

Inhealthcare LTD

{Insert Customer Name}

**Contract for the delivery of the Inhealthcare
Platform**

{Insert Date}

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Agreement between:

- (1) INHEALTHCARE LIMITED (Company Number 07966406) whose registered office is at Cardale House, Cardale Court, Beckwith Head Road, Harrogate, HG3 1RY (“**Inh**”); and
- (2) **[INSERT CUSTOMER NAME]** whose registered office is **[INSERT CUSTOMER ADDRESS]** (“**Customer**”)

Each a “**Party**” and collectively the “**Parties**”.

DEFINITIONS AND INTERPRETATION

1. In this Agreement, the following words have the following meanings:

Business Day means 9am to 5pm on any day which is not a Saturday, Sunday or bank or other public holiday in England and Wales.

Changes in Law means any change in any law, enactment, order, regulation, directive, code of practice or other similar instrument occurring after the Commencement Date affecting Inh and suppliers of services which are the same or similar to the Service and which results in an increase in the cost of to Inh of providing the Service.

Charges means the charges payable by the Customer to Inh for the provision of the Service as more particularly described in Schedule 4.

Commencement Date means **[INSERT]**.

Confidential Information means all information relating to a Party’s business and products (including operations, plans, marketing opportunities, customers, know-how (including designs, processes of product and technology, trade secrets and software) disclosed to the other Party (whether in writing, orally or by any other medium).

Controller shall have the meaning given to it under Article 4 of the EU General Data Protection Regulation.

Data means the Customer Data.

Data Protection Legislation means the Data Protection Act 2018, the EU General Data Protection Regulation 2016/679, the retained EU General Data Protection Regulation 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communication (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject shall have the meaning given to it under Article 4 of the EU General Data protection Regulation.

Exit Management Plan means the Exit Management Plan in Schedule 3. **Force Majeure** means any event which is beyond the control of a Party or which it would not be reasonable to expect a Party to control, other than any circumstance the consequences of which would have been avoided if it had been taken reasonable precautions (which it did not take) which, having regard to all matters known to it before the occurrence of such circumstance and all relevant factors, it should reasonably have taken. Such events include any act of God, act of terrorism, war, pandemic, national emergency, insurrection, riot, labour dispute affecting a third party (for which a substitute is not readily available), severe weather conditions or governmental interference.

Inh Change Request Form means the form to be submitted by the Customer to Inh in the event that additional services are required in addition to those set out in the specification in Schedule 6.

Inhealthcare Toolkit means the software used to create, develop and update pathways written for the Inhealthcare Platform.

Intellectual Property Rights means patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including rights in software), database rights, semi-conductor rights, design rights, rights in Confidential Information and any other intellectual property rights whatsoever, irrespective of whether such intellectual property rights have been registered or not, which may subsist in any part of the world.

Month means a calendar month.

Patient means an individual person who uses the Service to monitor a medical condition.

Personal Data shall have the meaning given to it under Article 4 of the EU General Data Protection Regulation.

Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that's are the results of both accidental and deliberate causes.

Processor shall have the meaning given to it under Article 4 of the EU General Data Protection Regulation.

Processing shall have the meaning given to it under Article 4 of the EU General Data Protection Regulation and permutations such as "Process" or "Processed" shall be interpreted accordingly.

Sensitive Personal Data/Special Categories of Data shall have the meaning given to them under Article 9 of the EU General Data Protection Regulation.

Service means the Service to be provided by Inh to the Customer as described in Schedule 1 and as may be varied by Inh from time to time but without materially adversely affecting the Service as at the date of this Agreement, save as may be required by a Change in Law.

Service Charge means the charges within a monthly period related to the Inhealthcare annual licence and any usage charges. For the avoidance of doubt this excludes any charges related to Communications, Development, Optional Services and Hardware.

Software means any software which is made available by Inh for use by the Customer and Patients in connection with or as part of the Service.

Term means the period during which Inh is to provide the Service to the Customer commencing on the Commencement Date and ending when terminated in accordance with Clause 5.

- 1.1. In this Agreement words denoting the singular include the plural and vice versa; words denoting any gender include all genders; reference to any person includes a reference to companies and all other legal entities; any reference to a statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time; any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and any use of the word “include” or “including” shall be deemed followed by the words “without limitation”.
- 1.2. The Schedules to this Agreement shall be deemed incorporated herein and form an integral part of this Agreement.

2. Provision and Use of the Services

- 2.1. Inh shall provide the Service to the Customer for the Term with reasonable skill and care.
- 2.2. Inh shall ensure it complies at all times with all legislation, laws, codes of practice and license conditions applicable to the provision of the Service and any reasonable policies of the Customer’s regarding the provision of the Service which are advised by the Customer.
- 2.3. The Customer shall ensure that it complies at all times with all legislation, laws, codes of practice and license conditions applicable to its use of the Service and any reasonable policies of Inh regarding the use of the Service which are advised to it by Inh. The Customer shall also comply with its further obligations set out this Agreement.
- 2.4. Inh reserves the right to amend, vary or change any Equipment or Software (including the technical specifications) provided that such amendment, variation, or change does not affect the provision of the Service. Where Inh reasonable considers that is it necessary to suspend the provision of the Service for the purposes of carrying out amendment, variation, change, repair, maintenance or improvement of the Software or Equipment. Inh shall use its reasonable endeavours to ensure that the Customer

receives reasonable notice as defined in Schedule 2 of any such work and that the amendment, variation, change, repair, maintenance or improvement be carried out as promptly as possible.

- 2.5. Inh reserves the right to suspend or vary any Service (or part of a Service and where generally or in respect of the Customer only) where it is required to do so by law, or at the direction of any court or governmental or other regulatory body, or as a result of the loss or revocation of any license which Inh requires to provide the Service. During the period of any such suspension the Charges for the suspended Service will not be payable unless the suspension arises as a consequence of an act or omission of the Customer, its employees or agents or persons authorised by it to use the Service.

