

FINAL CONTRACT

**DATED**

**(1) PRIMARY CARE IT LTD**

**-and-**

**(2)**

**SOFTWARE LICENCE AND MAINTENANCE AGREEMENT**

## FINAL CONTRACT

## TABLE OF CONTENTS

Clause	Page No.
1. Interpretation .....	1
2. Delivery and installation .....	5
3. Licence .....	5
4. Maintenance Services and Maintenance releases.....	8
5. Fees .....	8
6. Confidentiality and publicity.....	10
7. Supplier's warranties .....	10
8. Clinical responsibilities .....	11
9. Limits of liability .....	12
10. Intellectual property rights .....	13
11. Data protection .....	15
12. Termination .....	15
13. Waiver .....	18
14. Remedies .....	18
15. Entire agreement.....	18
16. Variation .....	18
17. Severance .....	18
18. Counterparts .....	19
19. Third-party rights .....	19
20. No partnership or agency .....	19
21. Force majeure .....	19
22. Notices .....	19
23. Governing law and jurisdiction .....	20
 Schedule 1 Software and Fees .....	 21
Schedule 2 Specification.....	24
Schedule 3 Data protection.....	32
Schedule 4 Maintenance Agreement.....	53
Schedule 5 Localisation plan .....	62

## TABLE OF CONTENTS

Clause	Page No.
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**THIS LICENCE** made on

**COVERS** the dates from **\*\*INSERT\*\*** to **\*\*INSERT\*\***

**BETWEEN**

- (1) PRIMARY CARE IT LTD incorporated and registered in England and Wales with company number 8656324 having its registered office at Suite 3A, Keswick Hall, Norwich, NR4 6TJ (**Supplier**)
- (2) **\*\*INSERT\*\*** incorporated and registered in England and Wales whose registered office is at **\*\*INSERT\*\*** (**Customer**).

## **RECITALS**

The Supplier is the entire legal and beneficial owner and licensor of certain software products listed in Schedule 1 and is willing to license the Customer to use these products and to provide certain maintenance and other services in relation to that Software as set out in this Agreement.

## **OPERATIVE PART**

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this licence.

**"Additional Software"** such computer programs in addition to the computer programs listed at Schedule 1 on the date of this Agreement as the Supplier shall agree to licence to the Customer in accordance with clause 3.3.

**"Affiliate"** includes, in relation to either party any business entity from time to time controlling, controlled by, or under common control with, either party.

**"Business Day"** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

<b>“Commencement Date”</b>	the date of this Agreement or, in relation to any Additional Software, the date the parties agree shall be the commencement date for the licence of such Additional Software pursuant to clause 3.3.2(a).
<b>"Controller, Data Subject, Personal Data, Personal Data Breach, Processing, and Processor"</b>	each have the meaning given to such terms in the Data Protection Legislation.
<b>“Customer Personal Data”</b>	Personal Data relating to patients or other service users of the Customer processed by the Supplier in relation to the Software and the provision of the Support Service to the Customer.
<b>“Data Protection Legislation”</b>	all applicable data protection and privacy laws in force from time to time in England and Wales, including the version of the General Data Protection Regulation ((EU) 2016/679) retained in UK law (“ <b>UK GDPR</b> ”); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
<b>"Fees"</b>	the Licence and Maintenance Fee, the Set-up Fee and any other fee payable by the Customer as set out at Schedule 1.
<b>"Intellectual Property Rights"</b>	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the

confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**“Licence”**

the Licence granted by the Supplier to the Customer pursuant to clause 3.1 and, as applicable, as renewed in accordance with clause 3.2.

**“Licence and Maintenance Fee”**

In relation to each element of the Software, the fee payable in relation to the licence of the Software and associated maintenance services as set out at Schedule 1 or such increased amount as may apply in accordance with clause 5.

**“Localisation Plan”**

the implementation and localisation plan, if any, set out at Schedule 5.

**"Maintenance Agreement"**

the form of maintenance agreement for the Software as set out at Schedule 4.

**"Maintenance Release"**

release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

**"New Version"**

any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the

previous versions as to be generally accepted in the marketplace as constituting a new product.

**“Patient Catchment Area”** the geographical patient catchment area specified in relation to the Software at Schedule 1.

**“Patient Population”** the number of persons registered as patients with the Customer in the Patient Catchment Area being, at the date of this Agreement the number of patients specified at Schedule 1.

**“Renewal Date”** an anniversary of the Commencement Date on which the Licence of any Software is renewed.

**“Set-up Fee”** any fee payable in relation to the installation and set-up of the Software and or any Localisation Plan as set out at Schedule 1.

**"Site"** the premises from which the Customer carries out its business as stated above or as notified to the Supplier in writing from time to time.

**"Software"** the computer programs listed in Schedule 1 as updated from time to time to include Additional Software and any Maintenance Release which is acquired by the Customer during the subsistence of this licence.

**"Specification"** the document detailing the specification of the Software as set out or referenced at Schedule 2.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise requires:

1.3.1 words in the singular shall include the plural and in the plural shall include the singular;



- 1.3.2 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.3.3 a reference to one gender shall include a reference to the other genders; and
- 1.3.4 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.7 The Schedules form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules.

## **2. DELIVERY AND INSTALLATION**

- 2.1 The Supplier shall deliver and install on the Customer's equipment one copy of the Software electronically at the address for the Customer (stated above) within 30 days of signature of this licence. Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 2.2 The Supplier and the Customer shall agree any training requirements of the Supplier in relation to the Software. Such training may include remote training sessions and face to face, on-Site, training. In each case such training shall be subject to such fees as the Supplier shall notify to the Customer from time to time.
- 2.3 Where the Supplier and the Customer agree that installation and training support is required in addition to the provisions of clause 2.1 and 2.2, such support shall be provided in accordance with, and the parties shall be bound by, the Localisation Plan.

## **3. LICENCE**

- 3.1 In consideration of payment of the Licence and Maintenance Fee by the Customer to the Supplier in accordance with clause 5 the Supplier grants to the Customer a non-exclusive licence for a term of 12 months commencing on the Commencement Date, to use the Software at the Site and in relation to the Patient Population only.
- 3.2 Unless this Agreement is terminated in accordance with clause 12, the Licence shall be renewed automatically on the first anniversary of the Commencement Date for a further 12 months and shall continue to be renewed, unless terminated, on each subsequent anniversary of the Commencement Date. On any such renewal the terms of this Agreement shall apply in relation to such extended term provided that the Licence and Maintenance Fee shall increase in accordance with clause 5.
- 3.3 The Customer and the Supplier may at any time agree the licence of software additional to the Software set out at Schedule 1 at the date of this Agreement ("**Additional Software**"). Where the parties so agree:
- 3.3.1 Schedule 1 shall be updated to include such Additional Software, the associated Licence and Maintenance Fee, and such further information as may be required or agreed;
- 3.3.2 the Supplier shall grant a licence to the Customer to use the Additional Software on the terms of clause 3.1 and the terms of this Agreement shall apply to such licence provided that:
- (a) the commencement date for the licence of such Additional Software shall be such date as is agreed by the parties and stated in Schedule 1 as updated; and
- (b) the renewal date for such Additional Software shall be the anniversary of the Commencement Date for the licence of that Additional Software as agreed in accordance with clause 3.3.2 (a) above.
- 3.4 In relation to scope of use:
- 3.4.1 for the purposes of clause 3.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal primary care business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer);
- 3.4.2 the Customer may not use the Software other than as specified in clause 3.1 and clause 3.4.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier;
- 3.4.3 except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third

party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.

