



PRIMIS FRAMEWORK SERVICES AGREEMENT

between

University of Nottingham

and

[CUSTOMER NAME]

This agreement is dated

Parties

- (1) The University of Nottingham a body corporate incorporated by Royal Charter and registered with number RC000664, of University Park, Nottingham NG7 2RD (**University**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Customer**).

BACKGROUND

- (A) The University has developed Primary Care Information Services (**PRIMIS**) which is recognised as a national and international centre of excellence in primary care information.
- (B) The University, through PRIMIS, has certain skills and abilities and assets that the Customer wishes to make use of.
- (C) When a Customer or any of its affiliates requests services from the University, and the University is able to provide such services, the relevant parties will enter into a separate work order contract in accordance with this framework agreement.

Agreed terms

1. Definitions and interpretation

The following definitions and rules of interpretation apply in this framework agreement.

1.1 Definitions:

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Business Day: a day other than a Saturday, Sunday, public holiday in England or any other day on which the University is officially closed for business.

Charges: the charges specified in the Work Order Contract payable by the Customer or a Customer Affiliate for the supply of the Services by the University.

Confidential Information: means any commercial, technical and other information and data (of whatever nature and form) and which at the time of disclosure is marked or identified as confidential or which, by reason of its nature or the circumstances surrounding its disclosure, would reasonably be understood as confidential.

“Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, and “Data Protection Officer” take the meaning given in the Data Protection Legislation.

Customer Affiliate: an Affiliate of the Customer.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by a party pursuant to this framework agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this framework agreement, including any Personal Data Breach.

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (“UK GDPR”), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

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

Deliverables: all documents, products and materials developed by the University or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Framework Agreement Commencement Date: [INSERT DATE].

Services: the services, including without limitation any Deliverables, to be provided by the University pursuant to a Work Order Contract.

Shared Personal Data: the personal data to be shared between the parties under clause 7 of this framework agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of Data Subject:

each party’s business contact details of relevant employees and representatives including name, work title and work contact details.

Work Order Contract: a legally binding agreement (made pursuant to this framework agreement) for the provision of Services by the University to the Customer or Customer Affiliate comprising a Work Order Form, its appendices, and the Work Order Terms and Conditions.

Work Order Form: means a document setting out the details of Services to be provided and payment in consideration of the Services using the template form set out in Schedule 1.

Work Order Terms and Conditions: means the terms and conditions in Schedule 2.

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.3 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.5 A reference to **writing** or **written** includes email.
- 1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.7 References to clauses and Schedules are to the clauses and Schedules of this framework agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 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.

2. Work Order Contract process

- 2.1 This framework agreement governs the overall relationship of the parties in relation to the Services provided by the University to the Customer and Customer Affiliates, and sets out in this clause 2, the procedure for the Customer and Customer Affiliates to request the provision of Services from the University under separate Work Order Contracts.
- 2.2 The Customer and the Customer Affiliates shall be entitled from time to time to request the Services from the University.
- 2.3 The University shall, following receipt of a request from the Customer or any Customer Affiliate:
- (a) either notify the Customer or Customer Affiliate that it is not able to provide the requested Services; or
 - (b) complete the template Work Order Form and submit the draft to the Customer or the Customer Affiliate (as applicable) for its approval.
- 2.4 A Work Order Contract shall not enter into force, be legally binding or have any other effect unless:
- (a) the Work Order Form has been signed by the authorised representatives of both parties to it; and
 - (b) as at the date the Work Order Form is signed, this framework agreement has not been terminated.

2.5 Each Work Order Contract:

- (a) Shall incorporate the Work Order Terms and Conditions, subject to any supplementary terms or variations to the Work Order Terms and Conditions as may be mentioned in the Work Order Form and which shall take precedence;
- (b) shall be entered into by the Customer or a Customer Affiliate and the University; and
- (c) forms a separate contract between its signatories.

