

Software as a Service Agreement

	Telephone: 07960051761 Email: sales@primumdigital.com Website: www.crosscover.co.uk
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Part A: Commercial Summary

[Customer Details] (Customer)	 Primum Digital Ltd Company Reg. No: 12064793 VAT registration No: 339 4606 81 Harscombe House, 1 Darklake View, Estover, Plymouth, PL6 7TL United Kingdom (Primum)
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Services

Primum will perform the following Services on the terms set out in this Quote for the Term:

1. Provide access to the CrossCover web application for **[Term]**;
2. Set up Services
3. Unlimited number of User accounts for usage at the licensed sites
4. Unlimited "Pathway Episodes", subject to Fair Usage;
5. **[Describe any further details of the Services as agreed in the Offer Letter]**

Deliverables

Primum shall provide the following deliverables to the Customer as part of the Services:

1. Clinical Safety Case Report in line with NHS Digital DCB 0129 standards
2. Data Protection Impact Assessment
3. **[Describe any further details of the Deliverables as agreed in the Offer Letter]**

Commencement Date: [Commencement Date]		Term: [Term]
Primum Key Contact/ Information Asset Owner (IAO): [Primum Key Contact]	Customer Key Contact: [Customer Key Contact]	Trust Chief Editor/ Named System Manager (IAA): [Trust Chief Editor/ IAA]

Payment and Schedule

First year invoice issue date: [First year invoice date]
 Second year invoice issue date 30 days prior to 12 months: [Second year invoice date]
 Third year invoice issue date 30 days prior to 24 months: [Third year invoice date]

All invoices are payable within 30 days of being issued to the Customer. Please see clause 14 of the Agreement (Part B).

Payment to be made by BACS to the following Primum bank account. (or such other account as nominated by Primum under clause 14.5.2 of the Agreement (Part B)):

[Primum Digital Limited Bank details]

Charges

Subscription Fee for CrossCover:

Number of Cloud Tenancies	[Number]
Scope:	[Primary Care, Secondary Care or Primary and Secondary Care]
Sites:	[Customer Sites]
Population served	[Population served]
Number of Specialty Pathway Apps	[Number]
Names of Specialty Pathway Apps	[App names]
Referral Management System included	[Yes or No]
Annual licence fee calculation	[Calculation]
Annual licence fee	[Licence Fee exclusive of VAT]

Fair Usage: [50% population served number] Pathway Episodes per annum.
 If the number of Pathway Episodes exceeds [50% population served number] per annum, additional charges of £1 plus VAT per Pathway Episode will be payable by the Customer.
Pathway Episode: Each time a Pathway is accessed. This is likely to be done every time a staff member uses the platform for an individual patient, but also if they use it for educational benefits.

Schedules

Schedule 1 – End User Licence Agreement
 [Additional Schedules]

This Contract is made up of:

- Part A: the Commercial Summary (this document);
- Part B: the Agreement and the documents referred to in it; and
- Part C: the Schedules.

If there is any conflict or ambiguity between the terms of the Contract, the order of precedence shall be as set out in the Contract.

The terms defined in the Agreement have the same meaning in this Commercial Summary.

The Customer hereby agrees to the terms and conditions set out in this Contract: Signed: [Customer] Name: Position: Date:	Primum hereby agrees to the terms and conditions set out in this Contract: Signed: For and on behalf of Primum Digital Ltd Name: Position: Date:
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PART B: Agreement

Background

- A. Primum has developed CrossCover, a decision support tool designed to provide educational reference information to its users via the Pathways. The Pathways enable healthcare professionals to use their own knowledge and judgement to make clinical decisions. Primum makes the Pathways available within the Services, which are accessible via the internet.
- B. The Customer wishes to use the Services.
- C. Primum has agreed to provide, and the Customer has agreed to take and pay for, Primum's Services subject to the terms and conditions of this Contract.

1. INTERPRETATION

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

Agreement	this document (Part B of the Contract) which sets out Primum's standard terms of business.
Applicable Laws	all applicable laws, statutes, regulation and codes, or decisions, directions and recommendations issued by any competent regulatory body from time to time in force.
Authorised Users	medical practitioners who are employees of, or consultants to, the Customer who are authorised by the Customer to use the Services, as further described in clause 4, and including Pathway Editors and the Chief Editor.
Services	the subscription Services provided by Primum to the Customer under this Contract via the Software (which forms part of the Services), including but not limited to the Pathways, access to and use of the Pathways.
Software	the online website and applications provided by Primum, as more particularly described in the Specification, through which the Customer may access the Services.

Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Change of Control	the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets of a party by another entity in a single transaction or a series of transactions.
Charges	the total charges payable by the Customer to Primum for the supply of the Services by Primum, as set out in the Commercial Summary, including but not limited to the Subscription Fees.
Chief Editor	the consultant nominated by the Customer in the Commercial Summary (or as from time to time nominated in accordance with clause 8) to approve, make live or delete Pathways within the Software on behalf of the Customer.
Commencement Date	the date from which the Services will be provided as set out in the Commercial Summary.
Commercial Summary	the commercial summary contained at part A of the Contract.
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 16.
Contract	the contract for the supply of Services contained in the Commercial Summary, the Agreement, the Schedules, the Privacy Policy and the End User Licence Agreement.
Customer Data	the data inputted by the Customer, Authorised Users, or Primum on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services. Customer Data excludes all information inputted into Pathways, whether during the creation of Pathways or during their use by the Customer.
Data Protection Legislation	the Data Protection Act 2018 (the DPA), the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive

(2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and General Data Protection Regulation (GDPR) and all applicable laws and regulations relating to the processing of the Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Effective Date	the date of acceptance in accordance with clause 2.2.
End User Licence Agreement (or EULA)	the end user licence agreement setting out the terms on which the Authorised Users access the Software and Services.
Fair Usage	the maximum number of Pathway Episodes per annum, as set out in the Commercial Summary, before additional Charges become payable by the Customer for each Pathway Episode in excess of the Fair Usage limit.
Illustrations	Medical drawings provided by Primum, including medical drawings requested by the Customer, for use within the Services. Illustrations are provided for the sole purpose of giving Authorised Users an impression of the anatomy of the relevant body part. Primum provides no guarantee of the accuracy of the Illustrations and all users, including Authorised Users should rely on their own medical knowledge when using the Illustrations and Pathways.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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.