- 3.5 Where the Customer requires backup copies of the Software in relation to its lawful use of the Software, the Supplier shall make such copies available at the Customer's request subject to the Supplier charging a reasonable fee not exceeding its costs of such service.
- 3.6 To the extent any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer the Supplier shall carry out such service on payment of a reasonable fee to be agreed with the Customer.
- 3.7 The Customer may not use any information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 3.6 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 3.8 The Customer shall not:
  - 3.8.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
  - 3.8.2 allow the Software to become the subject of any charge, lien or encumbrance; and
  - 3.8.3 deal in any other manner with any or all of its rights and obligations under this Agreement,without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 3.9 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.
- 3.10 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 3.11 Notwithstanding clause 6, a party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause

shall be made until notice of the identity of the proposed assignee has been given to the other party.

3.12 The Customer shall:

- 3.12.1 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
- 3.12.2 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
- 3.12.3 notify the Supplier as soon as possible following any increase in the Patient Population where such increase is equal to or exceeds 5% as against the Patient Population at the date of this Agreement or the date of any subsequent renewal of the Licence;
- 3.12.4 pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 5.6, from such date to the date of payment.

3.13 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

#### **4. MAINTENANCE SERVICES AND MAINTENANCE RELEASES**

- 4.1 The Supplier will provide the Customer with software maintenance services in relation to the Software in accordance with the terms of the Maintenance Agreement.
- 4.2 Subject to the compliance by the Customer with the terms of this agreement including the Maintenance Agreement, the Supplier shall provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

#### **5. FEES**

- 5.1 The Customer shall pay to the Supplier the Licence and Maintenance Fee and the Set-up Fee within

14 days of the Commencement Date.

- 5.2 Where the Licence renews in accordance with clause 3.2 a further Licence and Maintenance Fee shall be payable in relation to each item of Software for each 12 month period for which the Licence is renewed and such fee shall be payable within 14 days of the relevant Renewal Date. On or prior to such renewal the Supplier shall confirm the Licence and Maintenance Fee that shall apply to such further term applying such increases as may be required to reflect any increase in the Supplier's costs and in relation to any increase in the Patient Population in accordance with clause 5.3.1 and in the absence of such confirmation the relevant fees that applied in the previous 12 months shall apply subject to an increase by a percentage equivalent to the retail price index published by the Office for National Statistics for the 12 months prior to the date of renewal.
- 5.3 The Customer acknowledges that:
- 5.3.1 the Licence and Maintenance Fee is calculated on the basis of the Customer's Patient Population and the Supplier may increase the Licence and Maintenance Fee (and any other Fee) to reflect any increase in the Patient Population either on a renewal of the Licence in accordance with clause 3.2 or during the term of the Licence where the Patient Population increases by 5% or more as against the Patient Population applicable at the date of this agreement or the applicable Renewal Date as the case may be; and
- 5.3.2 the Licence and Maintenance Fee is calculated on the basis of an assumed standard usage of any video and text messaging services comprised within the Software in relation to the Patient Population; to the extent that the Customer's use of such services exceeds the assumed standard usage, the Supplier reserves the right to increase the Licence and Maintenance Fee in accordance with the increased costs of delivery of the associated services.
- 5.4 Any increase to the Licence and Maintenance Fee and any other Fee payable by the Customer in accordance with this Agreement shall be payable within 14 days of receipt by the Customer of the Supplier's invoice for the relevant Fee.
- 5.5 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.
- 5.6 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest

together with the overdue amount.

- 5.7 All amounts due under this Agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. CONFIDENTIALITY AND PUBLICITY**

- 6.1 Each party shall, during the term of this licence and thereafter, keep confidential, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority), any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

- 6.2 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **7. SUPPLIER'S WARRANTIES**

- 7.1 The Supplier warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this licence ("**Warranty Period**"). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- 7.1.1 repair the Software;

- 7.1.2 replace the Software; or
- 7.1.3 terminate the Licence immediately by notice in writing to the Customer and refund any of the Licence and Maintenance Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.
- 7.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 7.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **8. CLINICAL RESPONSIBILITIES**

- 8.1 The Customer represents and warrants to the Supplier that:
- 8.1.1 it has in place at the date of this Agreement, and shall maintain for the term of this Agreement, all applicable licences and consents as may be required to deliver any clinical services to its patients;
- 8.1.2 it shall act in accordance with all applicable law and regulation in carrying out its obligations under this agreement and in using the Software and any Documentation and or Deliverables.
- 8.2 The Customer acknowledges that the Software is designed and provided as an aid to the carrying on of clinical practice only, accordingly:
- 8.2.1 all clinical decisions whether in relation to diagnosis, treatment, clinical governance or otherwise are the sole responsibility of the Customer;
- 8.2.2 it is the Customer's responsibility to assess whether the Software and any outputs of the Software are fit for any clinical purpose to which the Customer may seek to apply them; and
- 8.2.3 the Supplier shall have no liability in relation to any acts or omissions of the Customer in relation to the Customer's patients or otherwise in relation to any clinical decisions of the Customer.

## **9. LIMITS OF LIABILITY**

9.1 Except as expressly stated in clause 9.2:

9.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (a) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill;
- (f) loss or corruption of data,

provided that this clause shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 9.1.2 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause;

9.1.2 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Licence and Maintenance Fee applicable to the relevant 12 month period during which such liability arises; and

9.1.3 the Customer agrees that, in entering into this licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

9.2 The exclusions in clause 7.3 and clause 9.1 shall apply to the fullest extent permissible at law, but



the Supplier does not exclude liability for:

- 9.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
  - 9.2.2 fraud or fraudulent misrepresentation;
  - 9.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 9.2.4 any other liability which may not be excluded by law.
- 9.3 All dates supplied by the Supplier for the delivery of the Software or the provision of services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 9.4 All references to "the Supplier" in this clause, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Customer acknowledges that all Intellectual Property Rights in the Software, any deliverables produced as outputs from the Software, any Maintenance Releases and any Deliverables or Documentation (as those terms is defined in the Maintenance Agreement) belong and shall belong to the Supplier, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence and the Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of the Supplier's Intellectual Property Rights.
- 10.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination

with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

- 10.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under 10.2 are conditional on the Customer:
  - 10.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - 10.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
  - 10.3.3 giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
  - 10.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 10.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
  - 10.4.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this licence;
  - 10.4.2 modify the Software so that it ceases to be infringing;
  - 10.4.3 replace the Software with non-infringing software; or
  - 10.4.4 terminate this licence immediately by notice in writing to the Customer and refund any of the Licence and Maintenance Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software

must comply with the warranties contained in clause 7 (*Supplier's warranties*) and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

10.5 Notwithstanding any other provision in this Agreement, clause 10.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

10.6 This clause 10 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 9.1.

## **11. DATA PROTECTION**

The Customer and the Supplier shall comply with their respective obligations as set out in Schedule 3 (*Data Protection*)

## **12. TERMINATION**

12.1 Either party may terminate this Agreement by giving 14 days' written notice to the other party with such notice to expire on the first anniversary of the date of this Agreement, or, where the Licence renews in accordance with clause 3.2, on any subsequent anniversary of the date of this Agreement.

12.2 The Supplier may terminate this agreement on one month's written notice to the Customer where the Customer fails to make arrangements for installation of any Maintenance Release in accordance with paragraph 2.2.2 or any New Version in accordance with paragraph 2.3 of Schedule 4 (*Maintenance Agreement*).

12.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

12.3.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

12.3.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;

12.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts

as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;

- 12.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 12.3.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - 12.3.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 12.3.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
  - 12.3.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - 12.3.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 12.3.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
  - 12.3.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.3.3 to clause 12.3.10 (inclusive); or
  - 12.3.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.4 Either party may terminate the Licence as it applies to any computer program comprised within the

Software on giving 14 days' written notice to the other party with such notice to expire on an anniversary of the relevant Commencement Date. On such termination the Licence and this Agreement shall continue in relation to the remaining Software.