3. Charges and Payment

- 3.1. In consideration for the provision of the Service, the Customer shall pay the Charges to Inh. The Charges will commence on the Commencement Date and be payable upon invoice as specified in Schedule 4.
- 3.2. All Charges and other payments which may become due under this Agreement are exclusive of VAT which (if applicable) shall be payable by the Party making the payment in question at the rate from time to time in force.
- 3.3. All invoices issued by Inh shall be paid by the Customer within thirty (30) days of the date of invoice. Inh will dispatch the invoice no later than two Business Days after the date of the invoice. Invoices not paid within this time frame will be escalated according to Inhealthcare's outstanding invoice process.
- 3.4. The Customer must provide any purchase order number or other reference which it wishes to appear on any invoice to be issued by Inh at least twenty eight (28) days prior to the date on which the invoice in question is to be raised. The Customer shall not be entitled to reject any invoice issued by Inh on the ground that it fails to include a purchase order number or any other reference where the customer has failed to notify Inh in accordance with this Clause 3.4.
- 3.5. Inh shall be entitled to suspend the provision of the Service, without liability, to the Customer during any period during which any overdue sums are due to it from the Customer. During any such period of suspension The Customer shall remain liable to pay the Charges for the suspended Service. Inh shall notify the Customer in writing a minimum of ten (10) working days prior to the suspension of the Service.
- 3.6. Interest shall accrue on all overdue amounts due from one party to the other before as well as after any judgement at a rate of 2% per annum above the base lending rate from time to time of Lloyds Banking Group Plc.
- 3.7. Save as provided for by Clause 3.8, the Customer shall not be entitled to make any deduction from any amount due from it to Inh nor shall the Customer be entitled to exercise any right of set-off.

- 3.8. Where the Customer has a bona fide dispute as to the amount of any invoice issued by Inh which it has informed Inh of in writing within fourteen (14) days of the date of the invoice, the Customer shall be entitled to withhold payment of the disputed amount only (provided it pays the undisputed amount in accordance with Clause 3.3) pending resolution of that dispute. Following resolution of that dispute, the Customer shall pay to Inh within seven (7) days (or before the end of the original period for payment if earlier) any amount which is agreed or is ordered to pay together with interest (if applicable) calculated in accordance with Clause 3.6.
- 3.9. Inh shall be entitled to increase the Charges during the Term to the extent that a Supplier Cost or Change in law leads to increased costs to Inh beyond its costs reasonably contemplated at the Commencement Date. Inh shall notify the Customer in writing a minimum of thirty (30) working days prior to such increase if possible, however there may be scenarios where this is reduced due to the short notice that Inh receives from its suppliers.
- 3.10. Inh shall reserve the right to review all Charges detailed within this agreement on an annual basis in line with the Commencement Date of this agreement and inline with Annual Inflation as measured by the Office for National Statistics Retail Price Index (RPI).

4. Limitation of Liability

- 4.1. Neither party seeks to limit or exclude its liability for death or personal injury caused by negligence nor in respect of fraud or fraudulent misrepresentation and no provision of this Agreement shall be interpreted as attempting to exclude or limit such liability.
- 4.2. Subject to the other provision of this Clause 4 and save in respect of any damage to the Equipment, the total aggregate liability of each Party to the other for any and all claims by the other in connection with the provision of the Service or otherwise arising out of or in connection with the Service or this Agreement for each twelve (12) months' period commencing on the Commencement Date and the anniversary thereof shall be limited to the amount of Charges paid or payable by the Customer for the provision of the Service during the preceding twelve (12) months (or during the first twelve (12) months of the Term the Charges paid and payable during that period) subject to a maximum amount of one million pounds (£1,000,000) if lower than the actual amount of the Charges over that twelve (12) months' period.
- 4.3. Subject to Clause 4.4, in no circumstances shall either Party be liable to the other for the following types of loss:
- 4.3.1. Loss of profit, loss of anticipated profit, loss of revenue, damage to reputation, damage to goodwill, loss of business, loss of savings or anticipated savings, or any form of indirect, consequential or incidental loss; and/or

4.3.2. Any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent).

4.4. In the event that this Agreement is terminated by Inh pursuant to Clause 5 or by the Customer in breach of the provisions of this Agreement, none of the provisions of this Clause 4 shall operate so as to exclude Inh's right to recover from the Customer the Charges which would have been payable by the Customer in respect of the Service up until the earliest point at which the Customer could have lawfully terminated the provision of the Service in accordance with this Agreement.

5. Term and Termination

5.1. Subject at all times to earlier termination in accordance with the provision of this Agreement, this Agreement shall continue for an initial period until [INSERT] (the Initial End Date).

5.2. Following the initial contract signature and with agreement from both parties this contract may be extended for further [INSERT] months at any point during the initial agreement phase. The charges detailed in Schedule 4 will be agreed between the two parties for any extension beyond the Initial End Date.

5.3. Without prejudice to its other rights or remedies, either Party shall be entitled to immediately terminate this Agreement:

5.3.1. By serving written notice of termination on the other Party (such notice to be served within thirty (30) days of the discovery of the breach giving rise to the right to terminate occurring) in the event that the other Party commits a material breach of any of its obligations pursuant to this Agreement, which, in the case of a material breach which is capable of remedy, is not remedied within thirty (30) days following receipt of written notice from the Party not in material breach requiring the party in breach to do so; or

5.3.2. In the event that the other Party enters into any compromise or arrangement with its creditors becomes unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986, if an order is made or an effective resolution is passed for the other Party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company). If a petition to wind-up the other part is presented to court (which is not withdrawn within fourteen (14) days) or if a receiver, manager, administrative receiver or administrator is appointed in respect of the world of any part of the other Party's assets.

5.4. Without prejudice to its other rights or remedies, Inh shall be entitled to terminate at its discretion the provision of the Service by written notice in the event that the Customer fails on three (3) or more occasions to pay any invoice (to the extent that the Customer has not disputed it in accordance with Clause 3.8) within fourteen (14) days of its due date and any such termination shall be deemed to be as a consequence of a material breach by the Customer

5.5. On expiry or termination of this Agreement for any reason, and subject to any other express provisions set out elsewhere in this Agreement or further commercial agreement reached between the parties:

5.5.1. all outstanding sums payable by the Customer to Inh shall immediately become due and payable;

5.5.2. All rights and licences granted pursuant to this agreement shall immediately cease;

5.5.3. Each party shall return promptly to the other party all records and materials of the other party in its possession, and any Confidential Information communicated to it by the other party, either preparatory to, or as a result of, this Agreement to the extent such material remains confidential;

5.5.4. The parties shall follow the terms of the Exit Management Plan.

5.6. Termination of this Agreement shall not affect the continuing enforceability of any provision of this Agreement which, whether expressly or by implication, is to survive termination.