Key Contact

the individual named in the Commercial Summary, or as nominated from time to time in accordance with clause 8, with the responsibilities described in clause 8.

Normal Business Hours

9.00 am to 5.00 pm local UK time, each Business Day.

Pathway

decision support pathways:

1. generated by Pathway Editors;
2. made live by the Chief Editor within the Software; or
3. accessible for download within the Software,

in accordance with the terms of the Contract.

Pathway Editor

an individual, appointed by the Customer, to create Pathways on behalf of the Customer under the Chief Editor's supervision.

Pathway Episode

each time a live Pathway is accessed by the Customer for whatever purpose.

Personal Data

as defined by the Data Protection Legislation.

Privacy Policy

the Supplier's privacy policy, available in Schedule 3.

Schedules

the schedules to the Agreement (Part C).

Special Condition

a variation of the Agreement agreed between the parties, as set out in the Commercial Summary.

Specification	the proposal document made available to the Customer by Primum (and attached to this Agreement at Schedule 2) which sets out a description of the Services and the user instructions for the Services.
Subscription Fees	the subscription fees payable by the Customer to Primum for their use of the Services as set out in the Commercial Summary.
Term	the term of the Contract as defined in the Commercial Summary.
Virus	any thing or device (including any Software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer Software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Vulnerability	a weakness in the computational logic (for example, code) found in the Software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.
1.2.	Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.
1.3.	A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
1.4.	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.5.	Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.
- 1.9. A reference to writing or written includes email but not fax.
- 1.10. References to clauses are to the clauses of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.

2. **BASIS OF CONTRACT**

- 2.1. The Customer's executed Commercial Summary constitutes an offer by the Customer to purchase the Services in accordance with the Contract.
- 2.2. The Commercial Summary shall only be deemed to be accepted when Primum issues written acceptance of the Customer's signed Commercial Summary at which point and on which date the Contract shall come into existence.
- 2.3. Any samples, drawings, descriptive matter or advertising issued by Primum, and any descriptions or illustrations contained in Primum's website or promotional materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. The terms of this Contract apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Any Commercial Summary, Specification or other form of quote, other than this document, given by Primum shall not constitute an offer capable of acceptance or a legally binding document and is only valid for a period of one calendar month from its date of issue.

3. **SUPPLY OF THE SERVICES**

Subject to the Customer paying the Charges and complying with the other terms and conditions of this Contract, Primum shall:

- 3.1.1. provide the Services and make available the Software to the Customer from the Commencement Date throughout the Term on and subject to the terms of this Contract;

- 3.1.2. provide, at Primum's sole discretion and on the Customer's request, additional Illustrations for use within the Services;
- 3.1.3. provide the Customer with support for the Services via email to support@primumdigital.com as part of the Services and at no additional cost to the Customer. For the avoidance of doubt, Primum shall only provide support in respect of the use of and operational faults in the Services and does not provide support in respect of the content of the Pathways. All requests for support should be addressed to the Chief Editor in the first instance, in accordance with the End User Licence Agreement; and
- 3.1.4. use commercially reasonable endeavours to make the Services available in accordance with the Google Cloud Platform uptime of 99.9%, except for:
 - 3.1.4.1. planned maintenance or maintenance carried out during the maintenance window of 10.00 pm to 02.00 am UK time; and
 - 3.1.4.2. unscheduled maintenance performed outside Normal Business Hours for additional app features, provided that Primum has used reasonable endeavours to give the Customer at least 72 Normal Business Hours' notice in advance.

4. **AUTHORISED USERS**

- 4.1. Subject to the Customer paying the Charges, the restrictions set out in this clause 4 and the other terms and conditions of this Contract, Primum hereby grants to the Customer a non-exclusive, non-transferable licence, without the right to grant sub-licences, to permit the Authorised Users to use the Services during the Term solely for the purpose of the Customer's internal business operations.
- 4.2. In relation to the Authorised Users, the Customer undertakes that:
 - 4.2.1. all users that it authorises to access and use the Services are employees of the Customer or are controlled by, or practise for, the Customer (e.g. a consultant);
 - 4.2.2. it will not allow the Services to be used by anyone who is not an Authorised User;
 - 4.2.3. each Authorised User shall keep secure the password for their use of the Services, that such password shall be changed no less frequently than once every six months and that each Authorised User shall keep their password confidential;
 - 4.2.4. it shall maintain an up to date list of current Authorised Users and provide such list to Primum within 5 Business Days of Primum's request;

- 4.2.5. it shall permit Primum or Primum's designated auditor to audit the Services in order to establish the name and password of each Authorised User and either party's data processing facilities to audit compliance with this Contract. Each such audit may be conducted no more than once per quarter, at Primum's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 4.2.6. if any of the audits referred to in clause 4.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Primum's other rights, the Customer shall promptly disable such passwords and Primum shall not issue any new passwords to any such individual; and
 - 4.2.7. if any of the audits referred to in clause 4.2.5 reveal that the Customer has underpaid Subscription Fees to Primum, then without prejudice to Primum's other rights, the Customer shall pay to Primum an amount equal to such underpayment within 10 Business Days of notification of the underpayment.
- 4.3. The Customer should employ all reasonable endeavours not to access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 4.3.1. are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.3.2. facilitates illegal activity;
 - 4.3.3. depicts sexually explicit images;
 - 4.3.4. promotes unlawful violence;
 - 4.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.3.6. is otherwise illegal or causes damage or injury to any person or property;
- and Primum reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 4.4. The Customer shall not:
- 4.4.1. except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:

- 4.4.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; or
 - 4.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
- 4.4.2. access all or any part of the Services in order to build a product or service which competes with the Services; or
- 4.4.3. use the Services and/or the Software to provide Services to third parties; or
- 4.4.4. subject to clause 27, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- 4.4.5. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 4; or
- 4.4.6. introduce or permit the introduction of, any Virus or Vulnerability into Primum's network and information systems.
- 4.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Primum.
- 4.6. The Authorised Users' use of the Services is subject to the End User Licence Agreement.
- 4.7. Authorised Users may use the Services solely in accordance with the End User Licence Agreement. An Authorised User may not use the Software or Services unless they enter into the End User Licence Agreement. The Customer:
 - 4.7.1. is solely responsible for ensuring that the Authorised Users enter into and adhere to the terms of the End User Licence Agreement; and
 - 4.7.2. indemnifies Primum for any loss or damage suffered by or caused to Primum as a result of the breach of clause 4.7.1; and
 - 4.7.3. acknowledges that Primum is not liable to the Customer for any loss or damage suffered by or caused to the Customer as a result of the breach of this clause 4.
- 4.8. The rights provided under this clause 4 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5. **PATHWAY DEVELOPMENT**

- 5.1. Subject to clause 3, and in addition to the rights granted in clause 4, Pathway Editors may use the Services to view, amend and create Pathways on behalf of the Customer.
- 5.2. Pathway Editors may also import and amend Pathways created by other users of the Services and submit these to the Chief Editor for approval (with or without amendment). Primum is not liable for any loss or damage suffered by the Customer as a result of the Customer's use of a Pathway made live by another user of the Services.
- 5.3. Pathway Editors may use the Services solely in accordance with the End User Licence Agreement. A Pathway Editor may not use the Services unless they enter into the End User Licence Agreement. The Customer:
 - 5.3.1. is solely responsible for ensuring that the Pathway Editors enter into and adhere to the terms of the End User Licence Agreement; and
 - 5.3.2. indemnifies Primum for any loss or damage suffered by or caused to Primum as a result of the breach of clause 5.3.1; and
 - 5.3.3. acknowledges that Primum is not liable to the Customer for any loss or damage suffered by or caused to the Customer as a result of the breach of this clause 5.
- 5.4. Ownership of the Intellectual Property Rights in the Pathways is subject to clause 15.

6. **MAKING LIVE AND DELETING PATHWAYS**

- 6.1. Subject to clause 3, and in addition to the rights granted in clauses 4 and 5, the Chief Editor may use the Services to make live or delete Pathways.
- 6.2. The Chief Editor may use the Services solely in accordance with the End User Licence Agreement. The Chief Editor may not use the Services unless they enter into the End User Licence Agreement. The Customer:
 - 6.2.1. is solely responsible for ensuring that the Chief Editor enters into and adhere to the terms of the End User Licence Agreement; and
 - 6.2.2. indemnifies Primum for any loss or damage suffered by or caused to Primum as a result of the breach of clause 6.2.1; and
 - 6.2.3. acknowledges that Primum is not liable to the Customer for any loss or damage suffered by or caused to the Customer as a result of the breach of this clause 6.
- 6.3. The Customer warrants that:

- 6.3.1. all Pathways created are accurate and complete, including where they make amendments to an existing Pathway imported from the Software; and
- 6.3.2. they have not licensed or assigned any of the rights or interests referred to above.
- 6.4. The Customer warrants that Authorised Users shall only use Pathways that have been approved by the Chief Editor. Primum is not liable for any loss or damage suffered by the Customer as a result of a breach of this clause 6.4.
- 6.5. Ownership of the Intellectual Property Rights in the Pathways is subject to clause 15.

7. **USAGE REPORTING**

- 7.1. Subject to clause 7.2, Primum shall provide the Customer with such usage reports as it reasonably requests in order to assess the use and uptake of the Services by the Authorised Users. Primum shall notify the Customer in writing if it is unable to provide the usage report requested by the Customer.
- 7.2. Primum shall provide the usage reports made available to the Customer under clause 7.1.
 - 7.2.1. no more than once per calendar month; and
 - 7.2.2. only at the Customer's written request as the usage is visible to the Chief Editor in the Dashboard feature.

8. **KEY CONTACT AND CHIEF EDITOR**

- 8.1. Each party shall appoint a Key Contact who shall:
 - 8.1.1. be the primary point of contact for all matters relating to the Services;
 - 8.1.2. provide professional and prompt liaison with the other party; and
 - 8.1.3. have the necessary expertise and authority to commit the relevant party.
- 8.2. The Chief Editor shall be the Authorised Users' primary point of contact in respect of any support requests or enquiries. The Chief Editor shall contact Primum in accordance with clause 3.1.3 and the End User Licence Agreement wherever technical support is required.
- 8.3. Either party may, from time to time, replace their Key Contact by giving the other party written notice of such change. The Customer may, from time to time, replace their Chief Editor by giving Primum written notice of such change.

