property**

- 6.1 Background IP used in connection with this Agreement will remain the property of the Party introducing it. For the avoidance of doubt, no licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement. The Customer hereby grants to the University licenses to its Background IP to the extent required to enable the University to carry out the Services.
- 6.2 The Results, all Process Developments and all IP contained therein shall belong to the University.
- 6.3 The Customer shall not:
  - 6.3.1 modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights owned by the University; or
  - 6.3.2 use any materials or Intellectual Property Rights owned by the University for financial gain.
  - 6.3.3 The Customer shall use its reasonable efforts promptly to inform the University as soon as it becomes aware of any actual or suspected infringement of any of the University's Intellectual Property rights, or any claim made or threatened that any of University's Intellectual Property rights infringe the rights of any third party. In



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any such case, the University shall have absolute discretion to decide what action, if any, to take, and to control any such action

### 7 Data Protection

- 7.1 This clause sets out the framework for the sharing of personal data between the parties as Controllers.
- 7.2 The University and the Customer will comply with the Data Protection Legislation.
- 7.3 The Customer warrants that:
  - 7.3.1 it is entitled, under the Data Protection Legislation, to provide the University with the Personal Data, and that the University's processing of the Personal Data in connection with the Services will not put the University in breach of the Data Protection Legislation; and
  - 7.3.2 that the Personal Data provided by the Customer to the University is accurate, adequate, relevant and limited to what is necessary for the University to provide the Services.
- 7.4 The University processes personal data (including the Personal Data) in accordance with its privacy notice, which is available on its website at <https://www.nottingham.ac.uk/utilities/privacy>.
- 7.5 Without prejudice to clause 7.4, the University will process the Personal Data: to provide the Services to the Customer and to deal with enquiries that the Customer may make or authorise; to contact the Customer or appropriate persons within the Customer's organisation, or third parties in relation to the Services; to procure third party services on behalf of the Customer in relation to the Services; for the purpose of compliance with applicable laws and regulations, or to defend itself in claims under such laws, or where necessary to exercise its legitimate business interests; (where relevant) for other legal, administrative and management purposes such as audits and research.
- 7.6 The Customer will only use any personal data supplied by the University to the Customer about the University's employees or other staff and/or third parties for the express purposes for which such personal data is provided to the Customer.
- 7.7 As controller, the Data Protection Legislation imposes on the University obligations to implement appropriate security measures to protect the Personal Data processed by the University, and to put in place appropriate safeguards if Personal Data is transferred outside the UK and the European Economic Area. Where the University transfers Personal Data to parties in other countries, it will do so on the basis that they will provide appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data and its accidental loss, destruction or damage. However, the Parties acknowledge that such information may be accessible by law enforcement agencies and other authorities in those countries.
- 7.8 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to the shared Personal Data. In particular, each party shall:
  - 7.8.1 consult with the other party about any notices given to data subjects in relation to the shared Personal Data;

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- 7.8.2 promptly inform the other party about the receipt of any data subject access request;
  - 7.8.3 provide the other party with reasonable assistance in complying with any data subject access request;
  - 7.8.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
  - 7.8.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators; and
  - 7.8.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation.
- 7.9 If during the term of this Agreement the Data Protection Legislation changes in a way that this Clause **Error! Reference source not found.** is no longer adequate for the purpose of governing lawful data sharing exercises, the parties agree that their authorised representatives will negotiate in good faith to review the Agreement in the light of the new legislation.

## 8 Confidential Information

- 8.1 Each Recipient undertakes, both during the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement, not to disclose the Confidential Information of the Discloser and not to use the Discloser's Confidential Information except for the purposes of this Agreement.
- 8.2 The obligations in clause 8.1 shall not apply or shall cease to apply to Confidential Information which:
- 8.2.1 has been received from a third party who are not bound by an obligation of confidentiality to the Discloser;
  - 8.2.2 was already in the Recipient's possession prior to its acquisition from the Discloser as evidenced by written records;
  - 8.2.3 was independently generated by the Recipient as evidenced by written records;
  - 8.2.4 is in or comes into the public domain other than by reason of a breach of this Agreement;
  - 8.2.5 is required to be disclosed by law or a court or other competent authority; or
  - 8.2.6 is disclosed with prior written consent of the Discloser.
- 8.3 Neither the University nor the Customer will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent.

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- 8.4 No Party will disclose, or will be required to disclose, any data identifying any person under this Agreement. The University may have access to general practitioner practice data for the purposes of performing Services, and such data is and shall remain the property of the general practitioner concerned. The Customer shall not be entitled to have access to any such data except as expressly agreed otherwise in writing in any Work Order.