6. Change

6.1. If the Customer wishes to make a change to the Service then the Customer shall complete the Inhealthcare Change Request Form at Schedule 6 and submit to Inh for review. For the avoidance of doubt, a change to the Service is any departure from or additional functionality to that set out in the specification in Schedule 1.

6.2. Inh do not commit to accepting all change requests submitted by the Customer. Inh shall consider whether any such change can be accommodated acting reasonably.

6.3. If a change is accepted by Inh then Inh shall be entitled to make a reasonable charge in respect of the development work in accordance with the rates set out in Schedule 4 which such change requires and shall be entitled to make a reasonable additional charge in relation to the Charges. Any dispute in relation to such additional charges shall be resolved in accordance with clause 17 below.

6.4. Once the parties have agreed the additional charges in relation development work and the Charges Inh will confirm timescales for the change to be made which shall depend upon Inh capacity.

7. Force Majeure

7.1. No failure or delay by a Party to perform its obligations in accordance with this Agreement (other than the obligation to pay the Charges for the Service) shall give rise to any claim by the other or be deemed a breach of this Agreement if such failure or delay results directly from an event of Force Majeure.

7.2. In the event that Inh is prevented from providing the Service to the Customer by reason of an event of Force Majeure for a period in excess of fifteen (15) consecutive Business Days. Then the Customer shall:

7.2.1. Not be liable to pay the Charges during the continuance of the event of that Force Majeure event; and

7.2.2. Be entitled to immediately terminate this Agreement by serving written notice on Inh if such event continues for a period of in excess of twenty eight (28) days.

8. Ownership and Return of Customer Data

8.1. Inh acknowledges that it shall not acquire any rights of ownership in respect of any data stored by the Customer using the Service (Customer Data). On termination of this Agreement Inh shall promptly return the Customer Data to the Customer at the cost of the Customer by such method Inh reasonably considers appropriate with regard to the volume and nature of the Customer Data.

8.2. Inh undertakes to the other that, in connection with the Customer Data and Patient Data to the extent that Inh receives, stores and/or processes any, it will as Data Processor at all times comply with the Data Protection Act 2018 (“DPA”), or any currently applicable Data Protection Legislation, (including the data protection principles referred to in the DPA) and any subordinate or associated regulations. Inh warrants that it has in place and undertakes to maintain appropriate technical and organisational measures against the accidental, unauthorised and unlawful processing, destruction, loss, damage or disclosure of the Customer Data and/or Patient Data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to process the Customer Data and/or Patient Data or on which the Customer and/or Patient Data is stored.

8.3. Inh will forward all requests for access to the Customer Data from Patients and third parties. This includes but is not limited to requests made by a subject for a copy of the subjects own personal information, as per the rights awarded to the subject by the DPA.

8.4. Inh will not remove any proprietary notices relating to the Customer Data.

8.5. Inh will not store or use Customer Data except where necessary to fulfil its obligations under this agreement.

8.6. Inh will preserve the integrity of Customer Data processed by Inh and prevent its corruption and loss.

8.7. Inh will ensure that any system which holds any Customer Data complies with NHS Cloud Security recommendations prescribed by NHS Digital.

- 8.8. If at any time Inh suspects that the Customer Data has or may have become corrupted lost, breached or significant degraded in any way for any reason, then Inh will notify the Customer immediately and will (at its own cost where such corruption, loss, breach or degradation of the Customer Data was caused by the action or omission of Inh or its representatives) comply with reasonable remedial action proposed by the Customer.
- 8.9. Inh agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Customer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

9. Software Licensing and Intellectual Property Rights

- 9.1. Ownership of all and any Intellectual Property Rights in any Software shall at all times remain vested in Inh and/or its third party licensors (as appropriate). The Customer shall not acquire ownership or title to any such Intellectual Property Rights pursuant to this Agreement or the provision of the Service to it.
- 9.2. Subject to the payment by the Customer of the Charges for the Service and the compliance by the Customer with its obligations pursuant to this Agreement, Inh grants to the Customer and Patients a non-exclusive, non-transferable, revocable licence to use the Software in order to utilise the Service to which it relates only during the Term.
- 9.3. The Customer will not and will not permit any third parties to:
- 9.3.1. Distribute or allow others to distribute copies of the Software or any part thereof to any third party;
 - 9.3.2. Tamper with, remove, reproduce, modify, amend or copy the Software or any part thereof;
 - 9.3.3. Provide, rent, sell, lease, licence or otherwise transfer the Software or any copy or any part thereof or use it for the benefit of a third party;
 - 9.3.4. Deconstruct, disassemble, reverse compile, reverse engineer the Software or any part thereof; and/or
 - 9.3.5. Attempt to discover the source and/or object code of the Software or any other underlying proprietary information.
- 9.4. This Clause 9.4 shall apply without prejudice to any rights which the Customer may have in respect of the Software which cannot lawfully be limited or excluded.
- 9.5. Inh warrants that (where applicable) it is authorised to sub-license use of Software in which the Intellectual Property Rights are owned by a third party to the Customer and Patients in connection with the provision of the Service.
- 9.6. Subject to compliance by the Customer with Clause 9, Inh shall indemnify the Customer for all losses, claims, liabilities, expenses and costs which the customer

may incur to a third party as a result of the use or possession by the Customer in accordance with this Agreement of any Software or use of the Service in which the Intellectual Property Rights purported to be owned by or licensed to Inh are found to infringe the Intellectual Property Rights of any third party (excluding any such claims which relate to customer Data stored by the Customer using the Service).