2.6 For the avoidance of doubt:

- (a) nothing in this framework agreement shall be construed as preventing the University carrying out services of a similar nature on behalf of any other entity;
- (b) the Customer reserves the right to obtain from any other sources any software, applications, services, resources, products or deliverables which may be similar or comparable to the Services of the University; and
- (c) the Customer does not guarantee the University any particular amount of work under this framework agreement.

3. Commencement and duration

This framework agreement shall commence on the Framework Agreement Commencement Date and shall continue, unless terminated earlier in accordance with clause 5 (Termination), for a period of [3 years].

4. Limitation of liability

4.1 The restrictions on liability in this clause 4 apply to every liability arising under or in connection with this framework agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

4.2 Nothing in this framework agreement shall limit or exclude the University's or the Customer's liability for any other liability which cannot be limited or excluded by applicable law.

4.3 Subject to clause 4.2:

- (a) neither party to this framework agreement shall have any liability to the other party for any indirect or consequential loss arising under or in connection with this framework agreement; and
- (b) each party's total liability arising under or in connection with this framework agreement shall be limited to £50,000.

5. Termination

- 5.1 Without affecting any other right or remedy available to it, either party may terminate this framework agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this framework agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - (b) the other party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other party's undertaking or assets or there are reasonable grounds for anticipating the imminent occurrence of any of these events.

6. Survival

- 6.1 On termination (or expiry) of this framework agreement, howsoever arising, each Work Order Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Work Order Contract, unless terminated earlier in accordance with the terms of such Work Order Contract.
- 6.2 The termination of any Work Order Contract shall not affect any other Work Order Contracts or this framework agreement.
- 6.3 Upon expiration or termination of this framework agreement, the rights and obligations which either expressly or by their nature are intended to survive expiration or termination of the framework agreement shall survive.
- 6.4 Termination of this framework agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

7. Confidentiality and freedom of information

- 7.1 Each party undertakes that it shall not at any time during this framework agreement, and for a period of five years after termination or expiry of this framework agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or supplier of the other party, except as permitted by clause 7.2.
- 7.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the

party's rights or carrying out its obligations under or in connection with this framework agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 7; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including, in respect of the University, requirements under the Freedom of Information Act 2000 (**FOIA**), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records (**Codes of Practice**) or the Environmental Information Regulations 2004 (**EIR**).

- 7.3 The Customer acknowledges that the University is subject to the requirements of the FOIA and the EIR, and the Customer will assist and co-operate with the University (on request and at each Party's own expense) to enable the University to comply with the information disclosure requirements imposed on it by the FOIA and/or the EIR as the case may be.
- 7.4 If the University in receipt of a 'Request for Information' under the FOIA and/or EIR decides that it is obliged to disclose Confidential Information in response to such Request for Information, it will endeavour to notify the Customer of that decision at least 20 days before disclosure (insofar as it is lawful for the University to do so) and will make reasonable efforts to limit the sharing of Confidential Information, in all cases while complying with the FOIA, while reserving the sole discretion as to what information disclosure is made.
- 7.5 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this framework agreement.
- 7.6 All media releases, public announcements and public disclosures by a party relating to this framework agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved in writing by the other party prior to release.
- 7.7 In addition, this clause sets out the framework for the sharing of the Personal Data between the parties as separate Controllers.
- 7.8 The University and the Customer shall each comply with the Data Protection Legislation.
- 7.9 The Customer warrants that it may lawfully, under the Data Protection Legislation, provide the University with the Personal Data, and that the University's processing of the Personal Data in connection with this framework agreement will not put the University in breach of the Data Protection Legislation.
- 7.10 Without prejudice to clause 7.23, the University will process the Shared Personal Data:

- a) to deal with enquiries that the Customer may make or authorise;
 - b) to contact the Customer or appropriate persons within the Customer's organisation, or third parties in relation to this framework agreement for the purpose of compliance with applicable laws and regulations, or to defend itself in claims under such laws, or
 - c) where necessary to exercise its legitimate business interests; (where relevant) for other legal, administrative and management purposes.
- 7.11 The Customer will only use Personal Data supplied to it by the University in relation to the University's employees or other staff and/or third parties for the express purposes for which such Personal Data is provided to the Customer.
- 7.12 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to the Shared Personal Data. In particular, each party shall:
- a) consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
 - b) promptly inform the other party about the receipt of any Data Subject Access Request;
 - c) provide the other party with reasonable assistance in complying with any Data Subject Access Request;
 - d) not disclose or release any Shared Personal Data in response to a Data Subject Access Request without first consulting the other party wherever possible;
 - e) assist the other party in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators; and
 - f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation or Data Loss Event.
- 7.13 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The University may on not less than 30 Business Days' notice to the Customer amend this framework agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 7.14 The parties shall process their Personal Data (including the Shared Personal Data) in accordance with the respective privacy notices , which are available on their respective websites:

For the University: <https://www.nottingham.ac.uk/utilities/privacy>

For the Customer: [add details here]

8. General

8.1 Notices.

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) 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
 - (ii) sent by email to the following address:
 - for the University: [EMAIL ADDRESS]
 - for the Customer: [EMAIL ADDRESS]
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours, when business hours resume. In this clause 8.1(b)(iii), business hours means 9.00am to 5.00pm on a Business Day.

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

8.3 **Waiver.** A waiver of any right or remedy under this framework agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

8.4 **Rights and remedies.** Except as expressly provided in this framework agreement, the rights and remedies provided under this framework agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

8.5 **Severance.** 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.

8.6 **Entire agreement.** This framework agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises,

assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 8.7 **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this framework agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 8.8 **No partnership or agency.** Nothing in this framework 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.
- 8.9 **Third party rights.** This framework agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 8.10 **Governing law.** This framework agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 8.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this framework agreement or its subject matter or formation.

This framework agreement has been entered into on the date stated at the beginning of it. For the avoidance of doubt the University shall not be required to make any enquiry as to the authority of any signatory who signs on behalf of the Customer and shall be entitled to accept such signatory as the Customer's authorised signatory.

SIGNED for and on behalf of
The University of Nottingham:

.....
Head of Operations
School of Medicine

.....
Date

SIGNED for and on behalf of
[Customer Name]:

.....
Authorised signatory

.....
Date

Schedule 1 – Template Work Order Form

BETWEEN

University:	
Address:	
University Manager	Name: Phone: E-mail:

AND

Customer:	
Address:	
Customer Manager:	Name: Phone: E-mail:

1. SERVICES REQUIREMENTS

(1.1) Services overview:

(1.2) Services and Deliverables required:

(1.3) Work Order Commencement Date:

(1.4) Work Order Expiry date (including any extension period or periods):

2 ADDITIONAL REQUIREMENTS

Variations or supplemental terms to Work Order Terms and Conditions:

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

(3.1) Location(s) at which the Services are to be provided:

(3.2) Management Information and meetings
4. INTELLECTUAL PROPERTY RIGHTS GRANTED BY THE UNIVERSITY
5. DATA PROTECTION
[not applicable OR data sharing agreement attached as Appendix 2]
6. Charges
(6.1) Charges:
(6.2) Invoicing schedule:

BY SIGNING AND RETURNING THIS ORDER FORM THE PARTIES AGREE to enter a legally binding contract together for the Services specified in this Order Form incorporating the rights and obligations in the Work Order Terms and Conditions set out in the framework agreement entered into by the Supplier and the University on [DATE].