### **9 Freedom of Information**

- 9.1 The Customer acknowledges that the University is subject to the requirements of the FOIA and the EIR, and the Customer will assist and co-operate with the University (on request and at each party's own expense) to enable the University to comply with the information disclosure requirements imposed on it by the FOIA and/or the EIR as the case may be.
- 9.2 If the University in receipt of a Request for Information decides that it is obliged to disclose Confidential Information in response to such Request for Information, it will endeavour to notify the Customer of that decision at least 3 days before disclosure (insofar as it is lawful for the University to do so).

### **10 Warranties and Liability**

- 10.1 Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall exclude or limit either Party's liability for the following:
- 10.1.1 death or personal injury resulting from negligence;
  - 10.1.2 deliberate breach, fraud or statements made fraudulently;
  - 10.1.3 any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability.
- 10.2 Save as provided in clause **10**, the University will not be liable for any exemplary, punitive or special damages, or any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused (even if caused by the University's negligence and/or breach of contract and even if the University were advised that such loss would probably result).
- 10.3 Subject to clause **10** of this Agreement, the University's total aggregate liability for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by the University's negligence and/or breach of contract) shall be limited to the Charges paid by Customer during the 12 months immediately preceding the date on which the claim arose.
- 10.4 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

### **11 Anti-Bribery**

- 11.1 The Customer shall:

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- 11.1.1 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
  - 11.1.2 not engage in any activity, practice or conduct which 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;
  - 11.1.3 comply with the University's Ethics, Anti-bribery and Anti-corruption Policies as provided to the Customer from time to time and, as the University may update them from time to time ("**Relevant Policies**");
  - 11.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 11.1.2, and will enforce them where appropriate;
  - 11.1.5 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this Agreement;
  - 11.1.6 immediately notify the University (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as officers or employees or direct or indirect owners at the date of this Agreement); and
  - 11.1.7 within one month of the date of this Agreement, and annually thereafter, certify to the University in writing signed by an officer of the Customer, compliance with this Clause 11 by the Customer and all persons associated with it and all other persons for whom the Customer is responsible under Clause 11.1.4 The Customer shall provide such supporting evidence of compliance as the University may reasonably request.
- 11.2 The Customer shall ensure that any person associated with the Customer who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this Clause 11 ("**Relevant Terms**"). The Customer shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to the University for any breach by such persons of any of the Relevant Terms howsoever arising.
- 11.3 Breach of this Clause 11 shall be deemed a breach, which is irredeemable, under Clause **Error! Reference source not found.**
- 11.4 For the purpose of this Clause 11, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 11 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

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### 12 ICT access

- 12.1 All access to any of the University's computer systems including any software, hardware, firmware, database, data or file, whether directly or remotely will be strictly limited to access required for the proper performance of the Services.
- 12.2 The Customer will comply with all reasonable security audits and the University's Policies and Procedures relating to access to the University's computer systems.

### 13 Force Majeure

- 13.1 Neither party will be liable to the other to the extent that it is unable to perform its obligations by reason of Force Majeure provided the party so unable to perform promptly notifies the other of the Force Majeure and its causes.
- 13.2 If a Force Majeure continues for more than 60 days a party in receipt of a notice pursuant to clause 13.1 may terminate this agreement by giving 30 days' notice to the other party. In calculating whether a Force Majeure has continued for 60 days, the party may ignore any period or periods totalling 10 days or less during the 60 day period during which the party serving the notice under clause 13.1 was able to fulfil its obligations.
- 13.3 The party serving a notice to terminate pursuant to clause 13.1 may withdraw it if the Force Majeure ceases during the 30 day notice period.

### 14 Notices

- 14.1 Subject to Clause 14.5, any notice given under this Agreement will be in writing and signed by or on behalf of the party giving it and will be sent to the party for the attention of the contact to the address or email address specified in clause 14.3 and served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party, or by sending it by email. Any such notice will be deemed to have been received:
  - 14.1.1 if delivered personally, at the time of delivery;
  - 14.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and
  - 14.1.3 in the case of email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 14.1.3 business hours means 9.00am to 5.00pm Monday to Friday on a day that is a Working Day in the place of receipt.
- 14.2 In proving such service it will be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by email to the email address of the relevant party.
- 14.3 The addresses and email addresses for service of notices are:
  - 14.3.1 For The University –
    - 14.3.1.1 **Address:** PRIMIS, Applied Health Research Building, University Park, Nottingham, NG7 2RD, United Kingdom;
    - 14.3.1.2 **For the Attention of:** PRIMIS Managing Director.

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14.3.1.3 **Email address:** enquiries@primis.nottingham.ac.uk

14.3.2 For the Customer –

14.3.2.1 **Address:** [ADDRESS];

14.3.2.2 **For the Attention of:** [POSITION OF CONTACT].

14.3.2.3 **Email address:** [EMAIL ADDRESS].

