

MAGENTUS DATA MANAGEMENT SERVICES LTD SERVICES AGREEMENT

Parties

- (1) **MAGENTUS DATA MANAGEMENT SERVICES LIMITED**, incorporated and registered in England and Wales with company number 08747031 whose registered address is at Second Floor, 75 Farringdon Road, London, EC1M 3JY ("**Magentus**")
- (2) **[INSERT CUSTOMER NAME]** of **[INSERT CUSTOMER ADDRESS]** ("**Customer**")

Background

- (A) Magentus is in the business of providing clinical data extraction services.
- (B) The Customer agrees to obtain and Magentus agrees to provide services on the terms set out in this agreement.

Agreed terms

1. Interpretation

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

1.1 Definitions

Acceptance: has the meaning given to it in paragraph 1.4(i) of Schedule 1.

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

Applicable Data Protection Laws: all Applicable Laws relating to the protection of personal data and the privacy of individuals, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).

Applicable Laws: all applicable laws, statutes and regulations from time to time in force.

Apollo Software: the software created and used by Magentus and installed on the servers of the GP Practices for the purpose of facilitating the provision by Magentus of the Services to the Customer.

Available Services: the services set out in Schedule 1.

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the fees payable for the Services, as specified in Schedule 3 and in the relevant Project Order.

Change: a change to the scope, nature, volume or execution of the Services under this agreement.

Change Control Note: the written record of any Change agreed or to be agreed by the parties under clause 6.

Change Control Process: the change control process set out in clause 6.

Confidential Information: all information (however recorded or preserved) that one party or any of its Affiliates (**discloser**) discloses or makes available directly or indirectly to the other party or any of its Affiliates (**recipient**) in connection with this agreement and which would be regarded as confidential by a reasonable business person, including any information of a confidential nature relating to the Charges or either party's operations, products, services, processes, business activities and plans, customers, suppliers, employees, consultants, technologies, Intellectual Property Rights, technical and business strategies and trade secrets or know-how, but excluding information that:

- (a) is or becomes generally available to the public (other than as a result of the recipient's breach);
- (b) was available to the recipient on a non-confidential basis before disclosure by the discloser;
- (c) was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the discloser or otherwise prohibited from disclosing the information to the recipient;
- (d) is developed by or for the recipient independently of the information disclosed by the discloser; or

(e) the parties agree in writing is not confidential or may be disclosed.

Contract Year: each twelve (12) month period commencing on the Effective Date or on any anniversary of it, it being agreed that the “**last Contract Year**” shall mean the period beginning on the last anniversary of the Effective Date during the term of this agreement and ending on termination or expiry of this agreement.

Consent: the consent obtained by the Customer and provided to Magentus in respect of each GP Practice by way of a consent form or other document (which shall be in the form agreed in writing between the parties) for Magentus to extract the Required Data (including any personal data contained within the Required Data) from the GP Practices and to deliver such Required Data to the Customer as part of the Services. Such consent may be obtained directly from the relevant GP Practice or from the relevant authorised representative body.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls** and **controlled** shall be interpreted accordingly.

Customer Materials: all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to Magentus in connection with the Services.

Customer Personal Data: the personal data which Magentus processes in connection with this agreement as a processor on behalf of the Customer, which shall include personal data within the Required Data and within the Data Extracts.

Data Extract: each distinct collection of Required Data to be delivered to the Customer.

Effective Date: [INSERT EFFECTIVE DATE OF THE AGREEMENT] OR [the date when this agreement has been signed by both Magentus and the Customer].

Endpoint: the IP address provided and configured by the Customer, in accordance with the relevant Specification Overview, for delivery of Data Extracts and which shall not be outside the United Kingdom.

Extract Query/Queries: the query/queries developed by Magentus in accordance with the relevant Specification to extract the Required Data from GP Practices and to deliver the Required Data to the Customer in the form of a Data Extract under the relevant Project Order.

Fix Responsibility: the party responsible for resolving a Variance as set out in Schedule 5.

Force Majeure Event: any circumstance not within a party's control including:

- (f) acts of God, flood, drought, earthquake or other natural disaster;
- (g) epidemic or pandemic;
- (h) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (i) nuclear, chemical or biological contamination, or sonic boom;
- (j) any law or action taken by a government or public authority, including imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary licence or consent;
- (k) collapse of buildings, fire, explosion or accident;
- (l) any labour or trade dispute, strikes, industrial action or lockouts;
- (m) non-performance by suppliers or subcontractors; and
- (n) interruption or failure of utility service.

GP Practice: general practitioner medical practices with which the Customer has direct or indirect contractual arrangements and which have a clinical system supported by Magentus and which are specified in the relevant Project Order as being within the scope of the Services.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, 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, or to claim priority from, those

rights and, whether existing prior to or at the date of assignment of such rights, together the right to enforce any 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;

Incomplete Data Extract: a Data Extract delivered to the Endpoint that has missing or incomplete data in required fields, and as such does not meet the requirements of the relevant Specification, giving rise to a Variance.

Losses: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, awards, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).

Magentus Personnel: all employees, workers, agents, consultants, contractors and other representatives of Magentus, who are engaged in the performance of this agreement from time to time.

Magentus Service Desk: has the meaning given to it in paragraph 1.6(b)(i) of Schedule 1.

Nominated Practice: has the meaning given to it in paragraph 1.5(a) of Schedule 1.

Pilot Practice: has the meaning given to it in paragraph 1.4(a) of Schedule 1.

Project Order: an order entered into between Magentus and the Customer upon execution of the Project Order template set out within Schedule 2, and which shall be subject to the terms of this agreement.

Project Plan: has the meaning given to it in paragraph 1.3(b) of Schedule 1.

Required Data: the data specified in the relevant Specification to be extracted by Magentus from the relevant GP Practices and to be delivered to the Customer as part of the Services.

Restricted Person: any person employed or engaged by Magentus or any of its Affiliates during the term of this agreement who is or has been involved in the provision of the Services or the management of this agreement or any Project Order.

RPI: the Retail Price Index rate published by the Office of National Statistics each year.

Service Software: has the meaning given to it in clause 5.1.

Shared Personal Data: any personal data which Magentus receives from the Customer, or otherwise collects, in connection with this agreement and processes in the capacity of a controller (joint or independent).

Services: the services detailed within a Project Order.

Specification: the specification agreed by Magentus and the Customer in relation to each Extract Query under each Project Order which shall be in the form agreed in writing between the parties.

Successful Data Extract: a Data Extract delivered to the Endpoint that is complete and that meets the relevant Specification requirements.

Third Party Materials: all services, documents, information, data, software, items and other materials in any form belonging to a third party which Magentus uses or is required to use in connection with the Services.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Unsuccessful Data Extract: an event whereby Magentus have either been unable to gain access to a GP Practice's clinical data or the Extract Query has not run successfully (but does not meet the definition of an Incomplete Data Extract), giving rise to a Variance.

Variance: the difference between the Data Extract required to be delivered to the Endpoint pursuant to the relevant Specification and the actual Data Extract delivered to the Endpoint whether that be an Unsuccessful or Incomplete Data Extract.

Variance Report: a report setting out the reason, root cause and responsibility for the Unsuccessful Data Extract or Incomplete Data Extract.

1.2 Clause, Schedule and paragraph headings do not affect the interpretation of this agreement.

1.3 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the relevant Schedule(s) prevail.

- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 The Schedules form part of this agreement and have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.6 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.8 This agreement is binding on, and enures to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to legislation or a legislative provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
 - (b) includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 A reference to **writing** or **written** excludes fax but not email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or that other agreement or document, in each case as varied from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Magentus' obligations

- 2.1 Magentus shall provide the Services to the Customer in accordance with this agreement and the relevant Project Order in all material respects.
- 2.2 Magentus shall perform the Services with reasonable skill and care in accordance with the generally recognised standards and practices in its industry.
- 2.3 Magentus shall use reasonable endeavours to meet any performance dates specified in this agreement or the relevant Project Order, but these dates are estimates only. Time is not of the essence for the performance of any of Magentus' obligations in this agreement or in the relevant Project Order.

3. Customer obligations

- 3.1 The Customer shall:
- (a) co-operate with Magentus in all matters relating to the Services and ensure that its other suppliers and the GP Practices co-operate with Magentus where necessary;
 - (b) provide the Magentus Personnel, in a timely manner and at no charge, with access to the Customer's premises and other facilities as required by Magentus for the performance of the Services;
 - (c) provide Magentus, in a timely manner, with all documents, data, information and materials required by Magentus to provide the Services and ensure that they are accurate and complete in all material respects;
 - (d) obtain and maintain all licences, consents and permissions (including Consent) that are necessary to enable Magentus to provide the Services (including the extraction of the Required Data) and to enable the Customer to receive the Services, the Required Data and the Data Extracts;
 - (e) perform the Customer responsibilities set out in Schedule 4; and
 - (f) respond promptly to any reasonable requests from Magentus for instructions or approvals required to provide the Services.

3.2 To the extent that Magentus' performance of its obligations under this agreement or a Project Order is prevented or delayed by any act or omission of the Customer or any of its agents, consultants or other suppliers or a GP Practice (**Excusing Cause**), Magentus shall not be in breach of this agreement nor the relevant Project Order nor liable for any Losses incurred by the Customer as a result of Magentus' performance being prevented or delayed. Without prejudice to any other right or remedy it may have, Magentus shall be:

- (a) allowed an extension of time to perform its obligations equal to the delay caused by the Excusing Cause; and
- (b) entitled to payment of the Charges despite its performance being prevented or delayed.

4. Project Orders

4.1 The Customer may procure any of the Available Services by agreeing a Project Order with Magentus pursuant to this clause 4.

4.2 Magentus shall provide the Services from the commencement date specified in the relevant Project Order.

4.3 Each Project Order shall be agreed in the following manner:

- (a) the Customer shall ask Magentus to provide any or all of the Available Services and provide Magentus with as much information as Magentus reasonably requests in order to prepare a draft Project Order for the Available Services requested;
- (b) following receipt of the information requested from the Customer Magentus shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Available Services; or
 - (ii) provide the Customer with a draft Project Order;
- (c) if Magentus provides the Customer with a draft Project Order pursuant to clause 4.3(b)(ii), Magentus and the Customer shall discuss and agree that draft Project Order; and
- (d) both parties shall sign the draft Project Order when it is agreed.

4.4 Once a Project Order has been agreed and signed in accordance with clause 4.3(d), no amendment shall be made to it except in accordance with the Change Control Process.

4.5 Each Project Order shall incorporate and adopt the terms of this agreement which are or can be applicable to such Project Order.

4.6 Each Project Order shall be part of this agreement and shall not form a separate contract to it.

4.7 If there is any conflict between this agreement and a Project Order, the relevant Project Order will take precedence over this agreement only in so far as this agreement applies to that relevant Project Order, not in so far as this agreement applies to other Project Orders.

5. Service Software and intellectual property rights

5.1 The parties acknowledge and agree that Magentus shall install certain software on the Customer's systems in order to facilitate the provision by Magentus of the Services to the Customer (**Service Software**).

5.2 The Customer shall not use or deal with the Service Software other than as expressly permitted by Magentus in writing.

5.3 The Customer has no right (and shall not permit any third party) to:

- (a) copy, adapt, reverse engineer, decompile, disassemble, modify, prepare derivative works of, adapt, alter, make error corrections to or otherwise attempt to discover the source code of or any internal data files of; or
- (b) reproduce, sell, distribute, licence, rent or otherwise allow access to

the Service Software in whole or in part.

5.4 The Customer acknowledges and agrees that all Intellectual Property Rights in the Service Software belong and shall belong to Magentus or the relevant third-party owners (as the case may be), and, except as stated expressly otherwise in this agreement, the Customer shall have no rights, title or interest in or to the Service Software.

- 5.5 The Customer shall permit Magentus to have access to the Customer's premises and systems for the purposes of installing, inspecting, monitoring and maintaining the Service Software, provided that Magentus provides reasonable advance notice to the Customer of such access, which shall take place at reasonable times, except in the event of an emergency where the Customer shall permit such access as soon as reasonably practicable.
- 5.6 The parties acknowledge and agree that the Data Extracts and any copies or derivatives of the Data Extracts created by either Magentus or the Customer shall be the Customer's Confidential Information.
- 5.7 The parties acknowledge and agree that Magentus shall retain ownership of all Intellectual Property Rights in the Extract Queries, excluding any Customer Materials contained within them.
- 5.8 Magentus shall only use the Extract Queries for the purposes of providing the Services to the Customer and shall not disclose the Extract Queries to any third party except with the express prior written consent of the Customer.
- 5.9 In relation to the Customer Materials:
- (a) the Customer warrants and represents that the supply, receipt and use of the Customer Materials in the performance of this agreement by Magentus shall not infringe the Intellectual Property Rights of any third party;
 - (b) the Customer shall indemnify Magentus against all Losses incurred by Magentus as a result of any claim that the supply, receipt or use of the Customer Materials infringes the Intellectual Property Rights of any third party;
 - (c) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in Customer Materials; and
 - (d) the Customer grants to Magentus a fully paid-up, non-exclusive, royalty-free, non-transferable (except in accordance with clause 14.5) licence to use, copy and modify the Customer Materials during the term of this agreement and any Project Order for the purpose of providing the Services to the Customer only. Magentus may grant sublicenses of the Customer Materials to its subcontractors and other suppliers where necessary for the performance of the Services.
- 6. Change control**
- 6.1 Either party may submit a written request for Change to the other party in accordance with this clause 6 but no proposed Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.
- 6.2 If Magentus wishes to make a Change, it shall send a draft Change Control Note to the Customer.
- 6.3 If the Customer wishes to make a Change:
- (a) it shall submit a written request to Magentus and provide as much detail as Magentus reasonably requires, including the timing of the proposed Change, to draft a Change Control Note; and
 - (b) Magentus shall, as soon as reasonably practicable after receiving the information at clause 6.3(a), provide a draft Change Control Note to the Customer.
- 6.4 A Change Control Note shall contain:
- (a) the title of the Change;
 - (b) a description of the Change;
 - (c) details of the effect of the proposed Change on the Services, Charges, timetable for the Services, and any other terms of this agreement.
- 6.5 If the parties:
- (a) agree to the terms of a Change Control Note, they shall sign it and that Change Control Note will amend this agreement; or
 - (b) are unable to agree a Change Control Note, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 14.3.
- 6.6 The Customer shall not unreasonably withhold or delay its consent to any Change requested by Magentus which:

- (a) is necessary for the Services to be provided in accordance with Applicable Law; or
 - (b) implements a general change to Magentus' operational processes or standard service offerings and does not have a material adverse impact on the Services or increase the Charges to a material extent.
- 6.7 If, in Magentus' reasonable opinion, a Change is required to respond to an emergency, Magentus shall use reasonable endeavours to obtain the Customer's prior written consent to that Change but may make a temporary Change as necessary to respond to the emergency. Following the implementation of the temporary Change, Magentus shall notify the Customer of the nature of the temporary Change and the emergency and the parties shall retroactively comply with the procedure in this clause 6.
- 6.8 If the Customer rejects a Change requested by Magentus, it shall explain its reasons for doing so in reasonable detail.
- 6.9 Magentus may charge for the time it spends on preparing and negotiating Change Control Notes where the Customer has requested the Change under clause 6.3. Magentus shall charge for its time on a time and materials basis at Magentus' standard rates.
- 7. Fees and payment**
- 7.1 In consideration of the provision of the Services by Magentus, the Customer shall pay to Magentus the Charges.
- 7.2 Where the Charges are calculated on a time and materials basis:
 - (a) Magentus' fee rates for each individual person shall be specified in the relevant Project Order or quote, or if not so specified, shall be Magentus' standard fee rates in place from time to time;
 - (b) daily fee rates are calculated on the basis of an eight-hour day, worked during Business Hours. Magentus shall charge on a pro rata basis for part days worked by Magentus Personnel during Business Hours;
 - (c) Magentus may charge for work outside Business Hours at the overtime rates specified in the relevant Project Order or quote or if not so specified, at Magentus' standard overtime rates in place from time to time; and
 - (d) Magentus shall ensure that Magentus Personnel complete time sheets to record time spent on the Services, and Magentus shall indicate the time spent per individual in its invoices.
- 7.3 Magentus may increase the Charges payable in relation to all or any Project Orders:
 - (a) with effect from each anniversary of the Effective Date to reflect the percentage increase in the RPI in the previous 12-month period; or
 - (b) to account for any increase in the cost of providing the Services.
- 7.4 Magentus shall give the Customer reasonable prior notice of each increase in the Charges made under clause 7.3 and for the avoidance of doubt, an increase in the Charges made under clause 7.3 shall not be subject to the requirements of clause 6 or clause 14.4.
- 7.5 The Customer shall pay the Charges, subject to receipt by the Customer of Magentus' invoice in respect of such charges, to a bank account nominated in writing by Magentus from time to time, by the due date for such charges, which shall be as set out in Schedule 3 or the relevant Project Order.
- 7.6 Where the Customer requires a purchase order number or any other reference to be quoted on Magentus' invoice, the Customer shall provide such purchase order number or reference promptly following Magentus' request for the same, along with contact details for the Customer's representative responsible for the processing of purchase orders and invoices.
- 7.7 Without prejudice to any other right or remedy that Magentus may have, if the Customer fails to pay Magentus any sum due under this agreement by the due date:
 - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) Magentus may suspend all or part of the Services until payment has been made in full.

- 7.8 All sums payable to Magentus under this agreement:
- (a) are exclusive of VAT and the Customer shall, in addition, pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). If any deduction or withholding is required by law, the Customer shall pay to Magentus such amount as will, after the deduction or withholding has been made, leave Magentus with the same amount as it would have been entitled to receive in the absence of a requirement to make a deduction or withholding.

8. Non-solicitation

- 8.1 During the term of this agreement and for a period of six (6) months after termination or expiry of this agreement, the Customer shall not (and shall procure that none of its Affiliates shall), without the prior written consent of Magentus:
- (a) solicit or entice away (or attempt to solicit or entice away) any Restricted Person from the employment or service of Magentus (or any of its Affiliates), other than by means of a public recruitment campaign open to all-comers and not specifically targeted at the staff of Magentus or any of its Affiliates; or
 - (b) employ or engage any Restricted Person.

9. Confidentiality

- 9.1 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use that Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
 - (b) disclose that Confidential Information in whole or in part to any person, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's Confidential Information:
- (a) to those of its and its Affiliates' employees, officers, representatives, independent contractors, subcontractors and advisers who need to know that information for the Permitted Purpose (**Representatives**). Each party shall ensure that its Representatives comply with confidentiality obligations which are substantially equivalent to those set out in this clause 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 9.3 The provisions of this clause 9 shall continue to apply indefinitely after termination or expiry of this agreement.

10. Personal data

- 10.1 For the purposes of this **Error! Bookmark not defined.10**, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing** shall have the meaning given to them in Applicable Data Protection Law.
- 10.2 Each party shall comply with all Applicable Data Protection Laws in its processing of personal data under or in connection with this agreement. This **Error! Bookmark not defined.Error! Bookmark not defined.10** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 10.3 The parties have determined that for the purposes of Applicable Data Protection Laws, Magentus shall process the Customer Personal Data as processor on behalf of the Customer.
- 10.4 Without prejudice to clause 10.2, the Customer warrants and represents that it has all necessary consents (including Consent) and notices in place to enable the Customer Personal Data to be lawfully transferred to or collected by Magentus, and further processed by Magentus, in connection with the performance of this agreement and the relevant Project Order.
- 10.5 In relation to the Customer Personal Data, the relevant Project Order sets out the scope, nature and purpose of processing by Magentus, the duration of the processing and the types of personal data and categories of data subject.

10.6 Without prejudice to clause 10.2, Magentus shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer, which are set out in relevant Project Order, unless Magentus is required by Applicable Laws to otherwise process that Customer Personal Data. Where Magentus is relying on Applicable Laws as the basis for processing Customer Personal Data, Magentus shall notify the Customer of this before performing the processing unless prohibited from doing so by those Applicable Laws. Magentus shall inform the Customer if, in the opinion of Magentus, the instructions of the Customer infringe Applicable Data Protection Laws. Magentus may suspend the provision of the Services until the parties have agreed revised instructions which are not infringing;
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data;
- (c) ensure that any Magentus Personnel authorised by Magentus to process Customer Personal Data are obliged to keep that personal data confidential;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Magentus), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner or other regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach;
- (f) at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of this agreement unless Magentus is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 10.6(f), Customer Personal Data shall be considered deleted where it is put beyond further use by Magentus; and
- (g) make available information to the Customer to demonstrate its compliance with this clause 10, and allow for audits by the Customer (or its designated professional auditors) for this purpose on reasonable notice, provided that Magentus is not obliged to allow more than one audit in any Contract Year or make available any information that concerns any other customer of Magentus (or any of its Affiliates) or could compromise the security of Magentus' systems or cause it to breach any legal obligation. Magentus is not obliged to grant access to any third party auditor until that auditor signs a confidentiality agreement with Magentus on terms reasonably satisfactory to Magentus.

10.7 The Customer provides its prior, general authorisation for Magentus to:

- (a) appoint processors to process the Customer Personal Data, provided that Magentus:
 - (i) ensures that the terms on which it appoints any processor comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Magentus in this clause 10;
 - (ii) remains responsible for the acts and omissions of any processor as if they were the acts and omissions of Magentus; and
 - (iii) informs the Customer of any intended changes concerning the addition or replacement of processors during the term of this agreement, giving the Customer the opportunity to object to changes provided that if the Customer objects to a change and cannot demonstrate, to Magentus reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Magentus for any Losses incurred by Magentus in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that Magentus shall ensure that all transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Magentus, including any request to enter into standard data protection clauses adopted by the Commissioner (where the UK GDPR applies to the transfer) or any other applicable data protection regulator.