For and on behalf of the University:

Name and title	
Signature	
Date	

For and on behalf of the Customer:

Name and title	
Signature	
Date	

Appendix 1: Specification for the Services (if applicable)

Appendix 2: Data Sharing Agreement (if applicable)

Schedule 2 Work Order Terms and Conditions

1. Definitions and interpretation

In addition to the definitions and rules of interpretation set out in the framework agreement, the following definitions and rules of interpretation apply to the Work Order Contract and, in the event of conflict, shall take precedence.

1.1 Definitions:

Charges: the charges set out in the Work Order Form.

Customer: the Customer identified in the Work Order Form.

Customer Background IPRs: all Intellectual Property Rights in the Customer Materials.

Customer Manager: the person nominated in the Work Order Form or as otherwise be nominated by the Customer from time to time.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the University under the Work Order Contract.

Foreground IPRs: all Intellectual Property Rights in the Deliverables, other than University Background IPRs.

Framework Agreement: the framework agreement entered into by the University and [CUSTOMER PARTY TO THE FRAMEWORK] with a commencement date of [DATE].

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

University Background IPRs: all Intellectual Property Rights that are owned by or licensed to the University and which are or have been developed independently of the Work Order Contract in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable a Customer to receive and use the Services.

University Manager: the person nominated in the Work Order Form or as otherwise be nominated by the University from time to time.

Work Order Commencement Date: the date given in the Work Order Form.

Work Order Expiry Date: the date given in the Work Order Form.

2. Term

- 2.1 The Work Order Contract shall come into force on the Work Order Commencement Date.
- 2.2 The Work Order Contract shall, unless terminated earlier in accordance with paragraph 10 (Termination of Work Order Contract), continue until the Work Order Expiry Date.

3. Supply of services

- 3.1 The University shall:
- (a) supply the Services from the Work Order Commencement Date in accordance with the Work Order Contract;
 - (b) use all reasonable endeavours to meet any performance dates specified in the Work Order Contract, always provided that if no performance dates are so specified the University shall perform the Services within a reasonable time;
 - (c) appoint the University Manager in respect of the Services, who shall have authority under the Work Order Contract contractually to bind the University on all matters relating to the Services;
 - (d) perform the Services with the level of care, skill and diligence in accordance with good practice in the University's industry, profession or trade;
 - (e) co-operate with the Customer in all matters relating to the Services;
 - (f) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under the Work Order Contract;
 - (g) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Work Order Contract;
 - (h) ensure that the Services and Deliverables will materially conform with the descriptions and specifications set out in the Work Order Form; and
 - (i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that it is notified of in advance.

4. Customer's obligations

- 4.1 The Customer shall:
- (a) co-operate with the University in all matters relating to the Services and appoint the Customer's Manager in relation to this Work Order Contract, who shall have the authority contractually to bind the Customer on matters relating to the Services;

- (b) provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the University and agreed with the Customer for the purposes of the Services;
- (c) provide such information as the University may request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner;
- (d) inform the University of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
- (e) only access those computer systems of the University (including software, hardware, firmware, database, data or file) which it has authorisation to access and is required for the Services and comply with all security audits and University policies and procedures relating to access of the University's computer systems.

4.2 If the University's performance of its obligations under the Work Order Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the University shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay and may itself seek reimbursement for any demonstrable additional costs that the University incurs as a result.

5. Non-reliance

5.1 The Customer acknowledges that:

- (a) any results, conclusions and statements comprised in or out of the Services cannot be guaranteed and accordingly it is provided on an "as is" basis;
- (b) the use and interpretation of the Services requires specialist skill and knowledge;
- (c) it has that skill and knowledge and undertakes that it will exercise that skill and knowledge and appropriate judgment when using the Services; and
- (d) it shall be solely responsible for any opinions, recommendations, forecasts or other conclusions made or actions taken by it or any other third party based (wholly or in part) on the Services.

5.2 The Customer shall, in exercising its rights under this Work Order Contract:

- (a) be wholly responsible for ensuring that its use of the Services is in accordance with all applicable laws, enactments, regulations and other similar instruments; and
- (b) obtain at its own expense all licences, permits and consents necessary for its use of the Services including but not limited to the requirements of the Medicines and Healthcare products Regulatory Agency (**MHRA**) or equivalent body.

