PHARMOUTCOMES MASTER TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

Acceptable Use Policy: means Optum's acceptable use policy (as may be made available to the Customer (and updated) from time to time).

Additional Terms: means the additional terms and conditions (if any) set out in the relevant Quote in respect of the relevant Solution(s), Service(s) and/or Goods detailed therein.

Agreement: means the agreement between Optum and the Customer, consisting of these Master Terms, the schedules (including, any and all Quotes as may be entered into by the parties from time to time) and any attachments.

Authorised Users: means those users (being employees of the Customer) that the Customer permits from time to time to access and use the System and relevant Solution(s) and/or Service(s) in accordance with the terms of the Agreement.

BaRS: means the national interoperability standard for booking and referral information for healthcare IT systems.

Business Day: means any day between Monday and Friday (inclusive) other than any public holiday in England and Wales.

Charge(s): means the fees and charges identified or referred to as such in the relevant Quote(s) in respect of the relevant Solution(s), Goods and/or Service(s).

Commencement Date: means the Effective Date of the first Quote entered into as between the parties (which references these Master Terms).

Confidential Information: means information (in any format) that falls within any of the following categories:

(a) it relates to, includes or comprises the existence or terms and conditions (or both) of the Agreement;

(b) it is Customer Data or Optum Data;

(c) it forms part of the Optum Materials;

(d) it is marked as "confidential" (or similar);

(e) it is of a nature that a reasonable person would (in all the circumstances) consider confidential, including:

(i) information concerning a party's business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, products, processes, techniques, equipment, marketing, market opportunities, plans, intentions, relationships with suppliers and customers, finances, personnel, computer software, and algorithms; and

(ii) similar information of third parties that a party maintains in confidence; or

(f) any combination of the foregoing.

Consultancy Services: means those services specified in a Quote which are to be provided by Optum in a consultancy or advisory capacity for the Customer, including, the provision of training or customisation of Templates

Contract Year: means:

(a) a period of 12 months commencing on the Commencement Date; and

(b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date;

provided that the final Contract Year shall end on the expiry or termination of the Term.

Controller: has the meaning as defined under the Data Protection Law.

Customer: means the party referred to as such in the relevant Quote.

Customer Cause: means any one or more of the following causes:

(a) any improper use, misuse or unauthorised alteration of the Services and/or the System;

(b) any use of the Services and/or System in a manner inconsistent with any then-current instruction documents made available by Optum;

(c) use of any hardware or software not provided by Optum or approved by Optum as Pre-requisites in connection with the Services and/or System; and/or

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(d) use of a non-current version or release of the System.

Customer Data: means:

(a) any Personal Data in respect of which the Customer is a Controller; and/or

(b) any data controlled by, provided by or in the possession of the Customer (save for any Optum Data).

Data Protection Law: means:

(a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; or

(b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union;

to which the Customer or Optum is subject, which relates to the protection of Personal Data.

Data Subject: has the meaning as defined under the Data Protection Law.

Day: means 7 hours inclusive of a 30 minute lunch break.

Documents: means any documentation in whatever format, including, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Effective Date: means the date identified as such in the relevant Quote entered into between the parties.

EMIS Web: means the Optum System known as EMIS Web which is Optum's core integrated clinical IT system (as may be updated from time to time).

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679).

EULA: means the end user licence agreement available at https://phpartnership.com/EULA and/or at

https://www.optum.co.uk/contracts-repository

(Ref: LCC427) and as updated from time to time, which shall apply to all Service Providers accessing the Solution(s) subject to the terms of this Agreement.

Existing Contracts: has the meaning set out in clause 2.5.

FOIA: means the Freedom of Information Act 2000.

Goods: means the goods (or any part of them) set out in the Quote. For the avoidance of doubt, save for the PharmAlarm Device, the term 'Goods' does not include any Solution(s).

Goods Specification: means any specification for the Goods, including any relevant plans or drawings, that is provided to the Customer by Optum (if any).

Indexation: means an adjustment to all relevant Charges to reflect the effects of inflation at the relevant Index Rate.

Index Rate: means the % of Indexation to be applied to all relevant Charges, in accordance with the Agreement, which is (a) calculated in December of each calendar year in accordance with the following formula and (b) then applied in respect of all Charges with an Index Year ending between the period commencing on 1 April of the following calendar year and ending on 31 March of the calendar year after that. For example, if the Index Rate for 2023 is 5.3%, this will be applied to all relevant Charges at the end of all Index Year(s) falling between 1 April 2024 and 31 March 2025.

New Charges = Charges x (Index d / Index o)

Where:

"**Index**" means the Retail Price Index (RPI);

"**Index d**" is the value of the Index published for November in the relevant calendar year where the Index Rate is being calculated; and

"**Index o**" is the value of Index published for November in the previous calendar year to when the Index Rate is being calculated.

Index Year: means, in relation to each Quote, either (i) the period starting on the Licence Start Date and ending 12 months thereafter or (ii) each 12 month period thereafter.

Input Material: means any and all Documents, information and any other materials provided by the Customer relating to the relevant Solution(s), Goods and/or Service(s).

Integration Services: means the licensing of the relevant Integration Tool(s) and the provision of those technical services as described in the relevant Quote, Optum Materials or such description as otherwise provided to the Customer by Optum, in relation to the support and maintenance of the relevant Integration Tool(s).