- 10.8 Magentus shall deliver Required Data to the Customer in the form of Data Extracts in accordance with the Specification and this will determine if the Data Extract shall contain de-identified, anonymised, or pseudonymised patient data. In the event that Magentus inadvertently provides any individual patient data outside of the Specification to the Customer, the Customer shall promptly destroy or remove such data and not retain any copies of such data.

11. Term and termination

- 11.1 This agreement commences on the Effective Date and continues, unless terminated earlier in accordance with the terms of this agreement, for a period of [INSERT NUMBER] years (**Initial Term**). At the end of the Initial Term, this agreement shall automatically renew for rolling one year periods (each a **Renewal Term**) unless either party provides notice of termination at least three months prior to the end of the Initial Term or the applicable Renewal Term.
- 11.2 Each Project Order shall commence on the commencement date specified in the relevant Project Order and shall continue, unless terminated earlier in accordance with this agreement or the relevant Project Order, until the earlier of:
- (a) the completion of the relevant Services;
 - (b) the expiry of the term of the Project Order, as specified in the Project Order; or
 - (c) the expiration of the either party's written notice to terminate the Project Order, such notice to be not less than six months in duration.
- 11.3 The parties acknowledge and agree that, notwithstanding the effective date of any notice to terminate this agreement pursuant to clause 11.1, this agreement shall only terminate on the termination or expiration of all Project Orders entered into before the date on which such notice to terminate this agreement is served. If there are no existing Project Orders as at the date such notice to terminate this agreement is served, the service of such notice shall terminate this agreement at the end of the Initial Term or the applicable Renewal Term.
- 11.4 Magentus and the Customer shall not enter into any further Project Orders after the date on which notice to terminate this agreement is served in under clause 11.1.
- 11.5 Subject to clause 11.7, without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by notifying the other party if:
- (a) the other party fails to pay an amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 11.5(c); or
 - (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on business.
- 11.6 Subject to clause 11.7, without affecting any other right or remedy available to it, either party may terminate a Project Order with immediate effect by notifying the other party if the other party commits a material breach of any term of the relevant Project Order and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.
- 11.7 Where a party commits a material breach of a Project Order only and fails to remedy that breach within a period of 30 days after being notified in writing to do so, the other party shall only be permitted to terminate the relevant Project Order and not the remainder of this agreement (including any other Project Orders or this agreement as a whole).

12. Consequences of termination

- 12.1 Upon termination or expiration of this agreement:

- (a) the Customer shall immediately pay to Magentus all of Magentus' unpaid invoices and interest and, where no invoice has been submitted for Services supplied, Magentus may submit an invoice, which shall be payable immediately on receipt;
- (b) each party shall promptly return to the other party all equipment, materials and other property belonging to and supplied by that party in connection with this agreement; and
- (c) Magentus shall, if so requested by the Customer, provide at the Customer's cost all assistance reasonably required by the Customer to facilitate the smooth transition of the Services provided under any Project Order to the Customer or any replacement supplier appointed by the Customer.

12.2 Upon termination or expiration of a Project Order:

- (a) the Customer shall immediately pay to Magentus all of Magentus' unpaid invoices and interest due in respect of the terminated or expired Project Order and, where no invoice has been submitted for Services supplied in respect of the terminated or expired Project Order, Magentus may submit an invoice, which shall be payable immediately on receipt;
- (b) each party shall promptly return to the other party all equipment, materials and other property belonging to and supplied by that party in connection with the terminated or expired Project Order, except to the extent that a party requires such equipment, materials or other property belonging to and supplied by the other party in connection with any other Project Order(s) which have not been terminated or which have not expired; and
- (c) Magentus shall, if so requested by the Customer, provide at the Customer's cost all assistance reasonably required by the Customer to facilitate the smooth transition of the Services provided under the terminated or expired Project Order to the Customer or any replacement supplier appointed by the Customer.

12.3 Any provision of this agreement or the relevant terminated or expired Project Order that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement or (as applicable) the relevant terminated or expired Project Order shall remain in full force and effect.

12.4 Termination or expiry of this agreement or any Project Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement or (as applicable) the relevant terminated or expired Project Order which existed at or before the date of termination or expiry.

13. Limitation of liability

13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with this agreement or any Project Order, including but not limited to liability:

- (a) for any breach of this agreement or any Project Order however arising; or
- (b) in relation to contract, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise.

13.2 Nothing in this agreement excludes or limits the liability of either Party which cannot legally be limited, including for:

- (a) death or personal injury caused by negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

13.3 Subject to clause 13.2 and clause 13.4, Magentus' total aggregate liability in respect of any and all liability arising out of or in relation to this agreement (including all Project Orders), in each Contract Year, shall in no event exceed the greater of £10,000 and an amount in aggregate equal to 125% of the total Charges actually paid by the Customer to Magentus during the Contract Year in which the event(s) which gave rise to the liability occurred, provided that if any event(s) that give(s) rise to liability occur(s) in the last Contract Year or after termination or expiry of this agreement, Magentus' total aggregate liability in respect of any and all such liability shall in no event exceed the greater of £10,000 and an amount in aggregate equal to the total Charges actually paid by the Customer to Magentus during the last Contract Year.

- 13.4 Subject to clause 13.2, Magentus shall not be liable 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 the agreement or any Project Order.
- 13.5 The Customer acknowledges and agrees that the Services rely and are dependent on Third Party Materials and accordingly Magentus shall not be liable for any failure or delay in providing the Services or in performing any of its other obligations under this agreement or any Project Order where such failure or delay is caused, directly or indirectly, by any failure, defect, non-availability, inability to use or access or other issue in relation to any Third Party Materials.
- 13.6 Magentus has given commitments as to compliance of the Services with relevant requirements as set out in this agreement. In view of these commitments, all warranties, conditions and other terms implied by statute or common law are, including but not limited to the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement and all Project Orders.

14. General

14.1 Force majeure.

- (a) A party (**Affected Party**) shall not be liable for any failure or delay in performing any of its obligations under this agreement for so long as, and to the extent that, its performance is prevented, hindered or delayed by a Force Majeure Event.
- (b) The Affected Party shall promptly notify the other party of the start of a Force Majeure Event and use reasonable endeavours to limit the effect of the Force Majeure Event on the performance of its obligations.
- (c) If the Affected Party has not resumed full performance of any obligations suspended under **Error! Bookmark not defined.**14.1(a) within 60 days after giving notice of the start of the Force Majeure Event, either party may terminate this agreement by giving not less than 30 days' notice to the other party.

14.2 Compliance with law.

- (a) In performing its obligations under this agreement each party shall comply with all Applicable Laws.
- (b) Magentus shall during the term of this agreement, comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

14.3 Dispute resolution procedure.

- (a) If a dispute arises out of or in connection with this agreement or its performance, validity or enforceability (**Dispute**), then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
 - (i) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Legal Director of the Customer and the Legal Director of Magentus shall attempt in good faith to resolve the Dispute;
 - (ii) if the Legal Director of the Customer and the Legal Director of Magentus are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Customer and the Managing Director of Magentus who shall attempt in good faith to resolve it;
 - (iii) if the Managing Director of the Customer and the Managing Director of Magentus are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and

(iv) unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR Notice.

(b) Subject to **Error! Bookmark not defined.**14.3(c), no party may commence any court proceedings in relation to the whole or part of the Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated, or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

(c) If for any reason the Dispute is not resolved within 30 days of the start of the mediation, the Dispute shall be finally resolved by the courts of England and Wales in accordance with **Error! Bookmark not defined.**14.13.