9. **CUSTOMER DATA**

- 9.1. Subject to clause 15, the Customer shall own all right, title and interest in and to all of the Customer Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 9.2. Primum shall back up the Pathways made live by the Customer, and any draft Pathways created by the Customer, on a daily basis at midnight GMT. Primum shall store the back up for thirty (30) days. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Primum shall be for Primum to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Primum. Primum shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Primum to perform Services related to Customer Data maintenance and back-up for which it shall remain fully liable subject to clause 18).
- 9.3. The Customer undertakes not to include any Personal Data in the Pathways.
- 9.4. Primum shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data, as such document may be amended from time to time by Primum in its sole discretion.
- 9.5. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.6. Without prejudice to the generality of clause 9.5, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Primum for the Term and purposes of this Contract so that Primum may lawfully use, process and transfer the Personal Data in accordance with this Contract on the Customer's behalf.
- 9.7. The Customer grants an irrevocable, perpetual, royalty-free, non-exclusive, worldwide licence to Primum to use the Customer Data for the purposes of Data Analysis, provided that such Customer Data is fully anonymised, and does not therefore constitute personal data for the purposes of the Data Protection Laws.
- 9.8. The Customer acknowledges and agrees that all results, insights, reports, work product and documentation arising from the Data Analysis (and all Intellectual Property Rights relating thereto) belong to and shall remain vested in Primum.
- 9.9. The Customer acknowledges that Primum has no control over any Customer Data hosted as part of the provision of the Service and, save where it conducts any Data Analysis, does not actively monitor the content of the Customer Data.

10. **DATA PROTECTION**

- 10.1. Primum will comply with its Privacy Policy for the Term, but where there is conflict between the Privacy Policy and this Agreement, this Agreement will prevail. If the Privacy Policy or this Agreement do not comply with the Data Protection Legislation then Primum reserves the right to comply with the Data Protection Legislation and will not be in breach of this Agreement for doing so.
- 10.2. Both Parties agree to comply with all requirements as set out in the Data Protection Legislation.
- 10.3. The Parties agree to provide reasonable assistance as is necessary to each other to enable them to comply with rights of Personal Data subjects and to respond to any other queries or complaints from individuals, e.g. the rectification, erasure, transfer or blocking of that individual's Personal Data.
- 10.4. Primum will not process Personal Data for longer than is necessary to carry out the Services.
- 10.5. Primum will continue to retain Personal Data in accordance with any statutory or professional retention periods applicable to their business.
- 10.6. Having regard to the state of technological development and the cost of implementing such measures, both Parties have in place appropriate technical and organisational security measures in order to prevent:
 - 10.6.1. unauthorised or unlawful processing of the Personal Data; and
 - 10.6.2. accidental loss or destruction of, or damage to, the Personal Data

and ensure a level of security appropriate to the nature of the Personal Data to be protected and harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage

11. **CHANGE CONTROL**

- 11.1. Either party may propose changes to the scope or execution of the Services, but no proposed changes will come into effect until an amended Commercial Summary has been executed by the parties.
- 11.2. If the Customer wishes to make a change to the Services, the Customer shall inform Primum in writing and, if Primum is able to deliver the changes requested, Primum shall prepare an amended Commercial Summary for the Customer.
- 11.3. The Customer may offer to purchase the amended Services on the terms of the new Commercial Summary by returning the signed Commercial Summary to Primum.

- 11.4. Primum may accept the Customer's offer by issuing written acceptance of the Customer's signed Commercial Summary. Primum shall not provide the amended Services until the Customer has returned the amended Commercial Summary pursuant to clause 11.3.
- 11.5. If Primum wishes to make a change to the Services, Primum shall inform the Customer of the intended changes and shall prepare an amended Commercial Summary for the Customer. The procedure set out in clauses 11.2 to 11.4 above shall apply to the approval of the amended Commercial Summary provided by Primum.
- 11.6. For the avoidance of doubt, Primum may amend the Commercial Summary without applying the change control procedure set out in this clause 11 where the amendment is required by an Applicable Law. Primum shall notify the Customer of any such amendments to the Commercial Summary as soon as reasonably practicable.
- 11.7. Each amended Commercial Summary forms part of the Contract and does not form a separate contract between the parties.
- 11.8. For the avoidance of doubt, Primum's refusal or inability to provide amended Services as requested in accordance with clause 11.2 shall not give the Customer the right to terminate the Contract.

12. **PRIMUM'S OBLIGATIONS**

- 12.1. Primum undertakes that the Services will be performed with reasonable skill and care.
- 12.2. Primum does not warrant that:
 - 12.2.1. the Customer's use of the Services will be uninterrupted, error-free or meet the target up-time at clause 3.1.4; or
 - 12.2.2. that the Services, Software, Pathways and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
 - 12.2.3. the Software or the Services will be free from Vulnerabilities.
- 12.3. Primum is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.4. This Contract shall not prevent Primum from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.
- 12.5. Primum warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.

13. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 13.1.1. provide Primum with:
 - 13.1.1.1. all necessary co-operation in relation to this Contract; and
 - 13.1.1.2. all necessary access to such information as may be required by Primum;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration of the Services;
- 13.1.2. without affecting its other obligations under this Contract, comply with all Applicable Laws with respect to its activities under this Contract;
- 13.1.3. carry out all other Customer responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Primum may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 13.1.4. ensure that the Authorised Users use the Services and the Software in accordance with the terms and conditions of this Contract and shall be responsible for any Authorised User's breach of this Contract;
- 13.1.5. ensure that the Chief Editor carries out its responsibilities on behalf of the Customer in a timely manner;
- 13.1.6. obtain and shall maintain all necessary licences, consents, and permissions necessary for Primum, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;
- 13.1.7. make available and maintain an internet connection of no less than 4 megabits per second;
- 13.1.8. make available and maintain access to Google Chrome version 72 or higher on its systems for use by the Authorised Users when accessing the Services; ensure that its network and systems allow Authorised Users access to the Services and comply with the relevant specifications provided by Primum from time to time; and
- 13.1.9. be, to the extent permitted by law and except as otherwise expressly provided in this Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Primum's data centres, and all problems, conditions, delays, delivery failures

and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

14. CHARGES AND PAYMENT

14.1. The Charges are as set out in the Commercial Summary. The Customer shall pay the Charges in accordance with this clause 14.