Integration Tool(s): means the proprietary software integration tools, made available by Optum as described in the relevant Quote for third party integration with the System (or relevant Optum Systems) (including any substitutes, enhancements, new versions or releases of such software integration tools) in respect of which the Customer may purchase Integration Services under the Agreement.

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or

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get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Licence Restrictions: means the restrictions (if any) on the licence to access and use the relevant Service(s) and/or Solution(s) specified as such in the relevant Quote or relevant Optum Materials (e.g. limitations on number of Authorised Users, Sites etc.)

Licence Start Date: means the date on which the provision of the Service(s), Goods and/or Solution(s) commences under an Quote.

Local Services: means a Referral Service that allows the Customer or Service Recipient (as appropriate) to triage and refer patients to local healthcare providers.

Master Terms: means these master terms and conditions.

Medical Device: shall have the meaning as set out under the MD Rules and Regulations.

MD Rules and Regulations: means any medical device laws, rules or regulations applicable to the parties including: (i) the UK Medical Devices Regulations 2002 (SI 2002/618) as amended by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019 ("**UK MDR 2002**"); (ii) the EU Medical Device Regulation ((EU) 2017/745) and the EU In Vitro Diagnostic Medical Device Regulation ((EU) 2017/746) to the extent that they (or equivalent UK domestic legislation) are ever enacted into UK law; and (iii) any relevant guidance from the MHRA and/or other relevant UK approved body, in each case as amended, supplemented, superseded or replaced from time to time.

Minimum Data Set: means the minimum amount of data and/or information, as reasonably requested by Optum, to be provided by the Customer to enable Optum to investigate an Incident.

Minimum Specification: means the minimum IT environment requirements (if any) referred to in the relevant Quote, or attached thereto, or relevant Optum Materials, in respect of the relevant Solution(s) (as may be updated from time to time).

Month: means a calendar month.

Multiple Service Subscription: means the provision of functionality within the System and relevant Solution(s) which allows the Customer to make Templates available to relevant Sites (subject to any Licence Restrictions in relation to the number of Sites). Such Sites are then able to record and share information related to the services being delivered by the Service Providers operating from those Sites.

NHSE Services means NHS England's services and APIs as listed here: Operations – NHS England Digital (as updated from time to time by NHS England) which allows the System and certain Services/Solutions provided under this Agreement to integrate with a national service where relevant.

NHSE Service Terms means NHS England's terms of service for use of the NHSE Services available here: Operations – NHS England Digital (see Appendix 1A: End user organisation acceptable use policy to be shared with all end user organisations by the connecting party) and as updated from time to time by NHS England.

NIMS: means the National Immunisation Management Service.

Operational Hours: means Monday to Friday, 8:30am to 6:00pm, but excluding any public holidays.

Optum: means Egton Medical Information Systems Limited (registered company number 02117205).

Optum Data: means any data controlled by, provided by or in the possession of Optum, including (where the context admits) the relevant Solution(s).

Optum Materials: means any and all Documents, information and materials provided by Optum in relation to the Solution(s), Goods and/or the Service(s) (including, any data, reports and specifications (as the same may be updated from time to time)).

Optum Systems: means any software or systems owned and/or operated by Optum, but excluding the System.

PDS: means the Patient Demographic Service.

Personal Data: has the meaning as defined under the Data Protection Law.

PharmAlarm Device: means the USB device containing the software which constitutes the PharmAlarm Software.

PharmAlarm Software: means the software embodied in the PharmAlarm Device and the related standalone software application.

Pre-requisite: means any systems or IT infrastructure requirements or other dependencies required to be obtained by the Customer to enjoy their use of the Goods, access to the System, Solution(s) and/or to receive the Services, as set out in the Quote, relevant Optum Materials, and/or as notified to the Customer by Optum from time to time.

Processor: has the meaning as defined under the Data Protection Law.

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Prohibited Act: means

(a) to directly or indirectly offer, promise or give any person working for or engaged by a party a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;

(c) an offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud a party; or

(d) any activity, practice or conduct which would constitute one of the offences listed under (c)(ii) above if such activity, practice or conduct had been carried out in the UK.

Quote: means an Quote (including any online Quote) in such format as may be provided by Optum from time to time (incorporated into and forming part of the Agreement as a schedule hereto) which describes the relevant Service(s), Goods and/or Solution(s), including, details of the deliverables (if any), Charges and/or any other applicable Additional Terms not detailed in these Master Terms.

Referral Services: means the provision of functionality within the System and relevant Solution(s) (and where relevant other Optum Systems) that allows for referrals of services from one System user to another System user (most commonly healthcare providers).

Service(s): means the service(s) to be performed by Optum pursuant to the Agreement (including the Subscription Services, Referral Services, Integration Services or Consultancy Services) as more fully specified in the applicable Quote(s)

Service Period: means a Month.

Service Providers: means the service providers that are entitled to access the System (in accordance with the EULA) in order to participate in delivering a service commissioned by the Customer. Such providers may be granted access to use Templates and/or other features within the System/Solutions to allow them to record the services they are delivering and share information with the Customer and/or other designated third parties. Services Providers may include Sites operated by the Customer itself and/or third parties such as independent pharmacies, opticians and other healthcare providers.

Service Recipient(s): means the healthcare providers and other parties which are authorised to use the Solutions or Services procured by the Customer under an Quote as agreed between Optum and the Customer from time to time.

Subscription Services: means a Single Service Subscription and/or Multiple Service Subscription.