5.3 To the fullest extent permitted by law:

- (a) The University shall not be liable to the Customer for any costs, expenses, loss or damage (whether direct, indirect or consequential and whether economic or other) arising from the Customer's use or reliance on the Services; and
- (b) any warranties, conditions and other terms implied by statute or common law are excluded from this agreement, except as expressly provided in this Work Order Contract.

5.4 The Customer shall indemnify the University against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the University arising out of or in connection with the Customer's use of the Services or any breach by the Customer of the terms of this agreement, including any claim based on any theory of product liability.

6. Intellectual property

6.1 The University and its licensors shall retain ownership of all University Background IPRs. The Customer and its licensors shall retain ownership of all Customer Background IPRs.

6.2 The University grants the Customer, or shall procure the direct grant to the Customer of the rights to the University Background IPRs and the Foreground IPRs in accordance with the Work Order Form.

6.3 The Customer grants the University a fully paid-up, non-exclusive, royalty-free, non-transferable licence to the Customer Background IPRs for the term of the Work Order Contract for the purpose of providing the Services to the Customer in accordance with the Work Order Contract.

6.3.1 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this Work Order Contract by the University, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the University in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the University arising out of or in connection with any claim brought against the University, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

- 6.4 The University warrants that the receipt, use of the Services by the Customer and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 6.5 The University shall not be in breach of the warranty at paragraph 6.4, and the Customer shall have no claim under the indemnity at paragraph 6.6, to the extent the infringement arises from:
- (a) any modification of the Deliverables, University Background IPRs, Foreground IPRs or Services, other than by or on behalf of the University; or
 - (b) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions.
- 6.6 The University shall defend the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.
- 6.7 In the defence or settlement of any claim under paragraph 8.6, the University may procure the right for the Customer to continue using the Services and/or Deliverables, replace or modify the Services and/or Deliverables so that they become non-infringing or, if such remedies are not reasonably available, terminate the Work Order Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer except to refund to the Customer such proportionate part of the Charges paid under the Work Order Contract for the period of time during which the Customer were unable to utilise the Services.
- 6.8 University liability under paragraph 6.6 is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**IPRs Claim**), the Customer shall:
- (a) as soon as reasonably practicable, give written notice of the IPRs Claim to the University, specifying the nature of the IPRs Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the IPRs Claim without the prior written consent of the University);
 - (c) give the University 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 University and its professional advisers to examine them and to take copies (at the University's expense) for the purpose of assessing the IPRs Claim; and

- (d) take such action as the University may reasonably request to avoid, dispute, compromise or defend the IPRs Claim.

7. Data protection

Unless specified in the Work Order Form or otherwise where required by law, neither party will disclose, or will be required to disclose, any data identifying any person under the Work Order Contract. If specified in the Work Order Form, the Customer may have access to data identifying a person (**Personal Data**) and/or general practitioner practice data (**Non-identifiable GP Data**). In such circumstances the supplemental terms set out in the Work Order Form shall govern the sharing and processing of Personal Data and Non-identifiable GP Data.

8. Charges and payment

- 8.1 In consideration for the provision of the Services, the Customer shall pay the University the Charges in accordance with this paragraph 8. The Charges shall be paid in pounds sterling.
- 8.2 The University shall invoice the Charges to the Customer at the intervals specified in the Work Order Form.
- 8.3 Unless otherwise agreed in the Work Order Form, the Customer shall reimburse to the University, in addition to the Charges, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by the University's employees, subcontractors and agents in the provision of the Services. The University shall submit its invoices for expenses to the Customer monthly in arrears.
- 8.4 The Customer shall pay each invoice which is properly due and submitted to it by the University, within 30 days of receipt, to a bank account nominated in writing by the University.
- 8.5 All amounts payable by the Customer are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Work Order Contract by the University to the Customer, the Customer shall, on receipt of a valid VAT invoice from the University, pay to the University such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.6 If the Customer fails to make any payment due to the University under the Work Order Contract by the due date, then, without limiting the University's remedies under paragraph 10, the Customer shall pay interest on the overdue sum in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 from the due date for payment to the date of actual payment (both dates inclusive) and the reimbursement of all expenses (including legal fees) incurred with respect to collection of

overdue fees with such amounts shall be payable on demand in addition to sums due under the Work Order Contract.