- 12.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.6 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 12.7 On termination of the Licence in relation to any part of the Software in accordance with clause 12.4:
  - 12.7.1 all rights granted to the Customer under the Licence for that Software shall cease;
  - 12.7.2 the Customer shall cease all activities authorised by this Agreement and the Licence in relation to such Software;
  - 12.7.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under in relation to the Licence of that Software; and
  - 12.7.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the relevant Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 12.8 On termination of this Agreement for any reason:
  - 12.8.1 all rights granted to the Customer under the Licence shall cease;
  - 12.8.2 the Customer shall cease all activities authorised by this Agreement and the Licence;
  - 12.8.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under this Agreement; and
  - 12.8.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 12.9 Any provision of this Agreement which expressly or by implication is intended to come into or

continue in force on or after termination of this Agreement shall remain in full force and effect.

### **13. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **14. REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **15. ENTIRE AGREEMENT**

15.1 This Agreement, the schedules and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

15.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it and or annexed to it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) ("**Representation**") other than as expressly set out in this licence or those documents.

15.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

15.4 Nothing in this clause shall limit or exclude any liability for fraud.

### **16. VARIATION**

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

### **17. SEVERANCE**

17.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this

Agreement.

- 17.2 If any provision or part-provision of this Agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **18. COUNTERPARTS**

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

## **19. THIRD-PARTY RIGHTS**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **20. NO PARTNERSHIP OR AGENCY**

- 20.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **21. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

## **22. NOTICES**

- 22.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:
- 22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its

registered office (if a company) or its principal place of business (in any other case); or

22.1.2 sent by email to such email as the other party shall have provided to the other for the purposes of correspondence in relation to this Agreement.

22.2 Any notice shall be deemed to have been received:

22.2.1 if delivered by hand, at the time the notice is left at the proper address;

22.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

22.2.3 if sent by email, at 9.00 am on the next Business Day after transmission unless an automatic response is received indicating that such email address is not in use or is not being monitored in which case notice must be sent in accordance with clause 22.1.1.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **23. GOVERNING LAW AND JURISDICTION**

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties hereto have caused this Agreement to be duly executed the day and year first before written



**SCHEDULE 1**  
**SOFTWARE AND FEES**

Contract owner:

Contract Customer Name	
ODS No. (if applicable)	
Website Address	
Contract Representative:	
Contract Rep. Email Address:	
Contract Rep. Phone Number:	
Deputy Contract Representative:	
Deputy Contract Rep. Email Address:	
Deputy Contract Rep. Phone Number:	

This contract covers the following organisations:

Surgery Organisation Name	or	ODS code	Website address	Patient Population	Contact Name	Contact email	Contact Phone number

**Subscription Information:**

Subscription Type: (Core / Enhanced / Professional / Individual)	
Total number of organisations	
Total Number of Patients	
Setup fee (without VAT)	
Annual subscription fee (without VAT)	

**Localisation allowance:**

Where packages incorporate localisation we include a time allowance for this. This represents the average time it would take us for an areas localisation work to be undertaken. We continue to monitor this and adjust contractual allowances for this as necessary. Our intention is that 95% of the localisation work we do should be achievable within these limits (so 95% of contracts would be completed within the limits), however when a localisation is within the top 5% of size, there may be additional fees included. During sizing of your localisation we will notify you if this applies to you, and give you an idea of the additional time and cost needed to complete the work. The following table shows you the development time included within the scope of the contract and additional costs if required:

Resource	Development time included	Cost per additional day (if needed)
Templates	1 day	£1500
Searches and alerts	5 days	£1500
Document management	15 days (for max 150 documents)	£295 (10 documents)

## **Training and support fees**

The training elements of the different subscription packages are detailed in Schedule 2. We include additional training rates here in case these are needed in addition to what is supplied with the subscription or product purchased.

Supplier's daily rate for additional training: £295 per day

Additional services can be undertaken with the following rates:

- Clinical systems specialist £1500 per day
- Senior systems specialist £1200 per day
- Systems specialist £1000
- Junior systems specialist £800
- Product support £300 per day

A day is defined as 8 working hours, including travel time if working on site, but not if working remotely.

The Supplier's daily rate applies to the initial term of the Agreement ending on the first anniversary of the date of this Agreement and is subject to such increase as the Supplier shall notify to the Customer on or following any renewal of the term of the Agreement.

## SCHEDULE 2

### SPECIFICATION

Primary Care IT supports practices with decision support tools, contract management tools, as well as any other resources practices may need for the efficient running of their practice. The products provided depend on the subscription or individual products purchased and are specified in schedule 1. In the following documentation we explain:

- The products
- Training that is provided
- Contract management
- Service model

#### Products:

Element	Specification
Templates:	OneTemplate Prescriber and Non Prescriber OneAdditional roles – for clinical pharmacists OneTemplate Acute – for on the day conditions OneCalculator – all clinical calculators in one place OneProcedure – covering all clinical procedures including minor ops OneAdmin – for all administrative activities, e.g. death notification, vaccine recording OneCoding – a template for clinical coders to enter data.
OneLaunchers	OneLauncher Prescriber OneLauncher Non Prescriber OneLauncher Admin OneLauncher Additional roles
Handy Protocols	Over 200 useful tools, ranging from simple code correctors, right up to results interpreters and prescribing guides
Care plans	-COPD -Asthma -Mental health -Learning disabilities -Diabetes (can be auto-launched and pre-populated after use of the OneTemplates)
OneResults and OneMonitoring	See what blood tests are needed for which patient, and when and why as well as when they were last done See what elements of care (including QOF) need doing, when they were last done and which ones are more than 10months since last done.
IIF Alerts	A suite of alerts that highlight any outstanding work that is needed to complete IIF targets
OneRecall	Full recall system, with searches and user specific triggers (e.g. receptionist booking appointment is notified of other outstanding actions required based on those overdue) with details in the alert box of medication reviews and results.

Document management	Full optimisation of your referral documents, including a generic referral form that can be used to generate all referrals. Creation of our “Referral tree” that houses all your documents in an easy to find structure
OneAnalytics	Allowing analysis of prevalence data, drug monitoring (DMARDs, DOAC etc), staff recording of QOF data etc. Building PCN level data to look at clinical skill mix used vs potentially needed – mapping what people were seen with vs what they needed to be seen to help with planning need
OneAnalytics IIF:	Shows performance against IIF targets, with associated financial details. Ability to track performance over time.
OneContact	Gives users access to the OneContact online platform for the period of the Licence. Details of the platform can be seen at: <a href="https://onecontact.health/">https://onecontact.health/</a>
Searches/Reports	Searches or reports that identify anything that you could need within Primary Care within your clinical system. From QOF to IIF, CQC and clinical audit tools. We have them all, and if we don't we'll build them for you.

## **Training:**

Primary Care IT has a number of training resources which customers can make use of.

**PCIT Hub** – Within our website, we have the PCIT Hub. This has training materials, and displays the resources available as part of your subscription – either by category or by user role. Our monthly training sessions are displayed here, as are localised training resources. Users can access our lessons within this platform as well. Users can request installation or removal of elements of their subscription from within this platform. This incorporates our knowledge base; Primary Care IT has an extensive and ever growing suite of support articles which can help users with use of our tools or the clinical systems in general

**PCIT Webinars** – Primary Care IT run a regular series of webinars on different topics, suited to current contracts, hot topics and the needs of our users.

## **Training / Onboarding Overview:**

PCIT offers a standard approach to training and onboarding based on our previous experience of working with numerous customers however we appreciate that no one customer is the same and will happily tailor the onboarding and training to meet your needs, ensuring successful adoption and benefits realisation of your purchased subscription with PCIT.

As part of the new customer onboarding the onboarding / training approach can be discussed and agreed prior to rolling out our subscription package.