Single Service Subscription: means the provision of a specific Template (as set out in the relevant Quote) which allows the Customer to make such Template available to relevant Sites (subject to any Licence Restrictions in relation to the number of Sites) and/or the relevant Quote or relevant Optum Materials. Such Sites are then able to record and share information related to the services being delivered by the Service Providers operating from those Sites.

Sites: means (as appropriate):

(a) the Customer's business premises located within the Territory; and/or

(b) the Service Recipient(s)'s business premises located within the Territory; and/or

(c) third party Service Providers' business premises located within the Territory.

Solution: means the Templates, Integration Tool(s) and any modules and other systems, applications and software (but excluding any Pre-requisite), details of which are set out in the applicable Quote(s), and with the functionality described in the specification (if any) therein, attached thereto, or otherwise provided to the Customer by Optum, together with any associated Optum Materials provided by Optum to the Customer.

Summary Care Record: means a record of key patient information.

Support Services: means the support services described in Schedule 1 to these Master Terms.

System: means Optum's web-based clinical and service management data collection and communications platform (known as PharmOutcomes) through which Optum provides the Services and Solutions to the Customer in accordance with the Agreement.

Template(s): means the editable templates made available by Optum and/or created by the Customer within the System for the capture of information regarding services to be provided by the Service Providers on behalf of the Customer.

Term: means the term of the Agreement, as determined in accordance with clause 2.1.

Territory: means the United Kingdom (and such other territories or countries as may be agreed in writing from time to time).

Transaction Data: means data in respect of use of the System and/or the Solution(s) by the Customer (including any Authorised Users) and/or any Service

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Provider in relation to Services taken under the Agreement (but not including any Personal Data).

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

VAT: means applicable value added tax chargeable under English law for the time being (and any similar additional or replacement tax).

Website: means the website, with a unique URL, specific to the Customer or Service Recipient (as appropriate), provided by Optum as part of the Local Services, through which the patient may submit certain information for the Customer or Service Recipient (as appropriate) to triage and assess the patient's eligibility for referral to a local healthcare provider.

1.2 Clause, attachment, schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A reference to: (i) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; and (v) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 References to clauses and schedules are to the clauses of, and schedules to, the Agreement; references to paragraphs are to paragraphs of the relevant schedule.

1.5 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 All of these Master Terms shall apply to the supply of Goods, Solutions and/or Services except where application to one is specified.

1.7 Where the Customer is procuring Services, Goods and/or Solution(s) for itself and/or Service Recipients, references in the Agreement to the Customer shall, where the context provides, be interpreted as a reference to the Customer and/or a Service Recipient.

2. COMMENCEMENT AND DURATION

2.1 **Agreement Term:** Subject to the remaining terms of this clause 2, the Agreement shall be made effective as of the Commencement Date and shall (subject to any alternative initial term specified in the relevant Quote or any earlier termination pursuant to clause 15) continue for an initial term of 12 months from the date on which the System or first Solution to be provided under the Agreement goes live (or, where there is no Solution, Optum starts to deliver the relevant Service) and shall then, subject to clause 15.2, continue on an annual rolling basis unless or until it (or the relevant Quote(s)) is terminated by either party giving not less than three (3) months' notice in writing to expire at the end of the relevant initial term or on any subsequent anniversary of the Commencement Date.

2.2 **Licence Term:** Unless the parties expressly agree otherwise in an Quote, the Licence Term in respect of each Quote shall commence on the relevant Licence Start Date, and subject to any earlier termination of the Agreement and/or the relevant Quote, continue for a 12 month period ("**Initial Licence Term**") and thereafter, subject to clause 2.4 shall automatically renew on an annual basis (each a "**Renewal Licence Term**"), subject to the Customer's continued payment of the relevant Charges, until:

2.2.1 it is terminated by either party giving not less than two (2) months' notice in writing to the other party, such notice to expire at the end of the Initial Licence Term or Renewal Licence Term (as appropriate); or

2.2.2 termination or expiry of the Quote or the Agreement in accordance with its terms (including in accordance with clauses 2.1 and 15.3).

2.3 Optum shall (subject to any earlier termination in accordance with the Agreement) provide to the Customer and the Customer shall pay for the relevant Service(s), Goods and/or Solution(s) from the Effective Date and during the Term (subject to any alternative term set out in the applicable Quote(s)).

2.4 If Optum agrees to provide any additional Solution(s), Goods or Service(s) under any Quote(s) agreed after the Commencement Date then after the Initial Licence Term or any Renewal Licence Term (save as may be expressly agreed otherwise in writing) Optum may, on notice to the Customer, align the Licence Term with the Term (or Optum may alternatively amend the Term to align with that Licence Term) so that the period during which any and all Solution(s), Goods and Service(s) are to be provided under all or some of the Quotes and the Agreement shall be the same.

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2.5 Subject to clause 2.6 (or as expressly provided for in the Additional Terms), Optum may align the provision of any existing solutions, goods and services (which are the same as, or which are to be replaced by, the Solution(s), Goods, and/or Service(s)) being provided (prior to the Commencement Date) by Optum under separate contracts (the "**Existing Contracts**") with the provision of the relevant Solution(s), Goods, and/or Services to be delivered under the Agreement, so that with effect from the Commencement Date, in which case, the term of the relevant Existing Contracts shall (where necessary) be extended so as to run concurrently with the Term. The charges due under the Existing Contracts may be varied by Optum in accordance with clause 10.4 following what would have been the expiry of the original term of the relevant Existing Contract.

