cemplicity

G-CLOUD 15

Patient Experience Insight Service Terms & Conditions

A. These Terms and Conditions are supplementary to the G-Cloud 15 Call-out and Framework Agreement (G-cloud Agreement) that exists between you (“the Client”) and Cemplicity UK Limited (“Cemplicity”), together the Parties. Where any discrepancy between terms arise the G-cloud Agreements will take precedence.

B. Cemplicity owns the Cemplicity Tools.

C. Cemplicity has agreed to grant to the Client a licence to use the Cemplicity Tools as part of its services and may provide additional services in relation to the Cemplicity Tools on the request of the Client. These Terms and Conditions shall apply to all services.

D. These Terms and Conditions will apply from the execution date of a Service Schedule or the signing of a G-cloud Agreement, whichever is the earlier.

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. Definitions: In these Terms and Conditions:

"Aggregate Anonymous Data" means where all Personal Data has been removed from a data set in a manner that the data could no longer be used or manipulated in a way that could identify an individual;

“T&Cs” means this document;

"Applicable Law" means the relevant requirements of all laws, regulations, rules or codes of practice pertaining to matters covered by this agreement, including (as appropriate) those promulgated by the UK Information Commissioner's Office ("ICO");

“Cemplicity Tools” means Cemplicity’s technology used to capture patient feedback, match feedback to background data provided by the Client, and all associated analysis, reporting, exporting, case management software and applications, and includes all existing functionality and new functionality included in subsequent releases of the Cemplicity Tools, all supporting documentation, training materials and know-how;

“Confidential Information” means all information of any kind, whether or not it is in tangible or documentary form and whether or not marked or identified as being confidential, that relates to the Disclosing Party or its business affairs and includes information relating to:

a) The Disclosing Party’s business operations, strategies, plans, approaches and technologies;

b) Customer or patient information, survey results and comments made by survey respondents using the Cemplicity Tools;

c) The G-cloud Agreement or these T&Cs;

d) Any information provided by the Client to Cemplicity in relation to providing the Services.

“Data Controller” has the meaning given to it in the Data Protection Laws;

“Data Governance” means the strategies, procedures, policies and functionality employed by Cemplicity to capture, manage and hold Personal Data hosted by Cemplicity secure;

“Data Protection Laws” means all applicable prevailing privacy and data protection laws including all subordinate legislation, directions of any competent privacy regulator, common law and other relevant court decisions and all relevant privacy and/or data protection codes of practice in each case as may be amended or replaced from time to time;

“Data Processor” has the meaning given to it in the Data Protection Laws;

“Disclosing Party” means the Party to whom or to whose business affairs the Confidential Information relates;

“Intellectual Property” means copyright, invention rights, patent rights, trade secrets, know-how, design rights, trademarks, database rights, business names, domain names and all other forms of intellectual property;

“Licence” means the licence granted by Cemplicity to the Client under clause 2;

"Personal Data" has the meaning set out in Data Protection Laws;

“Recipient” means the Party receiving Confidential Information under a G-cloud Agreement or these T&Cs;

“Services” means the services, incorporating the Cemplicity Tools, to be provided by Cemplicity to the Client;

"Service Level Agreement” means the agreement between the Parties on Cemplicity platform and service performance, including the speed with which issues will be resolved;

“Working Day” means Monday to Friday, except for a public holiday in London, United Kingdom.

1.2. Interpretation: In these T&Cs:

a) References to assignment include sales, assignments, transfers, mortgages, pledges, charges and any other dispositions or alienations;

b) An obligation not to do anything includes an obligation not to permit or cause that thing to be done;

c) References to one Party notifying another, or agreeing or objecting to any matter, or making any nomination means such Party notifying, agreeing, objecting, or nominating, in writing;

d) References to the parties includes their assignees, transferees, and successors;

e) References to customers and patients refer to the people receiving services from the Client;

f) All payments are to be made in immediately available cleared funds;

g) References to the singular will include the plural and vice versa;

h) References to clauses are references to clauses of these T&Cs; and

i) References to any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it.

2. Licence and Services

2.1. Services: From time to time, the Client may wish to acquire certain Services from Cemplicity in respect to the Cemplicity Tools. The Client and Cemplicity will negotiate in good faith, will enter a G-cloud Agreement and may also agree to a Services Schedule for each of the Services:

a) On the execution of the G-cloud Agreement or a Services Schedule, these shall be deemed to be incorporated into, form part of, and be governed by these T&Cs during the specified term of the G-cloud Agreement or the Services Schedule;

b) If there is any conflict between these T&Cs, any Services Schedule or the G-cloud Agreement, the provisions of the G-cloud Agreement shall prevail, then the Services Schedule; and

c) Unless specified otherwise in the Service Schedule, each Services Schedule will commence on the date it is signed and continue for the term specified therein. If the G-cloud Agreement is terminated, then any Services Schedule will also terminate automatically.