The following training is provided as part of your subscription package **\*\*DELETE AS APPROPRIATE\*\***:

### **Core:**

Initial training:

Onboarding – 1 hour remote onboarding session per site

Contract owner - 30 minutes remote

Ongoing training:

Access to remote webinars and PCIT hub

**Enhanced:**

Initial training:

Onboarding - 30 minutes face to face training per practice, in groups and by role, hosted by the customer(s) and 1 hour remote onboarding per site

Contract owner – 2 hours remote

Ongoing training:

Access to remote webinars and PCIT hub

Plus localisation training - one live webinar upto 90 minutes (recorded)

**Professional**

Initial training:

Onboarding - 30 minutes face to face training per practice, in groups and by role, hosted by the customer(s) and 1 hour remote onboarding per site

Contract owner – 2 hours remote

Ongoing training:

Access to remote webinars and PCIT hub

Plus localisation training - one live webinar upto 90 minutes (recorded)

6 monthly face to face training, group sessions duration based on 30 minutes per practice, by role, hosted by the customer(s)

Monthly user group meeting remote

Monthly contract meeting remote

3 Days of bespoke development time.

**Standalone:**

Initial training:

Onboarding – none

Ongoing training:

Access to remote webinars and PCIT hub

**Contract Management**

Regardless of your subscription package with us, all our customers are important to us and each contract will have its own dedicated Customer Relationship Manager who will act as your consistent point of contact to represent you and your sites within PCIT and help resolve any open tickets associated to your contract.

Working with your contract owner we will look to work with all your sites by meeting on a regular basis to answer questions and help resolve any open issues.

Our customer relationship managers meet monthly with our professional subscribers. During this meeting they cover the following areas:

- Feedback on any actions required following the last meeting
- New tools developed

- Highlighting of awareness days and any support resources PCIT have developed
- Number of tickets dealt with for the region
- Status and duration of these tickets
- Organisation of any future training
- Discussion of any additional development requirements

## **Service Desk**

**Hours open** Our service desk is open from 0800 – 1700 Monday to Friday.

**Method of communication:** Our support team and ITIL compliant service desk can be accessed by ticket from our website, email, phone, social media, by webchat or by direct communication with any of our team via the service desk. We can only offer to adhere to our timescales for responding to tickets when the correct engagement is followed.

**Classification of calls:** We use the following classification of contacts using the service desk:

- Question
- Fault
- Install feature
- Development request

**Target response times.** We have a variety of response time targets, depending on the nature of the issue – see further detail below (our full Incident Management policy is available on request for complete detail)

**Escalation process** Our escalation process is as follows:

1. Initial contact with customer: The support desk representative will respond to the customer's request and attempt to resolve the issue within their area of expertise.
2. Escalation to tier 2: If the issue cannot be resolved by the support desk representative, it will be escalated to a tier 2 support team with specialised knowledge and training.
3. Escalation to team lead: If the tier 2 team is unable to resolve the issue, they will escalate it to the team lead who will oversee the resolution process.
4. Escalation to management: If the team lead is unable to resolve the issue, they will escalate it to the appropriate management team for further review and resolution.
5. Notification of escalation: Throughout the escalation process, the customer will be informed of the status of the issue and who is currently handling it.
6. Escalation review: The management team will review the escalation and determine the appropriate course of action, which may include involvement from additional internal teams or external partners.
7. Resolution and follow-up: The issue will be resolved, and the customer will be notified of the resolution. The support desk will also follow up with the customer to ensure their satisfaction with the resolution.



8. Root cause analysis: The support desk will conduct a root cause analysis to determine what caused the issue and implement processes to prevent it from happening in the future.

#### **Description of the process of incident response:**

When receiving details of an issue with our tools, we immediately triage the ticket, send an acknowledgement, and ensure the case is raised and appropriately allocated within our ticketing system. The ticket is then categorised. The time frames for this are as follows:

<b>Response Time</b>	
<b>Ticket received</b>	5 minutes Action: Triage Ticket, categorise, allocate to correct team to action Output: Acknowledge Ticket Who: System or User
<b>Categorise Ticket</b>	30-60 minutes Action: Review Ticket, categorise further, allocate for action Who: User Output: Advise customer what action is being taken to resolve the ticket and any known timescales to address or provide a further update

When categorising tickets, we apply a “distribution” and “impact” assessment as follows (this is in line with NHS Digital guidance for GPITF suppliers):

<b>Level</b>	<b>Distribution</b>
<b>High</b>	Impacts or potentially impacts more than 50% of Service Recipients that use the affected Catalogue Solution.
<b>Medium</b>	Affects or potentially affects between 5 Service Recipients and 50% of Service Recipients using the affected Catalogue Solution.
<b>Low</b>	Localised to affecting or potentially impacting 1 or <=5 Service Recipients.
<b>Very Low</b>	Only affecting or potentially impacting a single End User at a Service Recipient.

<b>Categories</b>	<b>Impact</b>
<b>Unavailable</b>	This is as defined in the GPIT SLA 3.2.2.
<b>Degraded</b>	The Catalogue Solution can still be accessed by Service Recipient(s) and will perform the intended task successfully. However, timescales to complete the task are longer than expected or the Catalogue Solution performs with unexpected behaviour. This includes (but is not limited to) data issues where data is inaccurate.
<b>Non-Performance issue</b>	The impact of the Incident / Problem does not fall into either of the above categories. For example the impact is not related to the

usability of the Catalogue Solution, rather it relates to the overall aesthetic of the system such as a typo.

This gives us the following severity level matrix:

<b>Severity Level Matrix</b>			
<b>Impact</b>			
<b>Distribution</b>	<b>Unavailable</b>	<b>Performance Degraded</b>	<b>Non-Performance Issue</b>
<b>High</b>	Severity 1	Severity 2	Severity 3
<b>Medium</b>	Severity 2	Severity 3	Severity 4
<b>Low</b>	Severity 3	Severity 4	Severity 4
<b>Very Low</b>	Severity 4	Severity 5	Severity 5

Incidents with a Clinical Safety Rating must be assessed as per DCB0129 implementation guidance risk estimation. If the Incident has been given a Clinical Safety Rating, then the following Severity Levels shall be applied and Incidents with a Clinical Safety Assessment of Risk of 3 (Medium) or above must be assessed by an Internal Clinical Safety Team and NHS Digital's Clinical Safety Team.

Where the resultant Clinical Safety assessment of risk (as set out in DCB0129) differs from the Incident Severity Level Matrix then the Severity that is higher shall be used.

<b>Clinical Safety Assessment of Risk (as per DCB0129 section 4.4)</b>	<b>Incident Severity</b>
5	Severity 1
4	Severity 2
3	Severity 3
2	Severity 4
1	Severity 5

Our response times according to priority are as follows:

<b>Priority</b>	<b>Target response time</b>	<b>Hard stop Response time</b>	<b>Target resolution time</b>	<b>Hard stop Resolution time</b>
1	10 minutes	6 hours	ASAP – all other work ceases	1 day
2	1 hour	1 day	2 hours	3 days
3	6 hours	3 days	1 day	7 days
4	6 hours	7 days	5 days	14 days
5	6 hours	7 days	10 days	30 days

**Service desk capability:** Our documentation for GPIT futures is available on request which gives assurance of a GPIT Futures compliant, ITIL service desk. These are:

- Problem Management Process,
- Service Level Agreements,

- Change management Process,
- Incident management process.

Our service desk integrates with all other business functions through an integrated software platform, meaning all information about a user is tracked through not only our support desk, but also customer relationship management tool, our communications tool and also synchronises with our website. This gives us the ability to report on tickets by practice, by PCN, or by contract holder..