2.6 For the avoidance of doubt, if an Quote includes any Solution(s), Goods, and/or Services which are the same as or which are intended to replace any solutions, goods or services which are provided under any Existing Contract(s) then it is agreed that with effect from the relevant Effective Date, the Existing Contract(s) shall (in respect of the relevant solution(s), goods, and/or services or, if there are no remaining solution(s), goods, and/or services to be delivered under the relevant Existing Contract(s), in its entirety) be deemed to have been terminated by mutual consent (and without any liability on the part of either party) and the relevant Solution(s), Goods and/or Service(s) shall be provided under the Agreement. Optum will inform the Customer of the amount of any fees or charges paid under the Existing Contracts which are to be credited against the Charges under the Quote.

3. PURCHASING PROCEDURE

3.1 The Customer may: (i) purchase a licence to access and use a particular Solution (through the System); and/or (ii) agree to receive the relevant Goods and/or Service(s); (or any combination thereof) by entering into an Quote (which is then incorporated into and forms part of the Agreement) with Optum which shall specify the relevant:

3.1.1 Solution(s) which is to be licensed to the Customer and the type and extent of any Licence Restrictions which apply (for example, restrictions on functionality, number of concurrent Authorised Users; number of Sites; named Authorised Users etc.);

3.1.2 Service(s) which Optum is to deliver (which may include, support services, hosting services, consulting services (such as training, consultancy, project management, design or development services) as appropriate);

3.1.3 Goods which Optum is to deliver;

3.1.4 Charges payable in respect of the Solution(s), Goods and/or Service(s) to be provided; and

3.1.5 period during which Optum will give access to the relevant Solution(s) and/or deliver the relevant Service(s) and/or Goods.

3.2 In respect of any Quotes which are to be:

3.2.1 signed by the Customer; or

3.2.2 made available electronically and completed by the Customer (for example, by clicking a button marked 'Accept' or ticking the appropriate boxes),

then in each case this will constitute an offer by the Customer to purchase the relevant Solution(s), Goods and/or Service(s) as specified in the Quote under these Master Terms and any or all of: (i) the execution and return of a signed copy of the Quote by Optum; (ii) an acknowledgement of the Quote (including, one sent by email); (iii) the issuing of an invoice; or (iv) Optum's commencement of work pursuant to the Quote, will mean that the Quote is deemed to have been entered into so as to form part of the Agreement.

3.3 Without prejudice to the other terms of this clause 3, Optum may appoint one or more authorised resellers in respect of the relevant Solution(s), Goods and/or Service(s). If the Customer seeks to place an order with an authorised reseller then this shall be deemed an offer from the Customer and the terms of clause 3.2 shall apply regarding the acceptance of any such offer by Optum (and for the avoidance of doubt, subject to clause 3.4 any provision by Optum of any Solution(s), Goods and/or Service(s) will be subject to these Master Terms and the Agreement will be formed as between Optum and the Customer).

3.4 Where the Customer has placed an order via an authorised reseller of Optum, save to the extent otherwise specified in the Quote, Optum shall not be responsible for providing any support or maintenance services to the Customer in respect of the relevant Solution(s), Goods and/or Service(s) (including in relation to any customisation of any Templates) and the Customer shall be responsible for agreeing with the authorised reseller directly for the provision of any such services by the authorised reseller.

3.5 These Master Terms apply to the Agreement 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. For the avoidance of doubt, any standard terms and conditions of the Customer attached to, enclosed with, or referred to in any Quote, purchase order, or otherwise shall not form part of the Agreement or otherwise govern the delivery of any Solution(s), Goods and/or Service(s).

3.6 Without prejudice to clause 3.5, if the Quote contains any Additional Terms provided by Optum

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then such terms shall be deemed incorporated into the Agreement (in respect of the Solution(s) and/or Service(s) or Goods to which they relate) and to the extent that there is any conflict between the Additional Terms and these Master Terms, the Additional Terms shall prevail.

3.7 For the avoidance of doubt, any quotation given by Optum shall not constitute an offer, and is only valid for a period of twenty (20) Business Days from its date of issue.

4. OPTUM'S OBLIGATIONS

4.1 Optum shall use its reasonable endeavours to:

4.1.1 deliver the Service(s) and/or Goods and provide the Solution(s) in accordance (in all material respects) with the terms of the Agreement;

4.1.2 provide any Service(s) with reasonable care and skill;

4.1.3 meet any performance dates specified in the Agreement but any such dates shall be estimates only and time shall not be of the essence in relation to the delivery of any Goods and/or Service(s) and/or provision of any Solution(s); and

4.1.4 if relevant, observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Sites and that have been reasonably communicated to it, provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under the Agreement (including, any applicable Quote(s)).

4.2 Optum does not warrant that the use of the System or any Goods, Service(s) and/or Solution(s) will be uninterrupted or error-free.

5. SOLUTION(S) AND SERVICE(S)

5.1 Optum hereby grants the Customer a non-exclusive, non-transferable, limited, personal, terminable and revocable right during the term of the relevant Quote(s) to access and use the System, relevant Solution(s) (and related Optum Materials) detailed therein (in object code form only) in the Territory as necessary in order for the Customer to utilise the Solution(s) in accordance with the Agreement.