14.4 Variation. With the exception of variations made in accordance with the Change Control Process, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives) and expressly states that it is amending this agreement.

14.5 Assignment and other dealings.

(a) The Customer shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of Magentus (such consent not to be unreasonably withheld or delayed).

(b) Magentus may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.

14.6 Waiver.

(a) A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent right or remedy.

(b) A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 Severance. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this agreement

14.8 Notices.

(a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the following address (or an address substituted in writing by the party to be served):

(A) for notices to the Customer:

[INSERT ADDRESS]

Email: [INSERT EMAIL ADDRESS]

(B) for notices to Magentus:

Head of Legal, Magentus Data Management Services Ltd, Second Floor, 75 Farringdon Road, London, EC1M 3JY

Email: legal@magentus.com

(b) Any notice shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission or, if this time falls outside Business Hours, when Business Hours resume.
- (c) This clause 14.8 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.9 No partnership or agency.

- (a) Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

14.10 Third party rights.

- (a) This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- (b) The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

14.11 Entire agreement.

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into this agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.12 Counterparts. This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

14.13 Governing law and jurisdiction.

- (a) This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- (b) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the last date stated below.

Signed for and on behalf of
**MAGENTUS DATA MANAGEMENT
SERVICES LTD**

.....
Name:
Position:
Date:

Signed by for and on behalf of
[INSERT CUSTOMER NAME]

.....
Name:
Position:
Date:

Schedule 1 Services

1.1 The Available Services that may be provided by Magentus to the Customer under a Project Order are as follows:

- (a) data query development;
- (b) implementation planning;
- (c) data extract services at Pilot Practices;
- (d) data extract services at Nominated Practices; and
- (e) support services,

each as further described in this Schedule.

1.2 Data query development

- (a) Magentus shall develop and write Extract Queries for each clinical system, which shall meet the agreed relevant Specification.
- (b) The Customer and Magentus shall, where the specification for the relevant Project Order has not already been agreed, work together to agree the terms of the Specification, and shall ensure that the approval process takes as little time as possible and neither party shall unreasonably withhold or delay consent to any changes proposed by the other. The proposed specification shall (without limitation):
 - (i) detail the Required Data to be extracted by Magentus and the form and type of Data Extract to be delivered by Magentus to the Endpoint.
 - (ii) detail the subsequent outputs on the Customer server; and
 - (iii) detail the time and frequency of Data Extracts.
- (c) Magentus shall not be obliged to commence any development work until the relevant Specification has been agreed and approved in accordance with this agreement and the relevant Project Order. Upon written agreement by the parties of the Specification, Magentus shall write an Extract Query which shall be capable of extracting the Required Data from the relevant clinical system and delivering such Required Data to the Endpoint in accordance with the Specification.
- (d) Following written agreement of the Specification in accordance with paragraph 1.2(c), any change to the Specification shall be managed in accordance with the Change Control Process.

1.3 Implementation planning

- (a) Magentus will provide estimated timescales for completion of development and implementation of the Services as detailed in the Project Plan (if any).
- (b) Where requested by the Customer in writing, Magentus and the Customer will finalise and agree a full project plan which takes account of the relevant Specification agreed in accordance with this agreement and the relevant Project Order. Such project plan will include and set out:
 - (i) project activities and responsibilities;
 - (ii) timescales;
 - (iii) governance;
 - (iv) resource; and
 - (v) stakeholder engagement

(Project Plan).
- (c) The parties shall agree in writing the Project Plan (if any) within ten (10) days of the date of the relevant Project Order and until such agreement is reached, Magentus shall not be obliged to carry out any testing or implementation of the relevant Extract Query.

1.4 Data extract services at Pilot Practices

- (a) The Customer shall identify and notify Magentus in writing of a sample number of GP Practices on which to test the relevant Extract Query (**Pilot Practices**), no later than seven (7) days from the date of Magentus' and the Customer's agreement of the Project Plan pursuant to paragraph 1.3(c) or if there is no Project Plan, as soon as is practicable. Magentus shall require two (2) Pilot Practices to be nominated in respect of each clinical system.
- (b) Magentus shall test each Extract Query using a Magentus test environment, to ensure that each Extract Query has been developed in accordance with the relevant Specification.
- (c) When Magentus has confirmed that each Extract Query meets the requirements of the relevant Specification in a test environment, the Apollo Software will then be installed at the Pilot Practices for testing at the Pilot Practices, as follows:
 - (i) the Customer shall obtain Consent from the Pilot Practices (or the relevant authorised representative body), and provide the same to Magentus, in accordance with the Project Plan, or in a timely manner where such is not detailed within the Project Plan or where there is no Project Plan, prior to Magentus extracting any Required Data from such Pilot Practices. For the avoidance of doubt, Magentus shall be unable to extract or provide any Required Data and/or Data Extracts until such Consent has been obtained. Magentus shall be responsible for installing and testing the Apollo Software, either directly or through a third party as nominated by Magentus;
 - (ii) the Customer shall inform each Pilot Practice (or authorised representative body), that Magentus or its nominated third party will be contacting them in order to gain access to install the Apollo Software at such Pilot Practice;
 - (iii) the Customer shall ensure that each Endpoint is configured in accordance with the Specification and has been tested and is capable of receiving the Data Extract(s) pursuant to the relevant Specification; and
 - (iv) Following installation of the Apollo Software at the Pilot Practices and compliance by the Customer with its obligations under paragraph 1.4(c)(iii), Magentus shall then schedule the Extract Query in accordance with the relevant Specification and deliver the Data Extract to the Endpoint in accordance with the relevant Specification.
- (d) Where Consent is not obtained from a Pilot Practice (or the relevant authorised representative body), or a Pilot Practice does not allow the Apollo Software to be installed, Magentus shall have no obligation to provide any Services in relation to such Pilot Practice and the Customer shall nominate an alternative practice by notifying Magentus in writing with the details of such practice. The Customer will use reasonable endeavours to provide this within ten (10) Business Days of Magentus advising the Customer that either Consent has not been obtained or the Apollo Software is unable to be installed.
- (e) Following delivery of the Data Extract to the Endpoint from the Pilot Practices, the Customer shall:
 - (i) conduct testing to confirm that the Data Extract has been delivered in accordance with the Specification; and
 - (ii) record the outcome of testing in an issues log including any Variance.

The parties acknowledge and agree that Magentus may also carry out its own checks on the Data Extract.
- (f) The Customer will use reasonable endeavours to carry out the testing set out in paragraph 1.4(e) within ten (10) Business Days of being notified by Magentus that the Data Extract is available for testing.
- (g) Where Variance occurs Magentus shall use reasonable endeavours to resolve the issues identified within the issues log within ten (10) Business Days. Following resolution, Magentus shall demonstrate to the Customer that the issues recorded in the issues log have been resolved, and that the Extract Query delivers the Required Data and Data Extracts to the Endpoint in accordance with the relevant Specification.
- (h) The Customer will use reasonable endeavours to repeat the testing set out in paragraph 1.4(e) within ten (10) Business Days of being notified by Magentus pursuant to paragraph 1.4(g) that the issues have been resolved and promptly report any Variance to Magentus.