9.7. The Customer shall:

9.7.1. As soon as reasonably possible, inform Inh of any claim which it receives or which it becomes aware that it may receive;

9.7.2. Make no admission as to liability in respect of any claim or potential claim without the prior written consent of Inh;

9.7.3. Allow Inh (at the cost of Inh) to have sole conduct and control of the defence and/or settlement of any claim or potential claim; and

9.7.4. Provide Inh with such support, information and assistance as it may be reasonably request in connection with the investigation, fenced and/or settlement of any claim or potential claim. Inh shall on request, refund the reasonable and demonstrable expenses of the Customer incurred in complying with its obligations pursuant to the clause 9.7.4.

9.8. The Customer acknowledges that any programmes which Inh writes for its customers may contain standard routines/coding elements that Inh has developed for and needs to use for its other customers and that the copyrights in such standard routines/coding elements belong to Inh.

9.9. Any Intellectual Property Rights associated with content developed on the Inh platform will remain the property of the Customer.

9.10. The Inhealthcare Toolkit creates “assets” which define content and the behaviour of the pathway. These are usually XML files that are uploaded onto the Inh platform.

9.11. After termination of this Agreement, Inh will remove any assets (XMLfiles) that were built by the Customer and return them. At this point there will be then no customer IPR on the platform.

9.12. If a pathway developed by the Customer requires Inh to enhance the platform for the pathway to work properly, for example, Inh add integration with a 3rd party system, or add a new function then the IPR associated with the software enhancement belongs to Inh, Inh owns the IPR associated with the Inh platform, and the Customer own the assets if they developed the pathway.

10. Enforcement of the contract by Third Parties

- 10.1. No person who is not a party to this Agreement shall have any right to enforce the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

11. Confidentiality

- 11.1. Other than to its employees, sub-contractors and professional advisers who need to have such Confidential Information disclosed to them or except insofar as a Party may have a statutory duty to disclose any Confidential Information of the other Party or is required by law or a regulatory body to do so, neither party shall divulge or communicate to any third party any Confidential Information of the other Party but such restriction shall cease to apply to any Confidential Information of a party which may lawfully come into the public domain other than through the act or default of the other Party.
- 11.2. Each party shall be entitled to use the Confidential Information of the other Party only in connection with the performance of this Agreement and not otherwise or for its own benefit or the benefit of any third party.

12. Amendments to the Contract

- 12.1. By sufficient prior written notice Inh and the Customer shall be entitled to make such reasonable amendments to this Agreement as may be necessary from time to time to ensure continuing compliance with any applicable legislation, law, code of practice and/or license condition.
- 12.2. Any changes to the contract as defined within Clause 12.1 required written agreement by both parties. No single Party may unreasonably withhold consent to reasonable amends to this agreement.
- 12.3. Subject to Clause 12.1 and save where otherwise provided in this Agreement that a document may change, no amendment to this Agreement shall be valid and binding unless in writing and signed by both Parties.

13. Assignment of the contract and sub-contracting

- 13.1. Except to a successor of all or substantially all of a Party's assets, neither Party shall be entitled to assign or novate any of its rights or obligations under this Agreement without the prior written consent of the other, such consent us not to be unreasonably withheld or delated. For the purposes of this Clause 13.1, Inh shall not be deemed to have acted unreasonable should it refuse to consent to any assigned or novation by the Customer to any third party who is no, in the reasonable opinion of Inh, of the same financial standing or creditworthiness as the Customer.
- 13.2. Inh shall be entitled to sub-contract the performance of any of its obligations under this Agreement provided that any such sub-contracting shall not reduce Inh's liability to the Customer under this Agreement. Inh shall inform the customer of any

intended changes concerning the addition or replacement of sub-contract processors, giving the Customer the opportunity to object to such changes.

14. Data Processing

For the purpose of the data processing section of this agreement Inh are the Processor and the Customer is the Controller.

The Controller and the Processor each being a Party and together the Parties to this Agreement.

- 14.1. The Processor has been engaged by the Controller to Process the Data for the purposes described in Schedule 5.
- 14.2. The parties acknowledge that the Data constitutes or is capable of constituting Personal Data and/or Sensitive Personal Data (for the EU General Data Protection Regulation special categorise of data) as defined by current law.
- 14.3. The Parties wish to record the specific terms and conditions upon which processing of the Data is to be performed by the Processor.
- 14.4. This Agreement is made in accordance with the requirement under current data protection legislation to set out the terms and conditions upon which Processing of the Data is to be performed by the Processor.
- 14.5. The Processor will only Process Data on the instruction of the Controller. The Controller remains legally responsible for the personal data even when it is Processed by the Processor and therefore they must take steps to ensure the information assets remain protected, the liabilities and risk are appropriately managed, data is Processed lawfully and the Agreement is legally enforceable.
- 14.6. Certain words and expressions used in and are applicable to this Agreement are defined in the Definitions and Interpretations.
- 14.7. The Processor acknowledges that it will be named in the privacy notice of the Controller as a recipient of the categories of data as described in Schedule 6 and agrees to maintain the service of a Data Protection Officer as required by law.
- 14.8. The Processor agrees to inform the Controller immediately of any change to the Data Protection Officer or the Data Protection Officer of a sub-contractor.

Controller Responsibilities

- 14.9. The Controller shall at all times only Process the Data lawfully and in accordance with Data Protection Legislation.

14.10. The Controller shall not instruct the Processor to Process the Data on their behalf under this Agreement where the Controller does not have a secure basis in law to Process that Data.

14.11. The Controller shall remain responsible for ensuring the compliance of the Processor as detailed with the current Data Protection Legislation.

Processor Responsibilities

Where the Processor undertakes any processing of Data it shall:

14.12. Only process the Data for the purpose of the performance of its obligations under this Agreement;

14.13. Not itself determine or seek to determine the purposes for which and the manner in which Data are to be Processed

14.14. At all times Process personal data only in accordance with the Controller's instructions. These instructions may be set out in this Agreement or in the schedules. The Processor shall only undertake the processing of data to the extent, and in such manner, is necessary to comply with such instructions of the Controller;

14.15. Comply with all related and relevant legislation, regulatory and industry standards, including (but not limited to) current data protection legislation;

14.16. Meet or exceed the requirements of the NHS Digital minimum compliance requirements for organisations processing NHS data as described, including submitting Data Protection and Security Toolkit assessments as required on an annual basis, and to provide confirmation of the same on request;

14.17. Not share the Data, other than Data allowed by this Agreement, with any third party without the prior written permission of the Controller

14.18. On receipt of a subject access request made by a Data Subject under the current law:

14.18.1. Notify the Controller as soon as possible and in any case within three working days; and

14.18.2. Provide the Controller with all reasonable assistance and cooperation to enable to Controller to comply with the subject access request;

14.19. Make all reasonable changes to processing as required by the controller as a result or a Data Protection Impact Assessment (DPIA), and to assist the controller where required with information and technical expertise to support ongoing DPIAs.