2.2. Upgrade requests in relation to any Services Schedule: At any time during the term of the G-cloud Agreement or a Services Schedule, the Client may, by written notice to Cemplicity, request an upgrade to the Services supplied by Cemplicity. Within a reasonable time of receiving such notice, Cemplicity shall provide in writing the terms and fees applicable to the

requested upgrade. The Client must notify Cemplicity in writing of their acceptance of these terms and fees and then these will automatically form part of the relevant Services Schedule. For the avoidance of doubt, any upgrade in relation to the Services supplied under a Services Schedule must be agreed between the parties in writing.

2.3. Grant of licence: Cemplicity grants to the Client, subject to and on the terms and conditions set out in these T&Cs, a non-exclusive, non-transferable, revocable licence to access and use the Cemplicity Tools to deliver the agreed services. The Client acknowledges that Cemplicity is the exclusive owner of the Cemplicity Tools. This license will automatically terminate on termination of the Services being provided by Cemplicity to the Client.

2.4. The Client will not, except as expressly permitted in these T&Cs, provide access to, sell, transfer, licence, sub-licence, loan, lease, or disclose the Cemplicity Tools to any third person. For clarity, this includes (without limitation) using Cemplicity Tools to conduct research or solicit feedback on behalf of or for the benefit of any third party.

2.5. Ownership of modifications: The Cemplicity Tools as modified, adapted or altered remains the property of Cemplicity in all respects, whether modified by the Client, Cemplicity or a third party.

2.6. Client's Obligations: The Client will:

a) Be solely responsible for supervising, managing, and controlling access to the Cemplicity Tools other than for employees and contractors of Cemplicity and will ensure that the Cemplicity Tools are used in accordance with these T&Cs;

b) Co-operate with Cemplicity in all matters relating to the Cemplicity Tools and/or the Services;

c) Keep confidential and secure all passwords and user log-in names used to access Cemplicity Tools;

d) Agree that the corporate logo of Cemplicity, the size of which will be approved by the Client, appears at the bottom of all surveys and reporting used or generated through use of the Cemplicity Tools;

e) Ensure that communication with Cemplicity on operational matters is directed through no more than two Client representatives and that these nominated representatives have the requisite ability to implement the Cemplicity related activity across the Client organisation and to manage the simple technical tasks associated with Client use of Cemplicity Tools;

f) Agree that If Cemplicity's performance of its obligations under the G-cloud Agreement or these T&Cs is prevented or delayed by any act or

omission of the Client, its agents, subcontractors, consultants or employees, Cemplicity shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

2.7. Cemplicity obligations: Cemplicity will:

a) Training: Provide effective training and prompt support through the nominated help systems to the two nominated representative of the Client, at no additional cost. Communication with the Client for day-to-day operational purposes will be made through one of the two nominated representatives only.

b) Hosting: Host all data captured by the Cemplicity Tools on servers located in London, United Kingdom unless agreed in writing with the Client.

2.8. Service Levels

If the Client considers that Cemplicity has not met the level of service specified in any Service Level Agreement, then the Client agrees that Cemplicity will not be in breach of the G-cloud Agreement or these T&Cs unless:

a) The Client advises Cemplicity in writing that it considers there to have been a material failure in the level of service required under the Service Level Agreement; and

b) Having received such advice, Cemplicity cannot demonstrate the basis on which such a failure does not exist, nor fails to improve its level of service within a reasonable timeframe to meet the terms of the Service Level Agreement; and

c) The Client advises Cemplicity in writing that any similar failure to meet the level of service required under the Service Level Agreement during the next 12 months will be regarded as a breach of the G-cloud Agreement, if not rectified within a stated period which shall be not less than 30 days.

3. Intellectual Property Rights

3.1. Cemplicity Intellectual Property: The Client acknowledges that all Intellectual Property Rights in the Cemplicity Tools, are and will remain the sole property of Cemplicity or its licensors, and the Client will not during or at any time after the termination of the G-cloud Agreement in any way question or dispute the ownership by Cemplicity or its licensors of the Cemplicity Tools.

3.2. Client Intellectual Property: Subject to the rights reserved by Cemplicity under clause 3, any Intellectual Property Rights in the data that the Client

processes using the Cemplicity Tools are and will remain the property of the Client or its customers or patients.

3.3. The Client grants to Cemplicity, a non-exclusive, royalty-free worldwide license of its Intellectual Property Rights in Aggregate Anonymous Data.

3.4. The parties agree that the ownership of, and Intellectual Property Rights subsisting in the services, reports and analyses generated by Cemplicity using aggregated Anonymised Data, shall vest in, and belong to Cemplicity.

3.5. Open source: The Client agrees that Cemplicity has no obligation to publish or produce any of their code base that makes up Cemplicity Tools, or any other products they hold Intellectual Property Rights in, as open source or in a manner where it could be open sourced.