## **SCHEDULE 3**

### **DATA PROTECTION**

#### **1. INTRODUCTION**

- 1.1 This Data Processing Schedule describes the data processing arrangements and responsibilities connected with the supply of services by the Supplier (in this Schedule and accompanying documents within it, referred to as “**Primary Care IT**”) to the Customer as provided for in the Agreement. The term “**Services**” as used in this schedule refers to any maintenance services carried out in accordance with Schedule 4 together with the provision of licences for the use of the Software by the Customer in accordance with this agreement and any support services provided by Primary Care IT in relation to the functionality of the Software.
- 1.2 Paragraphs 2 to 10 of this Schedule apply in all cases. The relevant Annexes to this Schedule will also apply based on the Software that the Customer has purchased from Primary Care IT, which are set out in Schedules 1 and 2 above.
- 1.3 Unless expressly stated otherwise, the provisions of the Agreement shall also apply to this Schedule 3.
- 1.4 This Schedule 3 exists to ensure that there are enough protective measures in place and that the Processing complies with obligations at least equivalent to the minimum requirements set out in the Data Protection Legislation. This Schedule 3 is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.

#### **2. INFORMATION GOVERNANCE AND DATA PROTECTION GENERALLY**

- 2.1 The provisions of this paragraph 2 have been drafted to take account of the provisions of Schedule 3 paragraph 2 of the NHS Terms and Conditions for the Supply of Goods and the Provision of Services (2018).
- 2.2 The parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. Each party

shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.

- 2.3 Primary Care IT and the Customer shall each take steps to ensure that Personal Data is safeguarded at all times in accordance with Data Protection Legislation, and this obligation will include (if transferred electronically) only transferring Personal Data:
  - 2.3.1 if essential, having regard to the purpose for which the transfer is conducted; and
  - 2.3.2 that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Customer under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 2.4 Where, as so as to perform the Services, Primary Care IT processes Personal Data relating to patients and/or service users, it shall as necessary:
  - 2.4.1 complete and publish an annual information governance assessment using the NHS data security and protection toolkit;
  - 2.4.2 appoint an information governance lead or data protection officer able to communicate with Primary Care IT's board of directors or equivalent governance body, who will be responsible for information governance and from whom Primary Care IT's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 2.4.3 report all incidents of data loss and breach of confidence in accordance with Department of Health and/or the NHS England and/or Health and Social Care Information Centre guidelines;
  - 2.4.4 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies rigorously;

- 2.4.5 put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
- 2.4.6 put in place and maintain protocols for the lawful sharing of Personal Data with third parties in circumstances in which sharing of that data is required as part of the Services;
- 2.4.7 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings; and
- 2.4.8 take account of any new and/or updated requirements, guidance and/or policies notified to Primary Care IT by the Customer from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.

### **3. INFORMATION SECURITY GENERALLY**

- 3.1 The provisions of this paragraph 3 have been drafted to take account of paragraph 4 of the NHS Terms and Conditions for the Supply of Goods and the Provision of Services (2018).
- 3.2 Without limitation to any other information governance requirements set out in this Schedule, Primary Care IT shall:
  - 3.2.1 Notify the Customer without undue delay of any information security breaches or near misses of Customer Personal Data (including without limitation any potential or actual breaches of confidentiality or actual information security breaches); and
  - 3.2.2 Cooperate with any audits or investigations relating to information security and any data protection impact assessments undertaken by the Customer and provide full information as may be reasonably requested by the Customer in relation to such audits, investigations and assessments (subject to any information which is confidential being maintained as such by the Customer).
- 3.3 Primary Care IT shall maintain an information security management plan

appropriate to the type of Services it provides.

- 3.4 Primary Care IT shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

#### **4. PRIMARY CARE IT AS A DATA PROCESSOR**

- 4.1 The provisions of this paragraph 4 have been drafted to meet or exceed the requirements of Article 28 of the UK GDPR and apply where Primary Care IT acts as a Data Processor for the purposes of Data Protection Legislation in connection with Customer Personal Data.

- 4.2 The Customer (as a Controller) acknowledges that Primary Care IT is under no duty to investigate the completeness, accuracy or sufficiency of any specific instructions or the Customer Personal Data. The Customer shall use its best endeavours to ensure that the Personal Data that Primary Care IT processes on its behalf is accurate and up to date, and must exercise reasonable and independent judgment in making use of any Personal Data processed by Primary Care IT.

- 4.3 Without prejudice to the other requirements of this Schedule 3, where Primary Care IT acts as a Processor in relation to Customer Personal Data, it shall:

- 4.3.1 process that Customer Personal Data only on the documented instructions of the Customer (whether set out in this Agreement generally or more specifically from time to time), unless Primary Care IT is required by law to otherwise process that Customer Personal Data (including the requirements specified in paragraph 7 below). Where Primary Care IT is so required by law to process Customer Personal Data, Primary Care IT shall notify the Customer of this before performing the processing required by law, unless those laws prohibit Primary Care IT from so notifying the Customer. Primary Care IT shall inform the Customer if, in its opinion, the instructions of the Customer infringe applicable Data Protection Legislation;

- 4.3.2 implement appropriate technical and organisational measures (taking account of any measures reasonably specified by the Customer) to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data

(**“Protective Measures”**). In particular, as at the date of this Agreement, Primary Care IT has in place the measures set out in Appendix 1;

- 4.3.3 ensure that any personnel it engages to process Customer Personal Data are aware of the confidential nature of such data and are subject to contractual obligations of confidentiality;
- 4.3.4 assist the Customer insofar as this is possible (taking into account the nature of the Processing and the information available to Primary Care IT), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 4.3.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach involving the Customer Personal Data;
- 4.3.6 at the written direction of the Customer, delete or return Customer Personal Data and copies to the Customer on termination of the agreement unless Primary Care IT is required by law to continue to process that Customer Personal Data. For the purposes of this clause 4.3.6 Customer Personal Data shall be considered deleted where it is put beyond further use by Primary Care IT; and
- 4.3.7 maintain records to demonstrate its compliance with this paragraph 4.3 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 4.4 The Customer hereby provides its prior, general authorisation for Primary Care IT to:
  - 4.4.1 appoint (sub) processors to process the Customer Personal Data, provided that Primary Care IT:
    - (a) shall ensure that the terms on which it appoints such processors comply with the requirements of Data Protection Legislation, and insofar as reasonably practicable, are consistent with the obligations imposed on Primary Care IT in this paragraph 4;



- (b) shall remain responsible for the acts and omission of any such (sub)processor as if they were the acts and omissions of Primary Care IT; and
- (c) shall inform the Customer of any intended changes concerning the addition or replacement of the (sub)processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Primary Care IT's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Customer shall indemnify Primary Care IT for any losses, damages, costs (including legal fees) and expenses suffered by Primary Care IT in accommodating the objection.

4.4.2 transfer Customer Personal Data outside of the UK as required as part of the provision of the Services, provided that Primary Care IT shall ensure that all such transfers are effected in accordance with the Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of Primary Care IT, including any request to enter into standard data protection clauses approved for the transfer of such data.

4.4.3 either party may, at any time on not less than 30 days' notice, revise this paragraph 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **5. PRIMARY CARE IT AS A CONTROLLER**

5.1 The Parties acknowledge Primary Care IT will act as a Controller in connection with certain Personal Data of Customer staff it processes in order to set the Customer up as a client, and deliver the Services. Primary Care IT may generate and use logs and other data, including through obtaining feedback and surveys, about how the Customer and any service users or other Data Subjects are using the Services in order to better meet customers' needs, to develop enhancements to the Services and troubleshoot issues, to market its services, and for other internal business purposes, provided always that Primary Care IT will not make any further use of identifiable patient data in so doing. In this capacity Primary Care IT will act as a Controller and will

comply with Data Protection Legislation in so doing.