14.20. Ensure the processes and procedures are in place to comply with a controller request to:

- 14.20.1. Rectify data, at a database level if required
- 14.20.2. Erase data, at database level if required
- 14.20.3. Assist with the restriction or temporary suspension of data

14.21. Not transfer or permit the transfer of the personal data on to any territory outside the EU without the prior written consent of the Controller.

The Processor shall:

- 14.22. Have in place appropriate technical and organisational security measures equivalent to those imposed on the Controller by current data protection legislation;
- 14.23. Ensure that all Data Processed by the Processor and its staff are subjected to the technical and organisational security measures the Processor implements and maintains pursuant to clause 18.1 above;
- 14.24. Ensure that access to the Data is restricted by organisational controls to staff of the Processor who need access to meet the Processors obligations under this Agreement
- 14.25. Take reasonable steps to ensure the reliability of its staff who have access to the Data, which shall include ensuring that all staff engaged by the processor have had an appropriate disclosure and barring service check, understand the confidential nature of the Data, and have received appropriate training in the relevant Data protection legislation prior to their use of the Data;
- 14.26. Where instructed by the Controller to dispose of the Data, ensure it is disposed of securely and confidentially in accordance with the secure destruction requirements specified in Clauses 18.8 to 18.10 inclusive.
- 14.27. The Processor will not destroy the Data unless it has received specific instruction to do so from the Controller;
- 14.28. The Controller may, at any time during the term of this Agreement or upon any termination or expiry of this Agreement, require the Processor to securely return, transfer or destroy the Data, in whole or in part;
- 14.29. Where the Controller makes such a request under Clause 18.7:
 - 14.29.1. The Processor shall ensure that Data held in paper form (regardless of whether originally provided by the Controller or printed from the Processors IT systems) is destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.
 - 14.29.2. The Processor shall ensure that electronic storage media used to hold or process Data is destroyed or overwritten to current CESG standard as defined at www.cesg.gov.uk.

- 14.30. Provide the Controller with copies of all relevant overwriting verification reports and/or certificates of secure destruction of the Data at the conclusion of the Agreement;
- 14.31. Notwithstanding the other provisions of Clause 18.8-18.10 inclusive, the Processor may retain the Data which is subject of a request made under Clause 18.5, provided that:
 - 14.31.1. Such retention is necessary due to a continuing statutory or contractual obligation imposed on the Processor with respect to such Data;
 - 14.31.2. The Processor explains to the Controller what the relevant statutory or contractual obligations are to the reasonable satisfaction of the Controller;
 - 14.31.3. The processor promptly complies with the Controllers request made under Clause 18.5 as soon as such statutory and/or contractual obligation ceases to apply to the processor; and
 - 14.31.4. The Processor keeps the Controller informed of the Data it continues to retain, by notifying the Controller in writing at least once a year so long as the Processor continues to retain such Data.
- 14.32. Have procedures in place to monitor access and to identify unauthorised and unlawful access and use of personal data.
- 14.33. Immediately report any untoward incidents, near misses or activities that suggest non-compliance with this Agreement.
- 14.34. Maintain a record of all processing activities undertaken on behalf of the Controller and make them available on request to the controller and the supervisory authority as required by law, including the following:
 - 14.34.1. The categories of processing undertaken in this agreement
 - 14.34.2. A general description of the security technologies applied to the controllers data
- 14.35. Take account of all new Codes of Conduct and Certifications implemented by the supervisory authority and create a plan for implementation to be approved by the Controller, or a written explanation if the Coe of certification cannot or will not be adhered to.
- 14.36. Ensure any sub-processors used in the delivery of the Service comply with the requirements of the current data protection legislation and data processing terms within this agreement.

Audit

- 14.37. The Controller itself, or through any third party it appoints, may conduct an audit of the Processors business operations to review the Processors compliance with this Agreement.
- 14.38. The Processor shall conduct audits of its subcontractor's compliance with the equivalent obligations to those under this Agreement at reasonable intervals or as and when reasonably required by the Controller and shall provide the Controller with a detailed report of such audit.
- 14.39. The processor shall provide, if requested, independent assurance of the self-assessed NHS Digital compliance requirements as published on the NHS Digital website.

Sub-contracting

- 14.40. The Processor may only further sub-contract its obligations under this Agreement to any third party on receipt of written authorisation to do so by the controller. The Processor shall notify the Controller of any changes to the subcontractor(s) appointed under this Clause prior to the commencement of processing and give at least thirty (30) days' notice of said change.
- 14.41. Where a subcontractor is appointed, the Processor shall:
- 14.41.1. Carry out adequate due diligence on such subcontractor to ensure that the subcontractor is executed before the subcontractor is allowed to commence performance of any of the subcontracted obligations of the Processor, and provide a copy of such agreement to the Controller upon request.

Freedom of Information

- 14.42. The parties acknowledges that the Controller may be subject to the Freedom of Information Act 2000 (FOIA) and the Environment Information Regulations 2004 (EIR).
- 14.43. In addition, the Controller may be statutorily required to disclose further information about the services provided under this Agreement or the Agreement itself in response to a specific request under FOIA or EIR. In which case:
- 14.43.1. The Processor shall provide the Controller with all reasonable assistance and co-operation to enable the Controller to comply with its obligations under FOIA or EIR.
- 14.43.2. The Controller shall consult the other processor in respect of any commercial or other confidentiality issues in relation to the Agreement, however the final decision about disclosure of information or application of exemptions shall rest solely with the Controller.