3.6. Infringement: If the Client learns of any third-party claim, infringement or threatened infringement relating to the Cemplicity Tools, it will promptly advise Cemplicity, giving Cemplicity full detail of such circumstances, and will make no comment or admission to any such third party. Cemplicity will have full control over all proceedings and negotiations relating to any such claim, infringement or threatened infringement, and the Client will, at the request and cost of Cemplicity, co-operate fully with Cemplicity (including by providing documentation and making the relevant people available) in any action, claim or proceedings brought or threatened in respect of the Cemplicity Tools.

3.7. Know-How: The Client acknowledges and agrees that Cemplicity had, prior to entering the G-cloud Agreement, and will gain and develop as part of providing Services to the Client, general ideas, concepts, techniques and know-how (together referred to as “Know-How”). Nothing in the G-cloud Agreement shall in any way restrict Cemplicity from using such Know-How during or after the termination.

4. Use of information

4.1. Cemplicity will not use any provided data or survey response capable of identifying any specific patient or the Client for any purpose other than meeting their obligations under the G-cloud Agreement.

4.2. No Personal Data will be shared with a third party unless expressly provided for in the G-cloud Agreement or as required by law.

4.3. The Client agrees that their data may undergo processing to anonymise the data to create Aggregate Anonymous Data.

5. Patient Privacy and Data Governance

5.1. The Client indemnifies Cemplicity to the greatest extent permitted by law for any breach of local legislation including, but not limited to, the Data Protection Laws, where Cemplicity is acting in accordance with Client instruction.

5.2. Prior to entering this agreement Cemplicity has outlined its approach to Data Governance and in entering the G-could Agreement, the Client acknowledges that they have undertaken all due diligence to satisfy themselves that Cemplicity will meet its obligations as Data Processor and agrees that the security measures deployed by Cemplicity are consistent with such assessment. In particular the Client acknowledges that Cemplicity employees will remotely access data hosted in the UK from New Zealand and the EEA in order to perform Services for the Client but that data shall not be transferred outside the EEA or the UK for processing except as is explicitly agreed from time to time in writing.

5.3. The Client undertakes that Cemplicity may process Personal Data in New Zealand so long as the European Commission implementing its decision of 19 December 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by New Zealand (2013/65/EU) is valid and is not superseded or amended by another decision of the European Commission or another legal or regulatory body in European Union or in Ireland authorised to do so.

5.4. The Client agrees that Cemplicity has duly informed them of any data sub-processors it subcontracts with or intends to subcontract with to deliver any of the Services. The Client acknowledges and accepts that these sub-contractors may be located in a Third Country as defined in the Data Protection Laws and the Client has satisfied themselves that these subcontractors have an Article 28 compliant contract with Cemplicity.

5.5. If either Party becomes aware of any breach of any Data Protection Laws, including but not limited to the Data Protection Laws, by either Party they will advise the other Party immediately. Each Party will take prompt and appropriate action to comply with all Data Protection Laws. The costs of such action shall, unless determined elsewhere under this clause, be at their own cost as Data Controller (the Client) or Data Processor (Cemplicity).

5.6. The Client acknowledges and agrees that Cemplicity shall have no liability for any losses arising from any inability on Cemplicity's part to provide the Services as a result of a request made by the Client pursuant to this clause during the course of the Agreement.

6. Liability

6.1. Exclusion of liability: The Client may instruct Cemplicity to configure Cemplicity Tools, using algorithms or definitions provided by the client, so that if a patient reports a specific response or a change in response, the Cemplicity Tools do one or more of the following;

a) Cemplicity Tools send a notification via email to a Client nominated email address; or

b) Cemplicity Tools create a patient-specific record in the Client reporting portal; or

c) The patient receives an automated message with information on action they can take.

In no event shall Cemplicity be liable for any loss, damage, cost or expense of any kind that arises from the response-related functionality described in this Clause or for any loss, damage, cost or expense of any kind that arises from a patient's health state.

7. Termination

7.1. Consequences of termination: On termination of the G-cloud Agreement:

a) The Client will no longer use or license the Cemplicity Tools and such license shall automatically lapse;

b) The Client will, at Cemplicity's option, promptly return to Cemplicity or destroy all copies of the Cemplicity Tools in its possession or control;

c) Unless otherwise agreed by Cemplicity in writing, any Service Schedules then in force shall terminate at the same time as the termination of the G-cloud Agreement;

d) The Client shall immediately pay to Cemplicity all of Cemplicity's outstanding interest and unpaid invoices that are not disputed and, in respect of the Services supplied but for which no invoice has been submitted, Cemplicity may submit an invoice, which shall be payable immediately on receipt.

8. General

8.1. Cemplicity reserves the rights:

a) To exploit the Cemplicity Tools by such means as it may think fit including, without limitation, by the appointment of distributors; and

b) To modify, enhance, replace, or make additions to the Cemplicity Tools in any way whatsoever as Cemplicity may in its absolute discretion determine as long as these changes do not impact on the Cemplicity delivery of services outlined in Service Schedules to this agreement or agreed in the G-cloud Agreement.

8.2. Variations: No amendment or variation to these T&Cs will be effective unless it is in writing and signed by duly authorised representatives of both parties.