- (i) Upon resolution of all issues to meet the relevant Specification, the Customer will provide Magentus with written acceptance of the Extract Query (**Acceptance**) within ten (10) Business Days. Where the Customer fails to provide Acceptance, and Magentus has resolved all issues such that the Extract Query conforms to the relevant Specification, then the Extract Query will be deemed to have been Accepted.
- (j) Upon Acceptance, the Pilot Practices shall be deemed to be Nominated Practices.

1.5 Data extract services at Nominated Practices

- (a) The Customer shall provide Magentus with the required details of the GP Practices identified to be within the scope of the relevant Project Order but which are not Pilot Practices (**Nominated Practices**) in accordance with the Project Plan or in a timely manner where such is not detailed within the Project Plan or where there is no Project Plan.
- (b) The Customer shall obtain Consent from the Nominated Practices (or the relevant authorised representative body), and provide the same to Magentus, in accordance with the Project Plan or in a timely manner where such is not detailed within the Project Plan or where there is no Project Plan, prior to Magentus extracting Required Data from such Nominated Practices. For the avoidance of doubt, Magentus shall be unable to extract or provide any Required Data and/or Data Extracts until such Consent has been obtained.
- (c) Magentus shall be responsible for installing and testing the Apollo Software, either directly or through a third party as nominated by Magentus.
- (d) The Customer shall inform each Nominated Practice (or authorised representative body), that Magentus or its nominated third party will be contacting them in order to gain access to install the Apollo Software at such Nominated Practice.
- (e) The Customer shall ensure that each Endpoint is configured in accordance with the relevant Specification and has been tested and is capable of receiving the Data Extract(s) pursuant to the relevant Specification.
- (f) Following installation of the Apollo Software at the Nominated Practices and compliance by the Customer with its obligations under paragraph 1.5(e), Magentus shall schedule the Extract Query in accordance with the relevant Specification and deliver the Data Extracts to the Endpoint in accordance with the relevant Specification.
- (g) Where Consent is not obtained from a Nominated Practice (or the relevant authorised representative body), or a Nominated Practice does not allow the Apollo Software to be installed, Magentus shall have no obligation to provide any Services in relation to such Nominated Practice.
- (h) Magentus will use reasonable endeavours to ensure that it delivers Data Extracts in line with the service levels set out in the table below:

Type of extract	Frequency and run parameters	Description	Data Extract target (%)
Bulk query run	One off ad hoc	As set out in the relevant Specification	100%
Delta file query run	Monthly	As set out in the relevant Specification	90%

- (i) The Data Extract target for bulk query runs shall be calculated per bulk query run and the Data Extract target for delta file query runs shall be calculated on a monthly basis and each shall be calculated as a percentage as follows:

$$\frac{\text{Number of Data Extracts - Unsuccessful Extracts}}{\text{Number of Data Extracts}} \times 100$$

Where:

(1) **Number of Data Extracts** means, in relation to the relevant Project Order, the total number of Nominated Practices which Magentus is required to deliver Data Extracts from (in respect of the relevant run in the case of bulk query runs or during the relevant month in the case of delta file query runs); and

(2) **Unsuccessful Extracts** means the number of Unsuccessful Extracts and Incomplete Data Extracts (occurring in relation to the Nominated Practices referred to in point (2) above and occurring in respect of the relevant run in the case of bulk query runs or occurring during the relevant month in the case of delta file query runs) for which Magentus is responsible for resolving.

1.6 Support services

- (a) Provision of the support services is subject to the limitations and constraints as set out in this Schedule 1 (including in paragraph 1.7), and the responsibilities and dependencies as set out within Schedule 2.
- (b) Magentus shall provide the support services by:
 - (i) operating a single point of contact service desk which enables the Customer to log errors by calling a help desk telephone number or using a web portal specified by Magentus from time to time (**Magentus Service Desk**);
 - (ii) maintaining a log of errors reported by the Customer and providing regular status updates until the error is resolved in accordance with the procedures contained in this Schedule 1; and
 - (iii) managing and tracking errors through to resolution (where possible) by following appropriate processes.
- (c) **Unsuccessful Extracts**
 - (i) In the event of an Unsuccessful Extract, Magentus shall produce a Variance Report, investigate, resolve, and re-run the Extract Query in a timely manner. Magentus shall only be responsible for resolving a Variance where the Fix Responsibility indicates Magentus.
 - (ii) The Variance Report shall also include the status of each Variance and how it is being progressed by Magentus. Where Magentus is unable to investigate a Variance (having used reasonable endeavours to do so), or Magentus determines that such Variance is not the fault of Magentus, then Magentus shall assist the Customer to determine how a Variance can be investigated and which party is able to do this. Once the variance is resolved Magentus will re-run the Extract Query.
 - (iii) Magentus may either require the assistance of the staff at a Pilot Practice or a Nominated Practice (or authorised representative body), or request Pilot Practice or Nominated Practice staff (or authorised representative body) to raise any issues that the Commissioning Support Units (CSU) or Clinical Commissioning Group CCG are responsible for directly with them. Magentus will use reasonable endeavours to work with such staff to resolve problems.
- (d) **Incomplete Extracts**
 - (i) Where an Incomplete Data Extract is delivered to an Endpoint, Magentus will not be aware of any Variance as the Extract Query will have delivered some data to the Endpoint. Therefore, the Customer shall contact the Magentus Service Desk and provide notice and the details of the Incomplete Data Extract.
 - (ii) Until notified in writing by the Customer of any Incomplete Data Extracts, Magentus will not be aware of any Variance and therefore Magentus will continue to consider any Data Extract

delivered that is not an Unsuccessful Data Extract, to be a Successful Data Extract. Upon receiving written notice of an Incomplete Data Extract and upon verification by Magentus that data is missing from the Data Extract or the Data Extract is incomplete, the Data Extract will be considered to be an Incomplete Data Extract until the issue is resolved and back data provided, or it is determined by Magentus that the root cause of the Incomplete Data Extract is not the responsibility of Magentus.

- (iii) Magentus will investigate such issue in order to determine the cause of the issue and will recommend a resolution and, where Magentus determines that the root cause of the Incomplete Data Extract is Magentus' responsibility, Magentus shall use reasonable endeavours to resolve the issue in a timely manner.
- (iv) Where Magentus is unable to implement the resolution pursuant to paragraph 1.6(d)(iii) in a timely manner, Magentus will recommend the course of action to be taken in order to resolve the issue and notify the Customer.
- (v) Magentus will check the relevant Specification for the Extract Query which relates to an Incomplete Data Extract and may request that the Customer compares output files with other Pilot Practices or Nominated Practices (as applicable) using the same Extract Query. Where it is found that there is a fault with the Extract Query that is Magentus' responsibility, Magentus will use reasonable endeavours resolve the issue and re-run the Extract Query for the Incomplete Data Extract in a timely manner.
- (vi) Where an issue related to an Incomplete Data Extract is identified as not being Magentus' responsibility, the parties agree to act collaboratively to resolves such issue, and the following shall apply:
 - 1. where the relevant Pilot Practice(s) or Nominated Practice(s) move(s) to another compatible system, there is a joint responsibility to redeploy the Apollo Software;
 - 2. in the event of non-deployment or movement by a Pilot Practice or Nominated Practice to a non-compatible system, the Pilot Practice or Nominated Practice shall no longer be considered Consented.
 - 3. where changes were made to the IT systems of the Pilot Practice or Nominated Practice that caused the Apollo Software to fail, there is a joint responsibility to restore the Services in a timely manner. In the event of restoration of the Services not being possible, the Pilot Practice or Nominated Practice shall no longer be considered Consented.
- (vii) Where the checks carried out by the Customer under paragraph 1.6(d)(v) demonstrate that data within the clinical system is either incorrectly stored or is missing, then the Customer shall request the Pilot Practice or Nominated Practice (or authorised representative body) to change the data. Magentus will then, if required, re-run data in the Extract Query.
- (viii) Where Magentus needs to contact a Pilot Practice or a Nominated Practice (as applicable) in order to resolve an issue, Magentus shall make a maximum of three attempts to contact such Pilot Practice or Nominated Practice (keeping the Customer informed of all such attempts), and where such contact fails, Magentus shall inform the Customer and the Customer shall attempt to contact the unresponsive Pilot Practice or Nominated Practice (as applicable). If the Pilot Practice or Nominated Practice remains unresponsive following the Customer's attempts to make contact to discuss the issue, the parties shall discuss how to proceed.