14.2. Where agreed in the Commercial Summary, the use of the Services is subject to Fair Usage and additional Charges shall apply if the number of Pathway Episodes exceeds the specified Fair Usage.

14.3. Primum shall invoice the Customer for the Subscription Fees within 10 Business Days of the Effective Date and the Subscription Fees are payable before the Commencement Date. Primum shall not provide the Services until payment has been received for the Subscription Fees.

14.4. Primum shall invoice the customer for all Charges other than the Subscription Fees in arrears.

14.5. The Customer shall pay each invoice submitted by Primum:

14.5.1. within 30 days of the date of the invoice; and

14.5.2. in full and in cleared funds to a bank account nominated in writing by Primum, and

time for payment shall be of the essence of the Contract.

14.6. If Primum has not received payment of any invoice raised within 30 days after the due date, and without prejudice to any other rights and remedies of Primum:

14.6.1. Primum may, without liability to the Customer, include notifications that the Charges have not been paid to the Authorised Users and the Customer within the Services. These notices may affect the Customer's use of the Services and Primum shall not be liable to the Customer for any loss or damage caused by the presence of notifications in the Services;

14.6.2. Primum may, without liability to the Customer, disable the Customer's access to all or part of the Services and Primum shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

14.7. All amounts and fees stated or referred to in this Contract:

14.7.1. shall be payable in pounds sterling;

14.7.2. are non-cancellable and non-refundable;

14.7.3. are exclusive of value added tax, which shall be added to Primum's invoice(s) at the appropriate rate.

14.8. Where the Term is more than 12 months long, Primum shall be entitled to increase the Charges each year by the then applicable Retail Price Index on the anniversary of the Effective Date upon 90 days' prior notice to the Customer and the Commercial Summary shall be deemed to have been amended accordingly.

15. PROPRIETARY RIGHTS

15.1. The Customer acknowledges and agrees that, as between the Customer and Primum, Primum owns all rights, including Intellectual Property Rights, in the Pathways. The Customer does not have any rights, including any Intellectual Property Rights, in the Pathways.

15.2. In accordance with the terms of the End User Licence Agreement, the Pathway Editors and the Chief Editor assign to Primum with full title guarantee all their rights, title and interests in the Pathways they create and/or, in the case if the Chief Editor, make live.

15.3. Subject to clauses 15.1 and 15.2, nothing in this Contract affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information).

15.4. The Customer agrees and acknowledges that Primum may licence any and all Pathways to its other customers, including the Pathways that the Customer has made live in the Services.

15.5. The Customer acknowledges and agrees that Primum and/or its licensors own and retain all Intellectual Property Rights in the Services, including all rights in any improvement, enhancement or modification to the Services (**Improvement**) that either party may create to the Services. This Contract does not grant the Customer any rights to, under or in any Intellectual Property Rights or any other rights or licences in respect of the Services.

15.6. The Customer is not permitted to modify the Services except as expressly permitted in this Contract.

15.7. Primum confirms that it has all the rights in relation to the Services and the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.

15.8. The Customer:

15.8.1. warrants that the receipt and use of Customer Data in the performance of this Contract by Primum, its agents, subcontractors or consultants does not infringe the rights, including any Intellectual Property Rights, of any third party;

- 15.8.2. warrants that the Pathways do not infringe the rights, including Intellectual Property Rights, of any third party; and
 - 15.8.3. indemnifies Primum 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 legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by Primum arising out of or in connection with any claim brought against Primum, 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 Contract of the Customer Data or Pathways.
- 15.9. If the Customer is required to indemnify Primum under this clause 15 Primum shall:
- 15.9.1. notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 15.8 (as applicable) (**IPRs Claim**);
 - 15.9.2. allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer obtains Primum's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - 15.9.3. provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of Primum's costs so incurred; and
 - 15.9.4. not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim, using counsel, in such a way as not to bring the reputation of Primum into disrepute.
- 15.10. At Primum's expense, the Customer shall, and where applicable shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this clause 15.
16. **CONFIDENTIALITY**
- 16.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- 16.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

- 16.1.2. was in the other party's lawful possession before the disclosure;
 - 16.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 16.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 16.2. Subject to clause 16.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract. The confidential information is the terms of the Commercial Summary, as this would provide an unfair advantage to competitors if it was public knowledge.
- 16.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 16.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by an Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 16.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 16.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Primum's Confidential Information.
- 16.6. Primum acknowledges that the Customer Data is the Confidential Information of the Customer.
- 16.7. Primum may disclose that the Customer is a user of the Services. Primum reserves the right to use the Customer's name and logo, or the name of any hospital, minor injury unit, Integrated Care System, Primary Care Network, General Practice associated with the Customer in any promotional materials as Primum sees fit.

17. **INDEMNITY**

- 17.1. The Customer shall defend, indemnify and hold harmless Primum against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- 17.1.1. Primum is given prompt notice of any such claim; and

- 17.1.2. Primum provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense.
- 17.2. Primum shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this Contract infringes any Intellectual Property Rights in the United Kingdom, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 17.2.1. Primum is given notice of any such claim within 30 days' of receipt by the Customer;
 - 17.2.2. the Customer provides reasonable co-operation to Primum in the defence and settlement of such claim, at Primum's expense; and
 - 17.2.3. Primum is given sole authority to defend or settle the claim.
- 17.3. In the defence or settlement of any claim, Primum may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on seven (7) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 17.4. In no event shall Primum, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 17.4.1. a modification of the Services by anyone other than Primum; or
 - 17.4.2. the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Primum; or
 - 17.4.3. the Customer's use of the Services after notice of the alleged or actual infringement from Primum or any appropriate authority.
- 17.5. The foregoing and clause 18 state the Customer's sole and exclusive rights and remedies, and Primum's (including Primum's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

18. **LIMITATION OF LIABILITY**

- 18.1. The Customer agrees and acknowledges that the Services do not give specific advice on individual patients and should only be used by Authorised Users acting within their clinical competencies. The Services are not a substitute for professional medical qualifications and are used at the Customer's own risk.