15. Process for agreeing variations

- 15.1. Any variation to the terms of this Agreement shall be agreed in writing by the parties, such agreement not to be unreasonably withheld.

16. Dispute Resolution

- 16.1. Both parties shall aim to resolve all disputes, differences and questions by means or co-operation and consultation. Should this fail, then the dispute resolutions process in the standard NHS Commissioning contract will be engaged. Other terms of that contract will not be applicable in any way to this contract.

17. Termination

- 17.1. This Agreement shall commence on the Commencement Date and shall continue until the Processor has ceased to Process any Data and ceased to have any Data under its custody or control. For the avoidance of doubt, the requirement to keep confidential the data subject to this Agreement shall not terminate for so long as the Processor continues to retain any Data in accordance with Clause 9.

18. Liability

- 18.1. Each Party shall indemnify the other against and compensate for any direct loss sustained due to any failure to act in accordance with the terms of this Agreement plus associated legislation, policies and codes of practice up to the total value of £1 million (£1,000,000).

19. General

- 19.1. Any notice or other communication to be given under this Agreement shall be in writing (and in the case of Inh, addresses to the Company Secretary), shall be deemed to have been duly served on a Party if it is left at the authorised address of that Party or posted by pre-paid first class post addresses to that Party at such address and shall if:

19.1.1. Personally delivered, be deemed to have been received at the time of delivery, provided that where delivery occurs after 5.00pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00am on the next following Business Day; or

19.1.2. Posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting.

- 19.2. For the purpose of Clause 15.1, the authorised address of Inh shall be its registered office for the time being and, in the case of the Customer, the address as set out in this Agreement. Either Party may notify the other Party in writing from time to time of a change in its authorised address to another address in the United Kingdom

provided that notice of that change is given in accordance with the requirements of Clause 15.1.

- 19.3. Whilst the Parties may make operational communications concerning this Agreement via electronic mail, formal notice may not be validly served under this Agreement by electronic mail unless otherwise agreed by the receiving party.
- 19.4. This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior arrangements and understanding (both oral and written) relating to the subject matter of this Agreement (including any proposals submitted to the Customer by Inh not expressly incorporate into this Agreement). This Agreement shall supersede and take precedence over any purchased order or other document submitted by the Customer or referring to any contractual conditions, all of which are hereby excluded.
- 19.5. Neither Party has relied upon any warranty or presentation except as expressly provided for or referred to in this Agreement. All warranties, conditions, terms and representations, express or implied (whether by law, statute or otherwise) if not expressly incorporated into this Agreement are excluded to the fullest extent permitted by law.
- 19.6. Nothing in this Agreement is intended to nor shall it create any partnership, joint venture, agency, or other fiduciary relationship between the Parties who are with respect to each other, independent contractors.
- 19.7. Any provision of this Agreement which is held to be invalid or unenforceable shall be deemed ineffective to the extent of such invalidity or unenforceability without invalidations or rendering unenforceable the remaining provisions of this Agreement.
- 19.8. No failure, delay or neglect by a party to enforce any provision of this Agreement shall be construed nor be deemed to operate as a waiver of that Party's right in respect of such provision nor shall it affect the validity of this Agreement or any other provision in this Agreement nor prejudice that party's right to take any subsequent action.
- 19.9. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England.
- 19.10. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. A document signed and transmitted electronically by facsimile or email is to be treated as an original and shall have the same binding effect as an original signature on an original document.
- 19.11. In the event of conflict between the Agreement and any schedule, the schedule provisions will prevail.

Signatures

Inhealthcare Limited	
Name	
Position	
Date of signature	
Signature	

[INSERT CUSTOMER NAME]	
Name	
Position	
Date of signature	
Signature	

SCHEDULE 1 - THE SERVICE

SCHEDULE 2 – SERVICE MANAGEMENT

Service Management

Raising a support query

Logging a support query during business hours

The Inhealthcare support team is staffed between 8.00am and 6.00pm, Monday to Friday, excluding bank holidays. You can log a query by either calling the support line or by email. Inhealthcare will then identify the call priority and assign a unique ticket number which will be provided to the caller.

If the query is a change request, Inhealthcare will also require an email from an authorised user detailing the change and providing written authorisation. The Inhealthcare system keeps a record of the details of authorised users.

Support priorities

The customer will initially report relevant issues to the Inhealthcare technical support team via email or telephone call to the support desk. At this stage Inhealthcare will work with the customer to:

1. Determine the scope of the issue;
2. Classify the issue in accordance with the below table; and

Classification	Criteria	Response
Severe	An issue is Severe if any of the following are true: 1. Clinical system users are unable to use key functions of the system or access is not available. 2. A significant subset of patients (10%) are unable to use a key feature of the Patient-facing functionality. 3. Data in the database is found to be compromised. 4. Clinical issues are found within care plans that could affect patient safety. 5. Inaccurate reporting in	Inhealthcare shall respond within one (1) working hour to acknowledge that it is aware of an urgent priority issue and provide regular updates along with expected resolution/estimated fix times. Inhealthcare shall correct each such urgent priority issue or resolve it with a fix or reasonably acceptable workaround within the target time frame of four (4) working hours from the time of discovery or receipt of notice. If any fix or remedial action may impact clinical care or the local IT infrastructure, this will be agreed with Inhealthcare and IT Service Desk leads beforehand. Where necessary, this may require the fix to be delayed until the next working day.

Classification	Criteria	Response
	relation to patient Alerts.	
Moderate	If an issue is not Severe, it is classified Moderate if: A feature of the system, patient-facing functionality or support service is not available or is not functioning according to specification.	Inhealthcare shall respond within 8 working hours to acknowledge that it is aware of the issue and shall use its best efforts to resolve it within the target time frame of five (5) business days from discovery or receipt of notice. Regular updates should be provided at the end of each business day as to progress and expected resolution.
Minor	Otherwise, the issue is classified as Minor – an issue that has a minor effect on the ability to manage patients or the patient experience within the system. The issue may be logged as one of the following: 1. Minor bug not significantly affecting functionality 2. Enhancement request 3. General suggestion	Inhealthcare will enter the issue into its tracking system and review the outstanding list during supplier performance reviews. Minor bugs should be fixed in Inhealthcare's next scheduled release, alongside any reasonable minor enhancements

3. Coordinate a plan and appropriate timescales associated to resolve the issue.

Additional support outside of these hours/ days will be provided via an on call process. The issue escalation process remains the same for the out of hours support, however the response times from Inhealthcare support team cannot be guaranteed. Responses from Inhealthcare support outside of support hours will be provided on a best endeavours basis.