5.2 The Customer may exercise the rights granted to it by virtue of clause 5.1:

5.2.1 through the Authorised Users;

5.2.2 only for the internal business purposes of the Customer and at all times in accordance with the terms of the Agreement; and

5.2.3 subject to any Licence Restrictions.

5.3 Optum may restrict or suspend access to or use of any Service(s) or Solution(s) and/or the System if it needs to undertake any planned maintenance or if it (acting reasonably) feels this is necessary for security or clinical safety purposes.

5.4 In respect of the Service(s) to be provided by Optum under the Agreement, the relevant Quote shall set out:

5.4.1 the scope of the Service(s) to be provided;

5.4.2 any agreed timescales for the delivery of the Service(s) (and any agreed deliverables); and

5.4.3 the applicable Charges (including, whether the Service(s) are to be provided on a fixed price or a time and materials basis).

5.5 Optum reserves the right to change (from time to time) the System and any Service(s) or Solution(s) or Goods provided under the Agreement at any time provided that the performance of the System and/or relevant Service(s) or Solution(s) or efficacy of the relevant Goods is not materially adversely affected. Such changes may include:

5.5.1 introducing or removing features of the System, a Service or Solution; or

5.5.2 replacing the System or relevant Service, Solution or Goods with an equivalent System, Service, Solution or Goods.

5.6 Where the Services, System and/or Solutions you use or procure under the Agreement requires access to NHSE Services, you agree and acknowledge that that NHSE Service Terms shall apply to the use of such services.

6. SALES OF GOODS

6.1 The Goods are described in the relevant Goods Specification and/or Quote.

6.2 Optum reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

6.3 Optum shall deliver the Goods to the location(s) set out in the Quote or such other location(s) as the parties may agree (the "**Delivery Location(s)**") at any time after Optum notifies the Customer that the Goods are ready.

6.4 Delivery of the Goods shall be completed on the Goods' arrival at the relevant Delivery Location(s).

6.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Optum shall not be liable for any delay (or failure) in delivery of the Goods that is caused by the Customer's failure to provide Optum with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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6.6 If the Customer fails to accept or take delivery of the Goods, then except where such failure or delay is caused by Optum's failure to comply with its obligations under the Agreement in respect of the Goods:

6.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day following the day on which Optum notified the Customer that the Goods were ready; and

6.6.2 Optum shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6.7 If ten (10) Business Days after Optum notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Optum may resell or otherwise dispose of part or all of the Goods.

6.8 Optum may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.9 Optum shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer's warranty regarding the relevant Goods.

6.10 Optum warrants that on delivery, the Goods shall:

6.10.1 conform in all material respects with the Goods Specification; and

6.10.2 be free from material defects in design, material and workmanship.

6.11 Subject to clause 6.12, if:

6.11.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.10;

6.11.2 Optum is given a reasonable opportunity of examining such Goods; and

6.11.3 the Customer (if asked to do so by Optum) returns such Goods to Optum's place of business at the Customer's cost,

Optum shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.12 Optum shall not be liable for the Good's failure to comply with the warranty in clause 6.10 if:

6.12.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.11;

6.12.2 the defect arises because the Customer failed to follow Optum's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

6.12.3 the defect arises as a result of Optum following any drawing, design or Goods Specification supplied by the Customer;

6.12.4 the Customer alters or repairs such Goods without the written consent of Optum;

6.12.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or

6.12.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.13 Except as provided in this clause 6, Optum shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.10.

6.14 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by Optum under clause 6.11

6.15 The risk in the Goods shall pass to the Customer on completion of delivery.

6.16 Title to the Goods shall not pass to the Customer until Optum receives payment in full (in cash or cleared funds) for the Goods and any other goods that Optum has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.17 Until title to the Goods has passed to the Customer, the Customer shall:

6.18 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Optum's property;

6.19 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.20 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Optum's behalf from the date of delivery;

6.21 notify Optum immediately if it becomes subject to any of the events listed in clause 15.5.3; and

6.22 give Optum such information relating to the Goods as Optum may require from time to time.

6.23 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.5.3, then, without limiting any other right or remedy Optum may have:

6.23.1 the Customer's right to use them in the ordinary course of its business ceases immediately; and

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6.23.2 Optum may at any time: (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any Customer premises or the premises of any third party where the Goods are stored in order to recover them.

7. CUSTOMER OBLIGATIONS

7.1 The Customer shall:

7.1.1 procure and maintain any applicable Pre-requisites during its use of the System and/or receipt of the Solution(s) and/or Service(s);

7.1.2 not copy the System or any Solution or merge or incorporate any Solution (or any part thereof) with or into any other software nor (subject to any rights under any applicable law that cannot be excluded) attempt to disassemble, decompile, modify, adapt or reverse engineer the System or any Solution;

7.1.3 not translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license or create derivative works from the System or any Solution;

7.1.4 not use the System or any Solution or any portion thereof as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution;

7.1.5 ensure that all Authorised Users comply with the terms of the EULA;

7.1.6 maintain accurate and up-to-date records of the number and location of all copies of the System and each relevant Solution;

7.1.7 complete in a timely and accurate manner any pre-installation checklists as may be provided by Optum from time to time;

7.1.8 supervise and control use of the System, Solution(s) and Service(s) in accordance with the terms of the limited rights granted under the Agreement;