## **6. THE PARTIES AS JOINT CONTROLLERS**

6.1 To the extent the parties act as joint-controllers in respect of Personal Data pursuant to the provision of the Services, the parties have agreed that:

6.1.1 In the first instance, the Customer shall be responsible for providing fair processing information to the Data Subjects;

6.1.2 Primary Care IT shall put information on its website which explains its role in processing data and which indicates that the Customer is the first point of contact for Data Subjects;

6.2 Where any subject access request (or other attempt to exercise Data Subjects' rights) is made to either party, the Customer (as the entity which is more likely to have a direct and ongoing relationship with the data subject) shall be responsible for responding to the request in the first instance, but the parties shall cooperate with one another to coordinate the response.

## **7. DATA PROTECTION AND CLINICAL GOVERNANCE**

7.1 The Parties acknowledge that where there are any clinical concerns about patient care, Primary Care IT's medical director has a duty of candour and will abide by GMC guidelines regarding concerns about patient care. Concerns will always be raised directly with the Customer in the first instance, but if concerns remain other authorities (including the data subject) will be notified as appropriate depending on the nature and severity of the issue at stake.

## **8. UPGRADES AND DATA PROTECTION**

8.1 Subject to any changes that need to be made to ensure the safety or stability of the Services or for clinical governance or other equivalent reasons, where no notice shall be necessary, Primary Care IT will give the Customer not less than 2 weeks' notice for any new updates that it proposes to be evaluated on the clinical system. For any new Services offered, Primary Care IT will undertake an initial data protection impact assessment at the start of the project and make this available to the Customer.

8.2 Data Protection Impact Assessments undertaken by Primary Care IT so as to assist its customers in connection with the Services as at the date of this Agreement are included in the Appendices to this Schedule.

8.3 Primary Care IT will only publish protocols onto the live system for the Customer to use once agreement is received in writing from an appropriate authorised representative of the Customer.

## **9. THE CUSTOMER'S RESPONSIBILITIES**

9.1 The Customer shall ensure that prior to supplying any Personal Data to Primary Care IT (or instructing Primary Care IT to process any Personal Data on its behalf), it has satisfied all information governance obligations as regards the disclosure and processing of Personal Data relevant to processing under the terms of the Agreement.

9.2 Where the Customer requires Primary Care IT to make available other data sets that may have lawfully been transferred to Primary Care IT under Section 251 of the NHS Act 2006 (a Section 251 Approval) or under section 261 of the 2012 Health and Social Care Act (Section 251 Data), the Customer shall evidence to Primary Care IT that it has already received this data or that it has secured a legal basis to receive this data in accordance with the Section 251 Approval terms and conditions.

9.3 The Customer shall pay any fees to and meet any registration requirements for the Information Commissioner's Office and ensure that its fair processing information reflects the provision of the Services.

9.4 Where Customer Personal Data is held and / or processed by a clinical system supplier on behalf of the Customer, the Customer shall be responsible for instructing and authorising the clinical system supplier to transfer such data to Primary Care IT and shall be responsible for ensuring that these are transferred safely, securely and effectively. The Parties acknowledge that Primary Care IT may be unable to provide the Services without such data being provided.

## **10. WARRANTIES**

10.1 Primary Care IT warrants that it will:

- 10.1.1 having regard to the nature of the data being processed, the state of technological development and the cost of implementing them, put in place appropriate technical and organisational Protective Measures to protect the Customer Personal Data;
- 10.1.2 take reasonable steps to ensure compliance with those Protective Measures including through taking reasonable steps to achieve the availability of and access to Personal Data in a timely manner after an incident, and regularly assess and evaluate the effectiveness of the technical and organisational measures it adopts; and
- 10.1.3 Apply reasonable skill, care and diligence in discharging its responsibilities in connection with Data Protection Legislation.
- 10.2 The Customer warrants and represents that:
  - 10.2.1 Primary Care IT is entitled to use the Customer Personal Data to provide the Services and such use will comply with all Data Protection Legislation;
  - 10.2.2 it will comply with the Data Protection Legislation in commissioning and using the Services is not aware of any circumstances likely to give rise to breach of any of the Data Protection Legislation in commissioning the Services from Primary Care IT; and
  - 10.2.3 it has used best endeavours to ensure the accuracy of any Personal Data processed by Primary Care IT as part of the provision of the Services.
- 10.3 Except as expressly stated in this Schedule, all other warranties, conditions and terms, whether expressed or implied by statute, common law or otherwise in connection with Data Protection Legislation are hereby excluded to the extent permitted by law.
- 10.4 Without limiting the effect of paragraph 10.3 above, Primary Care IT does not warrant that any Personal Data (or other data) it has processed for the Customer:
  - 10.4.1 is or are accurate, complete, reliable, secure, useful, fit for purpose or timely;
  - 10.4.2 has or have been tested for use by the Customer or any third party; or

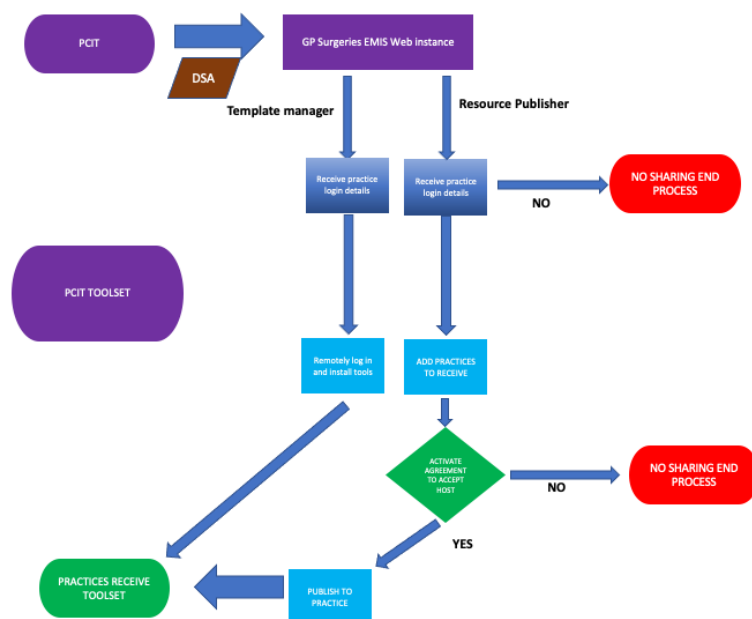
10.4.3 will be suitable for or be capable of being used by the Customer or any third party.

## **Appendix 1**

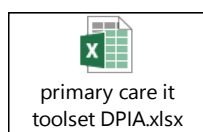
See attached policies

## Annex A – The Primary Care Toolset

### Data flow in connection with the Primary Care Toolset Service



### Data protection impact assessment for the Primary Care Toolset Service



### Description of data processing activities

The table below describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types that Primary Care IT may process to fulfil the Primary Care Toolset Service.