1.7 Limitations and constraints

- (a) The provision of the Services is subject to the following limitations and constraints:
 - (i) Magentus shall not be able to and shall not be required to extract or deliver any Required Data or Data Extracts from a Pilot Practice or Nominated Practice (as applicable) where such Pilot Practice or Nominated Practice (or the relevant authorised representative body) has not provided Consent. The Customer shall be entitled to replace such Pilot Practice or Nominated Practice with another Pilot Practice or Nominated Practice (as applicable), which shall then become a Pilot Practice or Nominated Practice (as applicable);

- (ii) Magentus may not be able to run the Extract Query during the Pilot Practice's or Nominated Practice's normal working hours, nor during any time outside of said normal working hours where the Pilot Practice or Nominated Practice prevents the Extract Query being run during clinical system downtime;
- (iii) where Magentus is providing the support services and investigating an issue, and needs to contact the Pilot Practice or Nominated Practice (as applicable), the resolution of such issue may be dependent upon the assistance provided by the Pilot Practice or Nominated Practice (as applicable);
- (iv) Magentus is not responsible for the data contained within a clinical system and therefore the accuracy of a Data Extract will depend upon the quality and accuracy of the information contained within such system. Magentus is not able to amend any data contained within a clinical system, and this shall be the responsibility of the Pilot Practice or Nominated Practice (as applicable); and
- (v) Magentus will not extract data from any 'free text fields' within a clinical system.

1.8 Changes to the Services

- (i) The parties acknowledge and agree that Magentus may be required to change the Services as necessary to incorporate changes in:
 1. Applicable Law, Information Governance, NHS Data Security and Protection toolkit other NHS guidance or associated guidance applicable to the Services, this agreement or a Project Order;
 2. IT technical changes as required by NHS Digital or clinical system providers; and/or
 3. National Information Board (NIB) code changes.
- (ii) Any changes required to be made pursuant to paragraph 1.8(i) shall be made in accordance with the Change Control Process.

Schedule 2 Project Order Template

PROJECT ORDER

Magentus and the Customer have entered into a Services Agreement dated [INSERT] (**Services Agreement**) pursuant to which Magentus has agreed to perform certain services for the Customer as specified in this Project Order.

Unless expressly stated otherwise in this Project Order, this Project Order fully incorporates the terms of the Services Agreement. All defined terms in this Project Order will have the same meaning as in the Services Agreement unless expressly stated otherwise in this Project Order. All references to Services in this Project Order are limited to the services set out in this Project Order. If there is any conflict between this Project Order and the Services Agreement, this Project Order will take precedence over the Services Agreement but only in so far as the Services Agreement applies to this Project Order, not in so far as the Services Agreement applies to other Project Orders.

Project Order no.	[INSERT]
Project Order name	[INSERT]
Project Order scope and/or area	[INSERT]
Commencement date	[COMMENCEMENT DATE OF THIS PROJECT ORDER] OR [The date when this Project Order has been signed by both Magentus and the Customer]
Term	[INSERT]
Services	Magentus will provide the following services to the Customer under this Project Order [INSERT OR DELETE AS APPROPRIATE]: 1. data query development; 2. implementation planning; 3. data extract services at Pilot Practices; 4. data extract services at Nominated Practices; and 5. support services. The above services are further described in Schedule 1 of the Services Agreement. [INSERT DETAILS OF ANY ADDITIONAL SERVICES]
Charges	Project set-up charge: [INSERT] Development charge: [INSERT] Extraction support charge: [INSERT] Additional Fee for each additional Data Extract(s) delivered by Magentus which exceeds the Delivery Quota: [INSERT]

Payment	The development charge shall be payable as follows: (i) £[INSERT] on the commencement date of this Project Order; and (ii) £[INSERT] on Acceptance. The extraction support charge shall be invoiced by Magentus [monthly] OR [quarterly] in arrears. The Customer shall pay the extraction support charge (as well as any Additional Fee(s)) within 30 days of receipt by the Customer of Magentus' invoice in respect of such charges.
Delivery Period	[Month] OR [period of three (3) months] OR [INSERT OTHER TIME PERIOD]
Delivery Quota	[INSERT]
GP Practices	[INSERT]
Magentus project manager	[INSERT]
Customer project manager	[INSERT]
Additional terms and information	[INSERT]

The Specification for this Project Order shall be based upon the following:

Names and number of GP Practices	[INSERT]		
Clinical systems	[INSERT]		
Required Data to be extracted	[INSERT]		
Form and type of Data Extract	[INSERT]		
Number of Extract Queries	[INSERT]		
Endpoint	Hardware: [INSERT]	Software: [INSERT]	Location: [INSERT]
Frequency	[Monthly] / [Quarterly]		

The following sets out the details of Magentus' processing of Customer Personal Data as a processor on behalf of the Customer.

1. **Scope:** the extraction by Magentus of Required Data (which will contain personal data) from GP Practices and the delivery of Required Data to the Customer as Data Extracts.
2. **Nature:** data extraction/collection and data transfer.
3. **Purpose:** [INSERT THE CUSTOMER'S PURPOSE FOR WANTING MAGENTUS TO EXTRACT THE DATA AND DELIVER SUCH DATA TO THE CUSTOMER AND WHAT THE CUSTOMER INTENDS TO DO WITH

THE DATA FOLLOWING DELIVERY. EXAMPLES INCLUDING RESEARCH AND MONITORING PUBLIC HEALTH AND TRENDS].

4. **Duration:** the duration of the Services.
5. **Types of personal data:** [INSERT THE TYPES OF PERSONAL DATA THAT WILL BE EXTRACTED FROM GP PRACTICES BY MAGENTUS AND DELIVERED TO THE CUSTOMER. THESE DETAILS WILL ALSO BE SET OUT IN THE SPECIFICATION. EXAMPLES OF DATA TYPES INCLUDE SPECIAL CATEGORY DATA SUCH AS HEALTH RELATED DATA, ETHNICITY, NAME, ADDRESS, CONTACT DETAILS SUCH AS TELEPHONE NUMBER AND EMAIL ADDRESS].
6. **Categories of data subject:** patients of the GP Practices [INSERT ANY OTHERS].

This Project Order has been entered into on the last date stated below

Signed for and on behalf of
**MAGENTUS DATA MANAGEMENT
SERVICES LTD**

.....

Name:

Position:

Date:

Signed for and on behalf of **[INSERT
CUSTOMER NAME]**

.....