7.1.9 use the System and relevant Solution(s) and Service(s) in accordance with any user documentation, guides or training (and any other reasonable instructions received from time to time) provided by Optum from time to time;

7.1.10 comply with any relevant Licence Restrictions, and the Customer shall not permit such Licence Restrictions to be exceeded at any time. For example, should the Licence Restrictions indicate a maximum number of Service Providers or Sites then the Customer shall not permit more Service Providers or Sites to participate in any services commissioned via the Customer using the Solution(s) or Service(s) being provided under the Agreement;

7.1.11 not allow the System or any Solution(s) to become the subject of any charge, lien or encumbrance;

7.1.12 ensure that its employees, agents and other parties who are permitted to use the System and Solution(s) are notified of the relevant terms of the Agreement prior to such employee, agent or party using the System or Solution(s);

7.1.13 not sub-license, assign, novate, transfer, sell, lease, rent, charge or otherwise deal in or encumber the System or any Solution(s) (in whole or in part);

7.1.14 not provide or otherwise make available the System or any Solution(s) to any person other than its employees or as specified herein without Optum's prior written consent;

7.1.15 not use the System, any Solution(s) or Service(s) in order to provide a bureau service (or any similar service) on behalf of any third party;

7.1.16 not display the System or any Solution(s) (or any Optum Materials) on a public bulletin board, ftp site, worldwide web site, chat room or by any other unauthorised means;

7.1.17 not use the System, the Solution(s), Goods or any Service(s) for any immoral or illegal purpose or for any other purpose which may be determined by Optum (acting reasonably) to be threatening, abusive or harmful;

7.1.18 not do anything (in Optum's reasonable opinion) that brings, or could potentially bring, Optum's name, business or brand into disrepute; and/or

7.1.19 immediately upon the date of termination or discontinuance of its right to use the same, for whatever reason, destroy all copies of the System and/or Solution(s) within its possession or control.

7.2 The Customer shall:

7.2.1 co-operate with Optum in all matters relating to the provision of the System, any Service(s) and its use of the relevant Goods and/or Solution(s) (including, providing such assistance (and access, including, remote access, to the relevant Sites, records and/or systems) as Optum may reasonably require in connection with its delivery of the System, any Solution(s), Goods and/or Service(s));

7.2.2 complete any preparation activities that Optum may require promptly and in accordance with any reasonable timescales so as to enable Optum to deliver, and the Customer to receive, the System, any Solution(s) and/or Service(s);

7.2.3 provide to Optum, in a timely manner, such Input Material and other information as Optum may require (and ensure that the same is accurate in all material respects);

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7.2.4 not cancel any direct debit (or amend its bank details) in relation to any payments due under the Agreement without giving reasonable advance notice to Optum (and if the Customer fails to comply with this obligation then it shall (without prejudice to its other rights and remedies) pay Optum a £100 administration charge);

7.2.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its receipt of any Service(s), its use of the System and/or relevant Goods and/or the Solution(s), the use by Optum of any Input Material and the use by Optum of any of the Customer's equipment, in all cases before the relevant start date;

7.2.6 promptly contact Optum's support desk to register any faults with regard to the System, any Service(s), Goods and/or Solution(s);

7.2.7 accept and install all updates as required by Optum from time to time in respect of the System and/or relevant Solution(s);

7.2.8 promptly notify Optum as soon as it becomes aware of: (i) any unauthorised use of the System, any Solution(s) or Service(s); or (ii) any errors in respect of the System or any Solution(s) or Service(s);

7.2.9 comply with all applicable laws (and the Acceptable Use Policy) in relation to its receipt or use of the System, any Service(s), Goods and/or Solution(s), including, any professional licences and permissions (and shall ensure that its users do the same);

7.2.10 comply with such generally applicable security policies as Optum may introduce from time to time; and/or

7.2.11 ensure that it has in place at all times, on any device used to access the System or any Service(s) or Solution(s) adequate and appropriate protections against any computer software that contains any "time-bombs", "worms", "viruses", "Trojan horses", "protect codes", "data destruct keys" or other programming devices that might, or might be used to, improperly access, modify, delete, damage, deactivate or disable any third party's computer software, hardware or data.

7.3 The Customer shall (and shall ensure that in respect of each of the Sites it operates (if any) it shall):

7.3.1 have in place an IT environment that meets any relevant Minimum Specification identified for it to properly receive and use the System, the relevant Solution(s) and Service(s); and

7.3.2 maintain all necessary network connections and environments for it to: (i) properly receive and use the relevant the System, Solution(s), Goods and/or Service(s); (ii) access and use the full functionality of the relevant Service(s) and/or Solution(s) (subject to any Licence Restrictions); and (iii) allow remote access to the System, the relevant Solution(s), Goods and/or Service(s) as required to enable to provision of any support and maintenance (and any other diagnostic) services.

7.4 The Customer:

7.4.1 accepts responsibility for the selection of the Solution(s) and/or Service(s) to achieve its intended results and acknowledges that none of the System, Solution(s) and/or Service(s) have been developed to meet the individual requirements of the Customer; and

7.4.2 agrees that the System, Solution(s) Service(s) and/or any related Optum Materials are intended to support, not substitute for, the expertise and professional judgement of pharmacists or other healthcare professionals and that any data is provided on the basis that the relevant healthcare professional will retain responsibility for deciding whether to deliver the relevant services.

7.5 If Optum's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (its agents, subcontractors, consultants or employees) and/or any relevant Service Provider, Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly).