18.2. The End User Licence Agreement contains additional limitations to Primum's liability in respect of the Authorised Users' use of the Services.

18.3. Except as expressly and specifically provided in this Contract:

18.3.1. the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer (including the Authorised Users), including the use of Pathways, and for conclusions drawn from such use. Primum shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Primum by the Customer in connection with the provision of the Services, or any actions taken by Primum at the Customer's direction;

18.3.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Contract; and

18.3.3. the Services are provided to the Customer on an "as is" basis.

18.4. Nothing in this Contract excludes the liability of Primum:

18.4.1. for death or personal injury caused by Primum's negligence; or

18.4.2. for fraud or fraudulent misrepresentation by Primum.

18.5. Subject to clause 18.2 and clause 18.4:

18.5.1. Primum shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and

18.5.2. Primum's total aggregate liability in contract (including in respect of the indemnity at clause 17), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.

19. **TERM, RENEWAL AND TERMINATION**

19.1. This Contract shall, unless otherwise terminated as provided in this clause 20, commence on the Effective Date and shall continue for the Term. This Contract shall renew automatically at the end of the Term unless the:

- 19.1.1. Customer notifies Primum, in writing, at least 3 months before the end of the Term that it wishes to terminate the Contract for an additional term
- 19.1.2. For the avoidance of doubt, clause 11 applies to the negotiation and variation of the Commercial Summary pursuant to clause 19.1.
- 19.2. Without affecting any other right or remedy available to it, Primum may terminate this Contract with immediate effect by giving written notice to the other party if:
 - 19.2.1. the Customer repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 19.2.2. the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- 19.3. Either party may terminate this Contract if the other suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986.

20. CONSEQUENCES OF TERMINATION

- 20.1. On termination of this Contract for any reason:
 - 20.1.1. all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Software;
 - 20.1.2. each party shall return and make no further use of any equipment, property, Software, the Specification and other items (and all copies of them) belonging to the other party;
 - 20.1.3. Primum may destroy or otherwise dispose of any of the Customer Data in its possession, unless Primum receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-ups of the Customer Data. Primum shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Primum in returning or disposing of Customer Data.

- 20.2. Termination of the Contract 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 breach of the Contract which existed at or before the date of termination.
- 20.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect, including clauses 14, 15, 16, 17, 18, 20, 22 and 31 which shall remain in full force and effect.

21. **FORCE MAJEURE**

Primum shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Primum or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Primums or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

22. **CONFLICT**

If there is an inconsistency between any parts of the Contract, the provisions of this Agreement shall prevail save that, if the parties have agreed any Special Conditions within the Commercial Summary, the Special Conditions shall prevail and the order of precedence in any event shall be:

- 22.1.1. Special Conditions;
- 22.1.2. Agreement;
- 22.1.3. Commercial Summary;
- 22.1.4. Privacy Policy;
- 22.1.5. End-User Licence Agreement; then
- 22.1.6. Schedules.

23. NO WAIVER

- 23.1. Failure to exercise, or any delay in exercising, any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 23.2. No single or partial exercise of any right or remedy provided under this Contract or by law shall preclude or restrict the further exercise of that or any other right or remedy.

24. RIGHTS AND REMEDIES

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

25. SEVERANCE

- 25.1. If any provision or part-provision of this Contract 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 Contract.
- 25.2. If any provision or part-provision of this Contract is deemed deleted under clause 25.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. ENTIRE AGREEMENT AND VARIATION

- 26.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 26.2. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) shall be for breach of contract.
- 26.3. No variation of this Contract shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

27. ASSIGNMENT

- 27.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

27.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

28. NO PARTNERSHIP

Nothing in this Contract 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, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

29. THIRD PARTY RIGHTS

A person who is not a party to this Contract shall not have any rights under or in connection with it.

30. NOTICES

30.1. A notice given to a party under or in connection with this Contract shall be in writing and sent to the party at the address given in this Contract or as otherwise notified in writing to the other party.

30.2. The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand or courier to the recipients registered office or trade address.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service providing proof of postage.	Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier.
Email to the address provided in the Commercial Summary.	At the time of transmission if during Normal Business Hours, otherwise at 10:00 am on the next Business Day after transmission.

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

31. **GOVERNING LAW AND JURISDICTION**

The validity, construction and performance of the Contract shall be governed exclusively by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

SCHEDULE 1

End User Licence Agreement

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THESE TERMS, CLICK ON THE "REJECT" BUTTON BELOW.

Who we are and what this Agreement does

We are Primum Digital Ltd of Harscombe House, 1 Darklake View, Estover, Plymouth, PL6 7TL. This Agreement is a license for you to use:

- The CrossCover application software via which the Documentation and Service are delivered, the data supplied with the software, and any updates or supplements to it (the **App**);
- The related online and electronic documentation (**Documentation**); and
- The service you connect to via the App and the content we provide to you through it, including the Documentation and pathways (**Service**),

as permitted in these terms.

What is CrossCover?

CrossCover is a decision support tool, designed to provide educational reference information to help you (**the Healthcare Professional**) to manage patients by delivering user-generated decision support pathways ("**pathways**"). The "**pathways**" support you as a healthcare professional to use your own knowledge and judgement to make clinical decisions. Each pathway has decision points and options are explained, but you as the healthcare professional decide which path to take. These pathways are created by the Pathway Editors in your Trust (as defined below), and made available via the App.

The App does not give specific advice on individual patients and should only be used by medical practitioners acting within their clinical competencies. The App is not a substitute for professional medical qualifications and is used at your own risk. Your professional responsibility may be engaged if you rely on the App and fail to use your discretion or refer matters to the supervising consultant as appropriate.