Enhancements and improvements

Planned events

Inhealthcare is committed to continuously improving its software and features. In order to enable new improvements and features to be implemented, the development team may need to take the system offline. We aim to inform our customers a minimum of ten days prior to the downtime at which time we will provide an overview of the changes/improvements being made during that release which affect users of the portal.

Unplanned events

In rare instances, there may be incidents which require the Inhealthcare portal to be taken offline for emergency maintenance. At such time an urgent notification will be sent to customers detailing the reason for and the expected duration of the maintenance.

Service Level Agreement (SLA)

Inhealthcare shall pay to the company service credits where Core System Availability is less than 99.9% availability.

One service credit will be equal to one day's Service Charges based on the average daily charge of the previous month's total Service Charges invoiced.

Inhealthcare shall be responsible for monitoring and measuring the Availability of the Core System to the extent that it is comprised of the following components:

Component	Monitoring Information (for information purposes only)
Clinician portal (WWW)	The Supplier monitors connectivity to these components using automated synthetics which attempt to perform a GET request on the application.
Authentication Service (WWW)	
Clinician portal (HSCN)	
Authentication Service (HSCN)	
Digital Pathway Engine	The Supplier's Digital Pathway Engine monitors the availability of it's Platform Engines which are used to drive activities along the patient pathway.
REST API (WWW)	The Supplier monitors the availability of its internet facing REST API which is used by partners and the Supplier's Mobile Applications to be able to share information to the Platform.
REST API (HSCN)	The Supplier monitors the availability of its HSCN facing REST API which is used by partners and the Supplier's Desktop Applications to be able to share information to the Platform.
HSCN	Inhealthcare monitors the ability for the Inhealthcare platform to connect to HSCN facing services such as NHS Digital's DNS and NHS Spine LDAP.
Patient Portal	Inhealthcare monitors connectivity to it's patient portal using synthetic connections to the Inhealthcare internet facing patient portal.
Email	Inhealthcare monitors the ability for the Inhealthcare platform to be able to send emails via it's email gateways.
Automated Phone Calls	Inhealthcare monitors the ability for the Inhealthcare platform to make phone calls to a synthetic contact centre.

Component	Monitoring Information (for information purposes only)
SMS	Inhealthcare monitors the ability for the Inhealthcare platform to send SMS messages using it's SMS gateway provider.

The Core System shall be deemed to be Available to the extent that any Unavailability results solely from equipment faults, network faults or other incidents outside the Supplier's control, including Force Majeure.

Service Level	Description	Service Credit Calculation	Critical Service Failure
99.9%	Core System Availability The Core System is Inhealthcare's server infrastructure and installed software located in Inhealthcare's secure data centre.	Core System Availability is measured across a calendar month. 99.9% availability is, therefore, equivalent to no more than 44 minutes of system unavailability per month (rounded to the nearest minute) based on a calendar average of 43,800 minutes per month. Core System Unavailability is identified by proactive fault detection by the Inhealthcare service management centre or when Inhealthcare acknowledges the Customer's reported fault. In calculating Core System Availability the following circumstances are excluded: i. Service unavailability as a result of	Planned maintenance can involve a temporary suspension of part or all of the service in order to enable Inhealthcare to undertake vital remedial/maintenance or upgrade work. Planned maintenance and controlled outages will always be notified to the customer at least 7 days in advance and be planned in such a way to have minimum impact on the Customer's or End User Organisations' operations. Emergency maintenance required as a result of identifying a problem through on-going monitoring and management, that could potentially cause an outage or failure of the service, will be notified to the customer at the earliest possible time and be managed in such a way to have

Service Level	Description	Service Credit Calculation	Critical Service Failure
		Service suspension in accordance with the Agreement. ii. Service unavailability due to action or omission of the Customer, End User Organisation, its employees, agents, sub-contractors or patients. iii. Service unavailability due to planned maintenance as specified below. iv. Service unavailability due to emergency maintenance. Specifically the requirement to resolve Known or Latent Vulnerabilities or to apply changes due to degradation of performance as a result of Customer or End User Organisation actions.	minimum impact on the customer's or End User Organisations' operation.

Core System Availability – 24x7	Service Credits Payable
≥99.9% to 100.0%(maximum of 44 minutes)	0
>99.0% to <99.9% (maximum of 7 hours 18 minutes)	1
>98.0% to ≤99.0% (maximum 14 hours 36 minutes)	5
>97.0% to ≤98.0% (maximum 21 hours 54 minutes)	10
>96.0% to ≤97.0% (maximum 29 hours 12 minutes)	15
>95.0% to ≤96.0% (maximum 36 hours 30 minutes)	20
Less than 95.0% (> 36 hours 30 minutes)	30

Please note:

- Service credits will be confirmed by credit note issued by Inhealthcare to the Customer confirming the adjustment to be made to the following monthly Service charges.
- Inhealthcare shall not be liable to pay any more to the Customer by way of service credits in any one month than a sum that is equal to (the VAT exclusive amount of) the preceding month's Service Charge regardless of the number of service outages in that particular month.
- Service credits shall only be applicable to organisations for unavailability of components within the Inhealthcare Platform which are used within their services.

Planned engineering

Inhealthcare is committed to continually improving and expanding its digital health platform and services, with a view to providing the highest levels of service possible to its Customers. In order to facilitate these improvements, it is necessary to carry out essential work from time to time. These activities are carefully scheduled through the use of an internal 'change control' process which is designed to give customers maximum visibility of any given change and thereby ensure that planning and implementation is carried out to minimise the effect on customers using their network services.

Details of maintenance windows and emergency outages are available on request.