8. SERVICE SPECIFIC TERMS

8.1 The appropriate terms set out in this clause 8 shall apply in the event that Optum is providing one or more of the Solution(s) or Service(s) detailed below under the Agreement.

8.2 The use of any of the Solutions or Services shall at all times be subject to any applicable Licence Restrictions.

Subscription Services

8.3 The Customer can purchase either a Single Service Subscription, or a Multiple Service Subscription for the services which will be specified in the relevant Quote.

8.4 If the Customer purchases a Single Service Subscription, Optum shall use its reasonable endeavours to provide the Customer:

8.4.1 access to, and to allow the Customer to make available to Service Providers at the relevant Sites through the System, the Template(s) specified in the relevant Quote.

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8.5 If the Customer purchases a Multiple Subscription Licence, Optum shall use its reasonable endeavours to provide:

8.5.1 the Customer with access to Templates in the System and allow the Customer to make the same available to Service Providers at the relevant Sites through the System; and

8.5.2 the functionality to allow the Customer to create its own Templates or modify existing Templates and make the same available to Service Providers at the relevant Sites through the System.

8.6 Optum reserves the right to amend or update the Services it provides to the Customer under each of the Subscription Services from time to time by updating these Master Terms.

PharmAlarm

8.7 Where the Quote specifies that the Customer is licensed to use the PharmAlarm Software:

8.7.1 the licence specified in clause 5.1 (and the applicable terms and conditions of the Agreement) shall apply to both the PharmAlarm Software and the accompanying standalone software application for the period specified in the Quote; and

8.7.2 the Customer shall only use the PharmAlarm Device for the duration of the licence referred to in clause 8.7.1 and agrees that Optum may terminate the Customer's ability to use the PharmAlarm Device on termination or expiry of that licence.

8.8 Optum shall deliver the PharmAlarm Device(s) to the Customer a reasonable period after payment of the relevant Charges by the Customer, or, provided the Customer has paid the relevant Charges, shall use its reasonable endeavours to deliver the PharmAlarm Devices by the date agreed with the Customer, provided that time shall not be of the essence in respect of such delivery.

8.9 Within a reasonable period of the Customer's notice pursuant to clause 6.11.1 but subject to clause 6.12, Optum will provide a replacement PharmAlarm Device free of charge if the following further conditions are also satisfied:

8.9.1 Optum determines the PharmAlarm Device is faulty or has a defect;

8.9.2 the fault/defect does not arise as a result of fair wear and tear or wilful damage by, or the negligence of, the Customer, or abnormal storage, working conditions or alterations made by the Customer to the PharmAlarm Device;

8.9.3 the Customer has paid the required Charges on time; and

8.9.4 the Customer returns the original PharmAlarm Device to Optum within 14 days of receipt of the replacement PharmAlarm Device.

8.10 If the above conditions are not met, any replacement PharmAlarm Device shall be chargeable to the Customer at the relevant Charges for the PharmAlarm Device at that time.

Referral Services

8.11 Optum can provide Referral Services through a configurable web-based portal or through ITK referrals using HL7, HL7, CDA and FHIR (as may be updated or amended from time to time) or BaRS where practicable. The Referral Services may use the System and one or more of the Optum Systems.

8.12 Referral Services may also incorporate the use of Templates to allow for Service Providers receiving the referrals from the Customer to complete the related patient (or other) follow up service. As such, the Customer may receive a Subscription Service as part of, or alongside, the Referral Services as specified in the relevant Quote.

8.13 The relevant Service Provider or operator of a Site (including, where relevant, the Customer) shall at all times be responsible for ensuring they obtain the relevant consent(s) from any patient to referral the relevant service through the System using the Referral Services.

8.14 The provision of Referral Services by Optum shall be dependent on and subject to the consent of the relevant referring party to Optum accessing or integrating with the relevant system of the referring party. In the event that the referring party withdraws such consent, Optum may terminate any relevant Quote for Referral Services on written notice to the Customer.

8.15 The exact specifications of the Referral Services to be provided shall be as set out in the relevant Quote.

Local Services

8.16 Authorised Users may access the 'Patient Access' referral or triage screens in EMIS Web to arrange a referral to a local healthcare provider. This is enabled via a clickable button embedded in EMIS Web.

8.17 Clicking the button takes the Authorised User to a page that either supports:

8.17.1 a direct referral to relevant and available services; or

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8.17.2 the use of a triage pathway that the Authorised User can use to ask a series of clinical questions relating to the relevant patient to assist the Authorised User in determining whether (or not) the patient is suitable for referral.

8.18 For suitable patients, both routes set out in clause 8.17 lead the relevant Authorised Users to the referral page, where the local healthcare provider for onward referral may be selected. Where relevant, this will be as agreed with, or selected by, the patient.

8.19 The Customer / Service Recipient can also direct its patients to complete the self-referral triage process by providing its patients with a link to the Website.