Name:

Position:

Date:

Schedule 3 Charges

1.1 Project set-up charge

- (a) The project set-up charge shall be as specified in the relevant Project Order. The Customer shall pay the project set-up charge to cover pre-sales activities, project management, consent documentation and all other activities necessary to support the initial set up of the project under the relevant Project Order.
- (b) The Customer shall pay the project set-up charge on the commencement date of the relevant Project Order.

1.2 Development charge

- (a) The development charge shall be as specified in the relevant Project Order.
- (b) The Customer shall pay the development charge in accordance with the terms set out in the relevant Project Order.

1.3 Extraction support charge

- (a) The extraction support charge shall be as specified in the relevant Project Order.
- (b) The Customer shall pay the extraction support charge in accordance with the terms set out in the relevant Project Order.
- (c) At the end of each Delivery Period (as set out within the relevant Project Order) during the term of the relevant Project Order (with the first such Delivery Period beginning on the commencement date of the Project Order), if the delivery of Data Extracts has exceeded the Delivery Quota for such Delivery Period (as set out within the relevant Project Order), the Customer shall pay the Additional Fee (as specified in the relevant Project Order) for each additional Data Extract delivered by Magentus which exceeds the Delivery Quota.

1.4 Other charges

- (a) Where the Customer requires Magentus to provide any services in addition to the Services specified in a Project Order, the associated fees for such services shall be agreed in writing between the parties and the Customer shall pay such charges within 30 days of receipt by the Customer of Magentus' invoice in respect of such charges.

Schedule 4 Customer responsibilities

1.1 The Customer shall:

- (a) nominate a project manager as a point of contact during the term of this agreement, in order to manage the following activity:
 - (i) co-ordinate the implementation activity where it has been agreed that such is a requirement of the Customer either between the parties or as indicated in the Project Plan (if any);
 - (ii) contribute to the development of the Project Plan (if any) and ensure that Pilot Practices and Nominated Practices are made aware of the implementation requirements;
 - (iii) approve and/or sign off the required documentation in a timely manner; and
 - (iv) participate in monthly project review meetings with Magentus's nominated project team and a quarterly management review meeting with Magentus' senior management team along with other ad hoc meetings that may be required;
- (b) procure that the GP Practices enter into Magentus' standard end user licence agreement in respect of the Apollo Software;
- (c) provide to Magentus details of Pilot Practices and Nominated Practices;
- (d) ensure that general medical practitioner practices are recruited and included within the scope of the Services;
- (e) obtain Consent from Pilot Practices and Nominated Practices (or the relevant authorised representative body);
- (f) ensure that Pilot Practices and Nominated Practices have their infrastructure and networks configured as required by Magentus and maintained such infrastructure and networks to a reasonable standard;
- (g) ensure that Pilot Practices and Nominated Practices have the required access required (technical and physical access in order to install the Apollo Software in accordance with Magentus requirements);
- (h) inform Pilot Practices and Nominated Practices that Magentus will be contacting them regarding installing Apollo Software and advise of the minimum environment requirements;
- (i) inform Magentus of any changes to the code list utilised within the Extract Query;
- (j) nominate alternative Pilot Practices or Nominated Practices where necessary;
- (k) conduct testing on Data Extracts to confirm whether the same conform with the relevant Specification and the agreement and record the outcome in an issues log and notify Magentus of any identified issues;
- (l) review and approve Variance Reports within seven (7) Business Days, where such is not undertaken then the Variance Report is deemed to be accepted;
- (m) ensure that where Apollo Software is installed on a workstation at a Pilot Practice or Nominated Practice, the Pilot Practice or Nominated Practice is aware that such workstation should remain powered on at all times, and use 'Away From My Desk' remote connection;
- (n) software to enable connection by Magentus in order to provide the Services;
- (o) notify Magentus of any changes to a clinical system at a Pilot Practice or Nominated Practice, as soon as is reasonably possible; and
- (p) contact the Magentus Service Desk within seven (7) days if an Incomplete Extract occurs.

Schedule 5 Sample Root Cause Description

Root Cause Code	Fix Responsibility	Root Cause Description
RC-A-KNOWN ERROR	Magentus	An issue previously raised where Magentus are either investigating or currently working on a resolution.
RC-A-NEW ERROR	Magentus	Any new error(s) not previously encountered by Magentus; the incident is to be investigated by the technical team.
RC-A-SQL REPORT ERROR	Magentus	Any error found where the cause does not relate to an IT environment or unexpected data issue. The Extract Query requires amending by Magentus to resolve the issue.
RC-E-APOLLO PC LOGGED OFF	GP Practice	The GP Practice PC(s) is required to be logged in overnight for the Apollo Software to work correctly.
RC-E-MOVED TO ALTERNATE SYSTEM	GP Practice	The GP Practice has changed clinical system causing the Apollo Software to no longer work correctly until updated. The GP Practice may also have moved to an Magentus non-compatible system.
RC-E-PRACTICE IT ENVIRONMENT	GP Practice	Changes made to the IT systems that cause the Apollo Software to fail. These may include changes to the GP Practice environment, the clinical system, any hardware, other software applications, operating system updates or changes, network or firewall updates or changes. Magentus assumes that all GP Practice systems meet the recommended specification by clinical system providers to handle the number of users and patient records for each practice, and that all IT systems are kept updated with all latest operating system, firmware, application updates and any other manufacturers' updates as recommended by the suppliers. External events such as power cuts, floods, loss of internet connectivity etc. IT issues which cause problems with installing or using the Apollo Software such as insufficient memory, user and network access and PC hardware.
RC-E-REFUSED ACCESS REQUIRED	GP Practice	The GP Practice may refuse access as they are unaware of the data study, information may not be disseminated to relevant practice staff from the GP Practice. Refusal by practice staff may also occur when they have not been informed by the Customer that access is required to provide support services. Access can be denied because GP Practice staff simply refuse to co-operate, despite knowing about the Services.
RC-E-UNEXPECTED DATA IN SYSTEM	GP Practice or Clinical Systems Supplier	Magentus assumes clinical systems data is updated in accordance with practice, NHS, NSS or other applicable clinical standards (QOF, NICE, Data Security & Protection Toolkit, etc.) that may be applicable by GP Practice staff. If the clinical system is not updated correctly there is a potential for missing data within the Data Extracts for which Magentus is not responsible.
RC-E-USER ERROR OR TRAINING	Customer or GP Practice	Incorrect use of Apollo Software where training or guidance is required. This may not be applicable to the data extract service.
RC-INCIDENT NO LONGER REQUIRED	Not applicable	Magentus will close any incident where the request has been cancelled or the issue no longer exists.
RC-R-REQUEST COMPLETED	Not applicable	The request was completed successfully. Any request which could not be completed will have another appropriate root cause listed. This may not be applicable to data extract services
RC-E-GP PRACTICE CONSENT NOT RECEIVED	GP Practice	Magentus has not received Consent required to undertake data extraction.

RC-E-DATA ACTIVATION OFF	GP Practice	The GP Practice has not activated the data download service, data activation toggle, or other such options from within the clinical system. Magentus cannot run an Extract Query to provide a data extract, as data will not be available for Magentus to extract from.
RC-CCS-DATA FEED PROBLEM	Clinical System Supplier	The data feed from the clinical system has not completed or there is a problem with the data feed, or the clinical system supplier has temporarily suspended the data feed to address underlying database issues. Magentus cannot run an Extract Query to provide a data extract, as the data will either not be present or be incomplete.