14.4 A party may change its details given in the table in Clause 14.3 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

14.4.1 the date, if any, specified in the notice as the effective date for the change; or

14.4.2 the date five Working Days after deemed receipt of the notice.

14.5 The Parties agree that due to the prevailing circumstances at the time of the contract which mean that access to the University's premises is restricted, all notices shall be, until such time as notified the University, sent by email or where they are sent by another method, a copy of the notice shall sent by email.

## 15 Disputes

15.1 The University and the Customer will use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this agreement or a breach thereof.

15.2 A dispute, which cannot be resolved in accordance with Clause 15.1 within 10 Business Days of commencement of attempts to do so, will be referred to the Managing Director of PRIMIS of the University and the Commercial Director of the Customer (or such other person nominated by each of the parties from time to time). They will review the matter within a further 10 Working Days and attempt in good faith to resolve it.

15.3 A dispute relating to a technical matter remaining unresolved after the procedures in Clauses 15.1 and **Error! Reference source not found.** may be referred at either party's request to the Centre for Effective Dispute Resolution and:

15.3.1 The Centre for Effective Dispute Resolution will then appoint an Expert and agree his terms of appointment;

15.3.2 Such Expert will act as expert and not as arbitrator. He will give his decision to the parties in writing within 1 month of his appointment. His decision will be final and binding on the parties in the absence of manifest error or fraud;

15.3.3 Each party will bear its own costs in relation to the reference to the Expert appointed under this Clause **Error! Reference source not found.**. The Expert's fees (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert will direct. All matters concerning the process and result of the determination by the Expert.

15.4 Where the dispute relates to any legal matter; including the recovery of sums due; that cannot be resolved in accordance with Clauses 15.1 and **Error! Reference source not found.**, either party may commence any court proceedings.

## SUBJECT TO CONTRACT

15.5 Nothing in this Clause 15 will prevent either party from seeking injunctive or other emergency relief which it considers appropriate.

### 16 Publicity

16.1 All media releases, public announcements and public disclosures by the Customer relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the University and approved in writing by the University prior to release.

### 17 General

17.1 The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.

17.2 This Agreement shall not be assigned by either Party without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. The University may subcontract parts of the Services providing that the University remains responsible for the carrying out of such parts of the Services and the University shall ensure that the Customer's rights hereunder are unaffected by such sub-contracting.

17.3 Any variation to this Agreement (and/or any Work Order) shall be in writing through a letter of variation and signed by authorised signatories for both Parties.

17.4 If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

17.5 No failure, delay, relaxation or indulgence on the part of either Party in exercising or partial exercise of any right hereunder shall operate as a waiver of such rights.

17.6 The formation, existence, performance, validity and all aspects of this Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Parties submit to the jurisdiction of the courts of England.

17.7 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

17.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

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

**SIGNED** for and on behalf of  
**The University of Nottingham:**

**SIGNED** for and on behalf of  
**[Customer Legal Title]**

.....  
School of Medicine

.....  
[Name and Position]

**SUBJECT TO CONTRACT**

.....  
Date

.....  
Date



## SUBJECT TO CONTRACT

### Annex 1 – The Services

*[Description of Services to be supplied by the University].*

*[Price of the Services – sample alternatives structures follow].*

Invoices to the Customer shall be sent to the following address:

[addressee for invoices at Customer] and may be sent by email attachment to the following email address [email address for invoices at Customer].

*[payment on completion:]*

£[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be submitted on or shortly after completion of the Services in material accordance with this Work Order.

*[payment in advance – include the second (highlighted) sentence if you want all monies in hand before you start work]*

£[amount] ([amount in letters]), payable within thirty (30) days of the University's invoice, to be submitted on or shortly the date of execution of this Work Order. [For the avoidance of doubt, and notwithstanding any other provision in the Work order or in the FSA, the University shall not be obliged to start work under this Work Order until the payment has been received in full and in cleared funds in accordance with the University's invoice.] [The Customer shall also pay any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services within thirty (30) days of the University's invoice in respect thereof, to be submitted once the Services are complete.]

*[payment in two instalments, one up front, one on completion:]*

The total price shall be £[amount] ([amount in letters]), payable as follows:

- £[amount] ([amount in letters]), payable within thirty (30) days of the University's invoice, to be submitted on or shortly the date of execution of this Work Order. [For the avoidance of doubt, and notwithstanding any other provision in the Work order or in the FSA, the University shall not be obliged to start work under this Work Order until the payment has been received in full and in cleared funds in accordance with the University's invoice.]
- £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be supplied on or shortly after completion of the Services in material accordance with this Work Order.

*[payment in quarterly instalments:]*

The total price shall be £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be submitted to the Customer quarterly in arrears.

*[payment in X dated instalments:]*

## SUBJECT TO CONTRACT

The total price shall be £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable as follows:

- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];
- [£[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];
- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];] and
- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date].