Description	Details
Subject matter of the Processing	Providing technical support in installing the Primary Care Toolset, and ad hoc further access in providing technical support once the Primary Care Toolset is installed.
Duration of the Processing	For the duration of the Agreement. Within this, no Personal Data is transferred to Primary Care IT and any access to Personal Data by Primary Care IT is ad-hoc.
Territorial scope of the Processing	The Processing will take place on the Customer's system, with remote access as necessary permitted by the Customer to Primary Care IT. Primary Care IT delivers services from the UK.
Nature and purposes of the Processing	Primary Care IT Ltd may incidentally have access to (or be instructed specifically to access) personal data (which may include patient data) whilst installing and providing support services in connection with the Customer using the Primary Care Toolset (which may include enabling clinical searches, templates and protocols). None of this data will be removed from the clinical/administrative systems of the Customer and wherever possible such access will be avoided or minimised.
Type of Personal Data	<p>Name, address, telephone number of Customers only (where Primary Care IT will act as a Controller).</p> <p>Limited access to other data types held on the Customer's systems in support of</p>

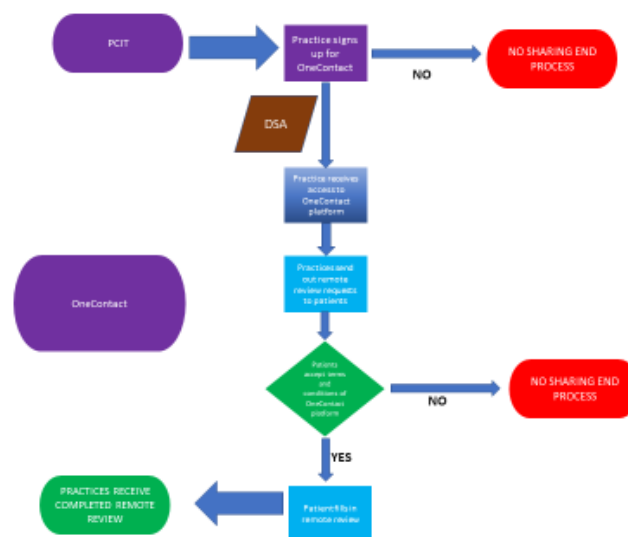


	delivery of the Primary Care Toolset (where acting as a Processor)
Data Flow	There is no data flow in scope of this project (where Primary Care IT acts as a Processor) as data will not ordinarily leave the Customer's systems.
Categories of Data Subject	Customers' staff and patients.
Plan for return and destruction of the Data once the Processing is complete	No Personal Data will ordinarily be transferred to Primary Care IT (where it is acting as a processor). If any Personal Data is transferred to Primary Care IT (as a processor) that data will be kept only for as long as needed to deliver services and destroyed once Processing is complete in accordance with the terms above.

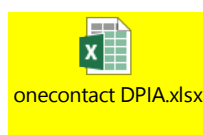
## Annex B – One Contact

### Data flow in connection with the One Contact Service

Practices send requests for remote consultations to patients. The patient completes these on a web portal and the data is held on UK cloud based servers until reviewed by the practice. Once the review has been completed, the data is deleted from the servers.



### Data protection impact assessment for the One Contact Service



### Description of data processing activities

The table below describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types that Primary Care IT may process to fulfil the One Contact Service.

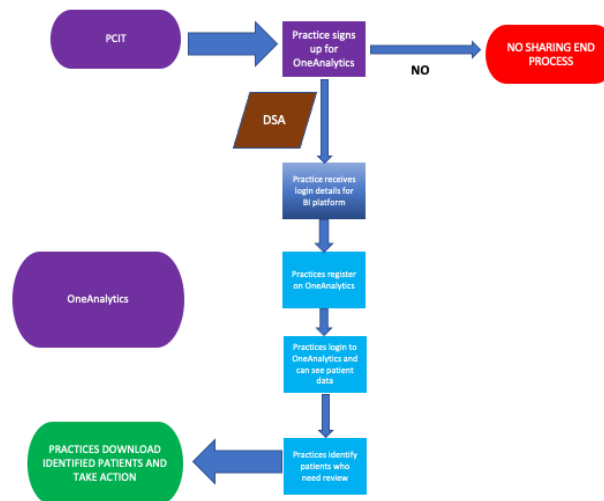
Description	Details
Subject matter of the Processing	Obtaining and supplying to the Customer data collected from patients for the purposes of remote review, using the OneContact platform.
Duration of the Processing	For the duration of the Agreement. Within this, Personal Data is only kept by Primary Care IT for (at most) six weeks as it is transferred from the Customer to the Patient, and then back to the Customer. Further details of the duration of processing of specific activities are set out below.
Territorial scope of the Processing	The Processing will take place within the OneContact platform. This data is held in the cloud on UK servers, in UK Cloud.
Nature and purposes of the Processing	<p>The Customer provides Primary Care IT with details of patients it wishes to contact for reviews. The Customer uploads a CSV file of patients that it wishes to contact. The CSV file is kept for 3 days.</p> <p>Primary Care IT then contacts the patient on behalf of the Customer (using the details supplied by the Customer), to enable the Patient to complete the relevant review form). Primary Care IT then collects information from patients when the patient is sent a review request by the data controller, or when the patient accesses an online consultation via the Customer's</p>

	<p>practice website. This contains patient identifiers - e.g. name, date of birth, as well as details of the condition the patient is suffering. Primary Care IT hold the data for up to six months or until it is accessed. Once the data is accessed/downloaded by the Customer, the data is deleted after 5 days by Primary Care IT from its cloud server.</p> <p>Primary Care IT Ltd also processes data to report on performance against this Contract.</p> <p>Primary Care IT Ltd also processes data to look at usage and outcomes associated with the OneContact product in accordance with paragraph 5 of this Schedule.</p>
Type of Personal Data	Name, date of birth, telephone number and clinical information related to the clinical condition which is being reviewed.
Data Flow	<p>The data used for analysis and reporting is extracted to Primary Care IT systems and then incorporated into the OneAnalytics platform – it is then available only to the Customer.</p> <p>Feedback obtained by Primary Care IT under paragraph 5 of this Schedule is used only internally by Primary Care IT and has all identifiers removed.</p>
Categories of Data Subject	Customers' staff and patients.

<p>Plan for return and destruction of the Data once the Processing is complete</p>	<p>Data on usage and feedback will be kept for the duration of the Agreement and destroyed once Processing is complete.</p> <p>Patient related data is kept:</p> <ul style="list-style-type: none"> <li>- For three days on upload by the Customer;</li> <li>- For five days on return by the patient once until the Customer confirms that the review is complete and then is deleted from our servers.</li> <li>- If the Customer does not access the data it is deleted after six months.</li> </ul>
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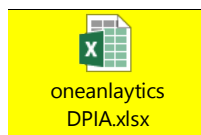
## Annex C – One Analytics

### Data flow in connection with the One Analytics Service



Data is uploaded from the practice to Primary Care IT servers, based in UK Cloud. From here an analytics BI tool (tableau) is used to display the data back to customers via our website. Data can be downloaded from the website to enable practices to identify appropriate patients.

### Data protection impact assessment for the One Analytics Service



### Description of data processing activities

The table below describes the subject matter, duration, nature and purpose of processing and the Personal Data categories and Data Subject types that Primary Care IT may process to fulfil the One Analytics Service.

Description	Details
Subject matter of the processing	Obtaining and presenting to the Customer data collected from the Customer's IT systems.
Duration of the Processing	For the duration of the Agreement. Within this, Personal Data is only kept by Primary Care IT for (at most) one month as it is transferred from the Customer to Primary Care IT for analysis, and then presented back to the Customer.
Territorial scope of the processing	Data is extracted from the Customer's systems and then processed within the cloud on UK servers, in UK Cloud. This is then presented back to the Customer via an API/dashboard.
Nature and purposes of the processing	<p>Primary Care IT extract coded data from the customers systems. Primary Care IT then conducts analytics on the data and re-presents the data back to the Customer – One Analytics is a suite of data visualisation tools.</p> <p>How the returned data is then used is a matter for the Customer but Primary Care IT envisages that the data has a number of benefits for the Customer and its patients, including in terms of:</p> <ul style="list-style-type: none"> <li>- Better identification of patients with multiple health conditions who may be at risk (risk stratification and case-finding);</li> <li>- Identification of patients that need recalling for QOF and improving data quality;</li> </ul>

	<ul style="list-style-type: none"> <li>- Blood/blood pressure indicators monitoring.</li> </ul>
Type of Personal Data	Coded Clinical Information
Data Flow	The data used for analysis and reporting is extracted to Primary Care IT's cloud server on a monthly basis, either manually or via the IM1 extract service, and then incorporated into the OneAnalytics platform on the UK Cloud – it is then available only to the Customer.
Categories of Data Subject	Customer's patients.
Plan for return and destruction of the Data once the Processing is complete	Data is expunged every month.