SCHEDULE 3 – EXIT MANAGEMENT PLAN

Termination Terms and Service Migration

At the end of the contract with the customer, and if the customer does not wish to renew their service, Inhealthcare will provide assistance where possible to facilitate a transition to any replacement service.

Inhealthcare will not be obliged to disclose any confidential information to the customer or replacement supplier, or to transfer any assets, contracts, employees or third party licences.

Inhealthcare will provide an inventory of all data relating to the services that is under the control of Inhealthcare and details of the data structures in which the customer data is stored.

Inhealthcare will transfer all the customer data relating to the service to the customer.

There are no additional charges for storing patient data other than the services charges listed. If, at the end of the contract, the customer decides that Inhealthcare will continue to store data for archiving purposes instead of being transferred to the customer, this will be covered in a subsequent Service Agreement and the commercials will be agreed at the time of that Service Agreement.

Exit Plan

As part of the transition, Inhealthcare will work with the Customer to produce an Exit Plan detailing the process for the customer to exit from the services supplied in a timely and orderly manner. The exit plan will detail the following responsibilities:

An agreed time and date for the Services to be ceased;

Allowing the customer to continue using the Services to permit the transfer of the Customer Data to the Customer or a replacement supplier prior to cessation of service subject to the continued payment of the charges and such period may continue beyond the Initial Term if required by the Customer for a period to be agreed between the parties;

Provision of the services and access to the data whilst there are any existing patients monitoring episodes actively in use by the Customer; and

Ceasing the Services at the agreed time on the agreed date.

SCHEDULE 4 – THE CHARGES

Inhealthcare will provide the Service defined in Schedule 1 of the contract based on the below charges:

Development	[INSERT]
Annual licence	[INSERT]
Usage	[INSERT]
Additional credits	[INSERT]
Total	[INSERT]

Development charges

The development charges will be invoiced upfront upon signature of the contract.

Annual license

The annual license per annum charges will be invoiced upfront upon signature of the contract.

Usage

Usage will be invoiced monthly in arrears.

Communication Credits

Additional communication credits will be invoiced monthly in arrears. Communication credits are utilised on the below basis:

Credit usage	
Online	0 credits
Smartphone application	0 credits
Outbound SMS *	1 credit
Inbound SMS (Virtual Mobile Number / Long Code)	0 credits
Inbound SMS (Short code)	4 credits
Voice Calls (per minute)	1 credit
Video Consultations	15 credits

*Outbound SMS are based on the below character limits:

Number of SMS	Maximum characters
1	151
2	302
3	453

SCHEDULE 5 – DATA PROCESSING AGREEMENT

Purpose and Nature of the processing:
Categories of Data Subject:
Duration of the processing:
The following data elements are expected to be processed:
Special provisions (if any)
Agreed material sub-contractors (add multiples as required): Detailed below are other data processors which could be involved in the delivery of the service: • Name: Amazon Web Services (AWS) • Processing allowed: Amazon Web Services (AWS) are a data processor for the data centre hosting services that they provide to Inhealthcare. • Location of Processing activity: [UK] • Name: Messagebird • Processing allowed: Messagebird are an SMS provider used by Inhealthcare and potential data processor for SMS messages sent from the Inhealthcare platform • Location of Processing activity: [EEA] • Name: AQL • Processing allowed: AQL are an SMS provider used by Inhealthcare and potential data processor for any SMS messages sent from the Inhealthcare platform. • Location of Processing activity: [UK] • Name: Firstcom Europe • Processing allowed: Firstcom Europe are a data processor any automated phone calls that are sent from the Inhealthcare platform. Firstcom Europe is the provider of SIP trunks to the Inhealthcare platform. • Location of Processing activity: [UK] • Name: Twilio

- Processing allowed: Twilio are a potential data processor for any automated phone calls that are sent from the Inhealthcare Platform. Twilio is a provider of SIP Trunks to the Inhealthcare platform.
- Location of Processing activity: [EEA]
- Name: Amazon Web Services (AWS)
- Processing allowed: Emails can be sent from the Inhealthcare platform using Amazon Web Services or alternatively NHS Mail can be used to send emails.
- Location of Processing activity: [UK]
- Name: NHS Mail / MS O365
- Processing allowed: Emails can be sent from the Inhealthcare platform using Amazon Web Services or alternatively NHS Mail can be used to send emails.
- Location of Processing activity: [UK]
- Name: WhereBy
- Processing allowed: WhereBy are a data processor for video conferences conducted via the Inhealthcare platform.
- Location of Processing activity: [EEA]
- Name: NHS Login
- Processing allowed: NHS Digital are a data processor for NHS Login authentication conducted via the Inhealthcare platform.
- Location of Processing activity: [UK]

Plan for return and destruction of the data once the processing is complete:

See Clause 14 of this agreement

SCHEDULE 6 – INHEALTHCARE CHANGE REQUEST FORM

Inhealthcare Change Request Form

This form is to be completed by existing Inhealthcare customers to submit an initial change request regarding an existing service. All fields in this form are to be completed and sent to support@inhealthcare.co.uk before a change request is accepted for initial review and scoping.

Once the form has been confirmed as accepted by Inhealthcare it will be reviewed by our Professional Services team at which point it will both be approved, and sent to our Account Management team who will provide pricing for the change or, our Professional Services team will be in touch to ask any further clarifications required. Once pricing has been provided and accepted the change will be scheduled in line with Inhealthcare's development and release cycle dependant on on-going projects and resources.

Service Name	
New or existing organisation	
Organisation Name (within Sandpit)	
Released Version Number (if applicable)	
Service Requirements (embed specification if necessary)	
Are there any reporting requirements? If yes please complete table below.	
Is there any integration to any other software as part of this service?	
Any service variables that require setting up or changing?	
Users that need setting up with roles and permissions	

Reporting Requirements

Name of report	
How often does the report need issuing, and on what dates	
Plain language description of what is required	
Column headings required and expected contents of each column	
Details of all Coded Entries required to build this report and which column they refer to	
Are SNOMED codes being used? If so, list code and usage here	
What other data structures are required to be referenced in building this report? Please list them and which aspect of the report they refer to. Examples might be Tasks, Care Facilities:	
Any further details of the service design that will affect the report?	