For the avoidance of doubt, to accept these terms and use the App you must be:

- 18 or over; and
- a registered medical practitioner and employed by an NHS Trust with whom we have a licence agreement in place for the use of the App (**Trust**).

In addition to the above, your permission to use the App, Documentation and Services is subject to our ongoing contractual relationship with your Trust and we may terminate this Agreement without prior notice to you.

App Users

You may use the App, Documentation and Services in accordance with this Agreement in the course of your employment within a Trust. If you are a Pathway Editor or Chief Editor (as defined below), you will have additional permissions and responsibilities under the terms of this Agreement.

A **Pathway Editor** is a consultant, appointed by their Trust, to create pathways for use within their Trust, as set out in this Agreement. Pathway Editors cannot make the pathways they create live.

The **Chief Editor** is a Pathway Editor nominated by your Trust to have day-to-day management of the Trust's relationship with us. A Chief Editor has all of the same controls as a Pathway Editor. In addition, only a Chief Editor is authorised to approve and make live or takedown pathways in the App on behalf of the Trust.

Your privacy

Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in the Privacy Policy and it is important that you read that information.

Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the App may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

Operating system requirements. This App requires a device with a minimum of 5 Megabytes of memory available and access via the Chrome web browser version 72 or above.

Support for the App and how to tell us about problems. If you experience difficulties in accessing the App or the Service, you should approach your Chief Editor in the first instance.

For support in relation to faults with the App or any technical difficulties, the Chief Editor should contact us as soon as possible by email at support@primumdigital.com. The Trust's IT team is not permitted to make any amendments to the App.

We do not provide support in respect of the content of the pathways or their use and implementation. Please address any concerns in this regard to your Chief Editor.

If you want to learn more about the App or the Service or have any problems using them please take a look at our support resources at www.crosscover.co.uk.

How you may use the App, including how many devices you may use it on

In return for your agreeing to comply with these terms you may, in the course of your employment only:

- download or stream a copy of the App onto any number of devices and view, use and display the App, the Services and the Documentation on such devices;
- use any Documentation to support your permitted use of the App and the Service; and
- receive and use any free supplementary software code or update of the App incorporating "patches" and corrections of errors as we may provide to you.

How you may use the App if you are a Pathway Editor

If you are a Pathway Editor, in return for agreeing to comply with these terms you may, in addition to the rights set out above:

- access, view, import, amend and create pathways on behalf of your service within the Trust; and
- amend imported pathways for use within your Trust.

Pathway Editors are responsible for ensuring:

- the accuracy and completeness of the pathways they create, including where they make amendments to an existing pathway imported from another Trust;
- that they and/or their Trust are the sole legal and beneficial owner(s) of all rights and interests, including the intellectual property rights, in the pathways and associated imagery which they incorporate into a pathway, including where they make amendments to an imported pathway; and
- that they have not licensed or assigned any of the rights or interests referred to above and, where applicable, they have the Trust's permission to use its rights in the creation of pathways. Where the Trust is sole or joint legal and/or beneficial owner of the rights and interests in the materials submitted by a Pathway Editor to the Chief Editor, it is the Pathway Editor's responsibility to ensure they have the Trust's consent to the pathway being made live on the App.

How you may use the App if you are a Chief Editor.

In addition to the rights of a Pathway Editor, a Chief Editor may make pathways live on the App for use within their Trust. Once the Chief Editor makes a pathway live on the App, it may be accessed by all users inside their Trust and to other Trusts who use the App. The Chief Editor may also unpublish/withdraw pathways from the App.

The Chief Editor is responsible for ensuring:

- the accuracy and completeness of the pathways used within their Trust;
- the accuracy and completeness of the pathways made live in the App, including where a Pathway Editor makes amendments to an imported pathway;
- that the Pathway Editors and/or their Trust are:
 - the sole legal and beneficial owner(s) of all rights and interests, including the intellectual property rights, in the pathways and associated imagery which they submit to the Chief Editor, including where a Pathway Editor makes amendments made to an imported pathway; or
 - otherwise authorised to submit the materials to the Chief Editor to make live on the App.

Where the Trust is sole or joint legal and/or beneficial owner of the rights and interests in the materials submitted to the Chief Editor by a Pathway Editor, it is the Chief Editor's responsibility to ensure, together with the Pathway Editor, that the Pathway Editor has the Trust's consent to use submit the materials to the Chief Editor to be made live on the App.

The Chief Editor is the point of contact for all enquiries regarding the use and content of pathways within the Trust and is responsible for replying to any such enquiries in a timely manner. We do not accept any liability to the Trust for any loss or damage suffered as a result of the Chief Editor's failure to do so.

The Chief Editor is responsible for liaising with us in relation to any faults within the App or any technical difficulties experienced by the Trust in respect of their use of the App. We do not accept any liability to the Trust for any loss or damage suffered as a result of the Chief Editor's failure to report faults or technical difficulties to use in a timely manner.

You may not transfer the App to someone else. We are giving you personally the right to use the App and the Service as set out above.

You may not otherwise transfer the App or the Service to someone else, whether for money, for anything else or for free. If you sell any device on which the App is installed, you must remove the App from it.

Changes to these terms. We may need to change these terms to reflect changes in law or best practice or to deal with additional features which we introduce.

Wherever possible, we will give you notice of any change to these terms by notifying you of a change when you next start the App.

If you do not accept the notified changes you will not be permitted to continue to use the App and the Service.

Update to the App and changes to the Service. From time to time we may automatically update the App and change the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively we may ask you to update the App for these reasons.

If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Services.

If someone else owns the device you are using. If you download or stream the App onto a device not owned by your Trust, you must have the Trust and the device owner's permission to do so. You will be responsible for complying with these terms, whether or not you or your Trust own the other device.