- 8.7 In relation to payments disputed in good faith, interest under paragraph 8.6 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 8.8 All amounts due under this Work Order Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Limitation of liability

- 9.1 References to liability in this paragraph 9 apply to every liability arising under or in connection with the Work Order Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Work Order Contract limits any liability which cannot legally be limited.
- 9.3 Subject to paragraph 9.2 the University's total liability to the Customer shall in no event exceed the Charges paid to the University under the Work Order Contract during the 12 months immediately preceding the date on which the claim arose.
- 9.4 Subject to paragraph 9.2, the University shall in no event be liable to the Customer for the following types of loss:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.

10. Termination of Work Order Contract

- 10.1 Without affecting any other right or remedy available to it, either party to the Work Order Contract may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Work Order Contract on the due date for payment and remains in default not less than 30 days after being notified to make such payment;

- (b) the other party commits a material breach of any other term of the Work Order Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (c) the other party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other party's undertaking or assets or there are reasonable grounds for anticipating the imminent occurrence of any of these events.

11. Consequences of termination and expiry

- 11.1 Termination or expiry of the Work Order Contract shall not affect any other work order contracts made pursuant to the Framework Agreement, or the Framework Agreement.
- 11.2 On termination or expiry of the Work Order Contract:
 - (a) subject to receipt of payment of all sums then due and owing, the University shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials;
 - (b) 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 Work Order Contract which existed at or before the date of termination or expiry shall not be affected; and
 - (c) the rights and obligations which either expressly or by their nature are intended to survive expiration or termination of the Work Order Contract shall survive.

12. Non-solicitation

The Customer shall not, without the prior written consent of the University, at any time from the date of the Work Order Contract to the expiry of 12 months after termination or expiry of the Work Order Contract, solicit or entice away from the University or employ or attempt to employ any person who is, or has been, engaged as an employee of the University in the provision of the Services.

13. Confidentiality

The terms of clause 7 of the Framework Agreement (Confidentiality) shall apply to the Work Order Contract *mutatis mutandis*.

14. Force majeure

Neither party shall be in breach of the Work Order Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Work Order Contract 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 60 days or more, the party not affected may terminate the Work Order Contract by giving 30 days' written notice to the affected party.

15. Dispute resolution

- 15.1 The University Manager and the Customer Manager will use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach thereof.
- 15.2 A dispute, which cannot be resolved in accordance with paragraph 15.1 within 10 Business Days of commencement of attempts to do so, will be referred to the Managing Director of PRIMIS of the University or the Director of the IP Commercialisation Office as applicable and the Commercial Director of the Customer (or such other person nominated by each of the parties from time to time) who will review the matter and attempt in good faith to resolve it within a further 10 Business Days.
- 15.3 Where the dispute cannot be resolved in accordance with paragraphs 15.1 and 15.2 either party may commence court proceedings.
- 15.4 Nothing in this paragraph 15 will prevent either Party from seeking injunctive or other emergency relief which it considers appropriate.

16. General

The terms of Clause 9 of the Framework Agreement (General) shall apply to the Work Order Contract *mutatis mutandis*.

SIGNED for and on behalf of

The University of Nottingham:

SIGNED for and on behalf of

[CUSTOMER]

.....
Head of Operations

School of Medicine

.....
Authorised signatory

.....
Date

.....
Date