## **SCHEDULE 4**

### **MAINTENANCE AGREEMENT**

#### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this paragraph apply in this Schedule 4 in addition to any terms defined at clause 1 (*Interpretation*).

**"Deliverables"** any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Support Service.

**"Documentation"** the documents provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.

**"Licence"** the licence between the Supplier and the Customer set out at paragraph 3 of this Agreement.

**"Manager"** the person appointed by the Customer from time to time in order to fulfil the role described in paragraph 7.3.

**"Modification"** any Maintenance Release or New Version which is acquired by the Customer.

**"Non-Severe Fault"** any reproducible fault in the Software as against its description in the Specification other than a Severe Fault.

**"Severe Fault"** a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the software in

question as described in the Specification.

**"Software"**

has the same meaning as in the Licence.

**"Specified Contacts"**

any two named contacts at the Customer whose names shall be provided to the Supplier from time to time.

**"Support Service"**

the support service more particularly described at paragraph 4, which is to be provided by the Supplier to the Customer under paragraph 3.1 and paragraph 3.2.

**"Standard Support Hours"**

8.30 am to 5.00 pm Monday to Friday, except on days which are bank holidays in England.

**"Support Staff"**

those individuals who perform the Supplier's obligations under this Agreement including (where the context permits) the Support Manager.

**"Supported Software"**

has the meaning set out in paragraph 2.1.

## **2. SUPPORTED SOFTWARE**

2.1 The Supported Software is:

2.1.1 the Software; and

2.1.2 any Modification which is acquired by the Customer (whether under the Licence, this Agreement or any other agreement between the Supplier and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence.

2.2 In relation to Maintenance Releases:

2.2.1 the Supplier shall from time to time make Maintenance Releases available to the Customer without charge; and

2.2.2 if the Customer fails to install or make arrangements for the installation of a

Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate this Agreement by giving one month's written notice to the Customer.

- 2.3 In relation to New Versions, if the Supplier releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this Agreement, nor shall it result in any adverse effect on the Support Service or the performance of the Supplier's obligations under this Agreement. However, if the Supplier has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within 12 months of the Supplier's having notified the Customer that a New Version is available, acquired and installed that New Version, the Supplier may terminate this Agreement by giving one month's written notice to the Customer given at any time after the expiry of such period.

### **3. THE SUPPORT SERVICE**

- 3.1 The Supplier shall supply, and the Customer shall take and pay for, the Support Service:
- 3.2 In relation to the Support Service:
- 3.2.1 the Support Service shall be provided during the Standard Support Hours and shall comprise:
- (a) a telephone and email help desk to provide first-line technical support to the Specified Contacts;
  - (b) access to the Supplier's web portal for the Specified Contacts; and
  - (c) remote diagnosis and, where possible, correction of faults through the help desk or web portal.
- 3.2.2 if additional on-site support is required in any month it may be provided by the Supplier at its option at the hourly and daily rates set out at Schedule 1 and as notified by the Supplier to the Customer from time to time.

- 3.2.3 where a Non-Severe Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release the Supplier may decline to provide assistance in respect of that Non-Severe Fault.
- 3.3 The Supplier may, on prior notice to the Customer, make changes to the Support Service, provided such changes do not have a material adverse effect on the Customer's business operations.
- 3.4 The Supplier shall have no obligation to provide the Support Service where faults arise from:
- 3.4.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
  - 3.4.2 failure to maintain the necessary environmental conditions for use of the Software;
  - 3.4.3 faults in, or integration with, any patient management or other software not provided by the Supplier;
  - 3.4.4 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
  - 3.4.5 relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
  - 3.4.6 any breach of the Customer's obligations under this Agreement howsoever arising or having the Software maintained by a third party;
  - 3.4.7 any Modification not authorised by the Supplier; or
  - 3.4.8 operator error.

#### **4. SUPPORT SERVICE**

- 4.1 The Supplier shall use reasonable endeavours to:

- 4.1.1 respond to an error report made by a Specified Contact through the help desk or web portal within 4 hours from the time of the report. The hours for the response will be calculated in relation to the Standard Support Hours where time outside of the Standard Support Hours shall not apply.
- 4.1.2 resolve a Severe Fault within four Standard Support Hours of the initial response provided under paragraph 4.1.1;
- 4.1.3 resolve a Non-Severe Fault within eight and a half Standard Support Hours of the initial response provided under paragraph 4.1.1.

## **5. FURTHER TERMS RELATING TO THE SUPPORT SERVICE**

- 5.1 The Supplier's obligation to provide on-site services shall extend to the Site in relation to the Patient Population only.
- 5.2 The Supplier shall ensure that, while on the Customer's premises all persons who enter such premises with the authority of the Supplier for the purpose of, or in connection with, this Agreement or the provision of the Support Service, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this Agreement as a result of compliance with the terms of this paragraph 5.2.

## **6. ADDITIONAL CHARGES**

- 6.1 The Customer shall pay all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by this Agreement.
- 6.2 The Customer shall reimburse any reasonable travel or subsistence expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Support Service, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

## **7. THE CUSTOMER'S RESPONSIBILITIES**

- 7.1 Without prejudice to paragraph 5.2, the Customer shall provide the Supplier, the Support Staff and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.
- 7.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 7.3 The Customer shall nominate the Specified Contacts who shall be available to liaise with, and respond to queries from, the Supplier.
- 7.4 The Customer shall:
- 7.4.1 co-operate with the Supplier in performing the Support Service and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
  - 7.4.2 report faults promptly to the Supplier; and
  - 7.4.3 keep full backup copies of all of its data.
- 7.5 Except as expressly provided otherwise, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

## **8. NON-SOLICITATION**

The Customer shall not, for the duration of this Agreement, and for a period of six months following termination, directly or indirectly induce or attempt to

induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Support Service or otherwise in connection with this Agreement to leave the employment of the Supplier.

## **9. RISK AND TITLE**

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the Customer on acceptance by the Customer.

## **10. THE SUPPLIER'S WARRANTIES**

10.1 The Supplier warrants to the Customer that:

10.1.1 the Support Service will be performed:

(a) in accordance with all laws and regulations which are directly applicable to the Supplier; and

(b) with all reasonable skill and care;

10.1.2 to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and

10.1.3 at the date of this Agreement, the Supplier has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for the Supplier to perform the Support Service.

10.2 If, during the term of this Agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the warranties contained in paragraph 10.1.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this Agreement during the year in which the termination occurs, less a charge for the Support Service performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this paragraph 10.2. This clause sets out the Customer's sole remedy and the Supplier's entire liability for

breach of paragraph 10.1.1.

- 10.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 10.4 All dates supplied by the Supplier for the delivery of the Modifications or the provision of the Support Service shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 10.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## **11. CUSTOMER RESPONSIBILITY**

11.1 The Customer acknowledges that:

11.1.1 it is exclusively responsible for:

- (a) ensuring that the staff of the Customer are trained in the proper use and operation of the Software;
- (b) making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
- (c) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;

11.1.2 the level of the fees charged reflects the allocation of risk between the parties; and

11.1.3 it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.

## **12. DURATION**



Supply of the Support Service by the Supplier to the Customer shall continue during the continuance of the Agreement until termination or expiry in accordance with clause 12 (*Termination*) of the Agreement.

**SCHEDULE 5**  
**LOCALISATION PLAN**

Signed by Anna Chard for and on  
behalf of PRIMARY CARE IT LTD

Relationship Manager

Signed by

for and on behalf of