We may collect technical data about your device. By using the App or any of the Services, you agree to us collecting and using technical information about the devices which you use the App on and related software, hardware and peripherals to improve our products and to provide any Services to you.

We are not responsible for other websites you link to. The App or any Service may contain links to other independent websites which are not provided by us. Such independent sites are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any).

You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.

Licence restrictions

You agree that you will:

- not rent, lease, sub-license, loan, provide, or otherwise make available, the App or the Services in any form, in whole or in part to any person without prior written consent from us;
- not copy the App, Documentation or Services, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
- not, except as expressly permitted to Pathway Editors under this Agreement, translate, merge, adapt, vary, alter or modify, the whole or any part of the App, Documentation or Services nor permit the App or the Services or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App and the Services on devices as permitted in these terms;

- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App or the Services nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are necessary to decompile the App to obtain the information necessary to create an independent program that can be operated with the App or with another program (**Permitted Objective**), and provided that the information obtained by you during such activities:
 - is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it in order to achieve the Permitted Objective; and
 - is not used to create any software that is substantially similar in its expression to the App;
 - is kept secure; and
 - is used only for the Permitted Objective;
- comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the App or any Service.

Acceptable use restrictions

You must not:

- use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App, any Service or any operating system;
- infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service;
- transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
- use the App or any Services as a substitute for medical knowledge and experience; and
- collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

We are not liable to you or to your Trust for any loss or damage arising from your failure to comply with these restrictions.

Intellectual property rights

All intellectual property rights in the App, the Documentation and the Services throughout the world belong to us (or our licensors) and the rights in the App and the Services are licensed (not sold) to you. You have no intellectual property rights in, or to, the App, the Documentation or the Services other than the right to use them in accordance with these terms.

In consideration of our granting you access to see, use and amend pathways from the App, you:

- assign to us with full title guarantee all your rights, title and interests in the pathways you create and/or make live in the App, including any rights, title and interest in amendments you make to pathways you have imported;
- agree that you have no rights in the pathways and that all pathways imported, created, amended, made live or otherwise available in the App belong to us both legally and beneficially; and
- agree that we may, at our sole discretion, make the pathways you make live in the App available to other Trusts or third parties.

Our responsibility for loss or damage suffered by you

Medical Imagery. All pathway imagery and anatomical drawings in the App are provided for illustration purposes only. We cannot guarantee that these images will be an accurate illustration of your patient's anatomy. You should rely on your own medical knowledge and experience and we will not be liable to you for any loss or damage caused by your failure to do so.

We do not review pathways. We do not review the pathways submitted by Pathway Editors. It is your responsibility to ensure you are using an appropriate pathway on a case by case basis. You should rely on your own medical knowledge and experience and we will not be liable to you for any loss or damage caused by your failure to do so.

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking these terms or our failing to use reasonable care and skill. We are not responsible for any loss or damage that is not foreseeable.

Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these terms, both we and you knew it might happen.

When we are liable for damage to property. The App, Documentation and Services are solely for use in the course of your employment and we are not responsible for any loss or damage caused to personal devices or digital content. However, for the avoidance of doubt, we will not be liable for damage that could have been avoided by following our advice to apply an update

offered or for damage that was caused by failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us. We are not liable for user-generated digital content which you or your Trust download to your device(s).

We are not liable for business losses. The App is for use as decision support tool to help you manage patients by delivering user-generated content created by you, Pathway Editors or third parties. Neither the App, nor the Services or Documentation as provided by us give specific advice on individual patients and should only be used by medical practitioners operating within their clinical competencies. If you use the App for any commercial, business or resale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

Limitations to the App, the Documentation and the Services. The App, the Documentation and the Services are provided for general information purposes only as a decision support tool. They do not give specific advice on individual patients and should only be used by medical practitioners acting within their clinical competencies. They are not a substitute for professional medical qualifications and experience and they are used at your own risk. Whenever reasonably necessary, at your professional discretion, you must obtain specialist advice from your consultant or an appropriate member of your Trust before taking, or refraining from, any action on the basis of information obtained from the App, the Documentation or the Service. Although we make reasonable efforts to update the information provided by the App and the Service, we make no representations, warranties or guarantees, whether express or implied, that such information is accurate, complete or up to date. We are not liable for any loss or damage caused as a result of the use of content generated or downloaded by you, a Pathway Editor, your Trust or third parties.

Check that the App, the Documentation and the Services are suitable for you. The App and the Services have not been developed to meet your individual requirements or manage and diagnose individual patients. Please check that the facilities and functions of the App, the Documentation and the Services available meet your requirements before use.

We are not responsible for events outside our control. If our provision of the Services or support for the App or the Services is delayed by an event outside our control then we will contact your Trust as soon as possible to let them know. We will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event.

We may end your rights to use the App, the Documentation and the Services if you break these terms. We may end your rights to use the App, the Documentation and Services at any time by contacting your Trust if you have broken these terms in a serious way. If what you have done can be put right we will give you a reasonable opportunity to do so.

If we end your rights to use the App, the Documentation and Services:

- You must stop all activities authorised by these terms, including your use of the App;
- You must delete or remove the App from all devices in your possession and immediately destroy all copies of the App which you have and confirm to us that you have done this; and

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- We may deactivate your access to the Services.

We may transfer this Agreement to someone else. We may transfer some or all of our rights and obligations under these terms to another organisation.

You may not transfer your rights to someone else. You may not transfer your rights or your obligations under these terms to another person.

No rights for third parties. A person who is not a party to this Agreement shall not have any rights under or in connection with it.

If a court finds part of this contract illegal, the rest will continue in force. Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

Even if we delay in enforcing this contract, we can still enforce it later. Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

Which laws apply to this contract and where you may bring legal proceedings. The validity, construction and performance of this agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which both parties submit