8.20 Where self-referral is used:

8.20.1 the patient will be asked to verify that they are registered with the Customer's/Service Recipient's practice and can then complete the relevant clinical questions;

8.20.2 where the patient, based on their responses, is:

8.20.2.1 not eligible for a referral, then they will be unable to proceed and will be advised by email to contact their GP practice, NHS 111 and/or accident and emergency (as appropriate, based on their responses);

8.20.2.2 eligible, the referral will be submitted to the Customer/Service Recipient (as appropriate) for processing, as set out below and the patient will receive an email confirming that the referral has been submitted and is with the Customer/Service Recipient (as appropriate) for review;

8.20.3 patient information is recorded when the patient chooses to make a referral through the Website, to determine their identity and to enable the assessment of the referral. Once this information has been submitted, Optum will process such data on behalf of the Customer/Service Recipient (as appropriate) in accordance with the Agreement. As between the Customer/Service Recipient (as appropriate) and the patient, the capture and use of the data provided is subject to the terms of the Customer's/Service Recipient's (as appropriate) privacy policy;

8.20.4 Optum will search the submitted patient information against the information held in Optum Web and present potential patient match(es) to the Customer/Service Recipient (as appropriate) for review and approval;

8.20.5 the system will display where the submitted patient information matches and/or does not match the information held on EMIS Web. This information is for guidance and assistance only and it is the Customer's / Service Recipient's responsibility to ensure that the identity of the patient is properly verified, notwithstanding the information which may be retrieved from EMIS Web;

8.20.6 once the Customer/Service Recipient (as appropriate) has confirmed the patient's identity the Customer/Service Recipient (as appropriate) will be able to either:

8.20.6.1 confirm the referral and appointment and send the referral to the selected local healthcare provider. This will automatically file the referral to the selected patient's record and send the referral to the pharmacy (or other healthcare provider) selected by the patient for the appointment to be booked, or alternatively the referral may be rejected by the local healthcare provider; or

8.20.6.2 reject the referral. This will automatically send the patient an email confirming that the referral has been unsuccessful and advising the patient to contact the Customer/Service Recipient (as appropriate).

8.21 Sending the referral will result in the following actions:

8.21.1 Secure ITK/BaRS referral sent to the relevant local healthcare provider delivering the referred service; and

8.21.2 communication sent (by email and/or SMS) on behalf of the relevant healthcare provider to the patient to provide information on direction of the referral along with a reference ID to present at the local healthcare provider on arrival. This identifies them as a 'referred patient' when engaging with the relevant local healthcare provider.

8.22 In respect of use of the Local Service by the Customer / Service Recipient (as appropriate) it is agreed and acknowledged that:

8.22.1 the Customer / Service Recipient (as appropriate) will be responsible for ensuring that the triage functionality is used appropriately and that Authorised Users with access to the same are adequately trained and supported in its use;

8.22.2 the triage screens are intended to aid and supplement, not substitute for, the expertise and judgment of those using the triage screens and if they are being used by anyone other than an appropriate healthcare professional, then it is the responsibility of the Customer / Service Recipient (as appropriate) to ensure that such Authorised Users are being appropriately supervised, monitored and supported;

8.22.3 the services are provided on the basis that the healthcare professionals at the Customer / Service Recipient (as appropriate) are responsible for patient care and will retain full and sole responsibility for patient care (and whether a referral to a local healthcare provider or otherwise is appropriate in the circumstances); and

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8.22.4 it is the Customer / Service Recipient (as appropriate), and not Optum (or any of its sub-contractors) that is providing triage services to the patients.

8.23 Optum shall have no liability to the Customer or any Service Recipient in the event that they fail to appropriately use the Services in accordance with these Master Terms.

8.24 Where the patient submits information via the Website, it is acknowledged that the patient may have changed their personal information (such as mobile phone number or home address) or may submit incorrect or inaccurate information, and so this information may not match the information held in the patient's record in EMIS Web. Optum will use its reasonable endeavours to find the most relevant patient match however it does not guarantee that this will always be correct. The Customer/Service Recipient (as appropriate) shall be responsible for verifying the identity of the patient and/or the details they have submitted via the Website and updating their record in EMIS Web where appropriate. Optum shall have no liability for any incorrect or incomplete information submitted by the patient, or for any failure of the Customer / Service Recipient (as appropriate) to properly verify the identity of the patient before sending a referral and taking any other action.

8.25 The Customer acknowledges that the provision of the Website and its functionality is free of charge and agree that any support and maintenance arrangements agreed with Optum shall not apply to this service. Optum shall use its reasonable endeavours to review and evaluate any issues or bugs which are brought to its attention through the usual support channels.

8.26 Following the submission of any referral(s), Optum will use its reasonable endeavours to provide the following (or an equivalent thereof) to the local healthcare provider receiving the referral:

8.26.1 the ITK/BaRS referral presents in the service screen of PharmOutcomes at the relevant local healthcare provider;

8.26.2 the local healthcare provider is alerted of the referral receipt via management email or PharmAlarm if present;

8.26.3 the local healthcare provider team member can drop, accept or complete the referral;

8.26.4 on completion, the PharmOutcomes user uses structured follow-up to record the intervention. This forms the clinical record;

8.26.5 saving the follow-up supports post event message back to the Customer/Service Recipient (as appropriate) to inform of service outcomes;

8.26.6 saving intervention information provides real time reporting for the Customer; and

8.26.7 (if relevant) saving the follow-up record manages the care provider's claim for service provision via FHIR message sent to MYS managed by the NHS Business Services Authority.

Integration Services

8.27 Before permitting an Integration Tool to be used with an external system, Optum may require such system(s) to be assured in accordance with Optum's assurance processes at the relevant time. During the Term, Optum may require that the relevant system is re-assured at any time, particularly in the event that any changes are made to the relevant system that might impact on the Integration Tool's functionality, reliability or use.

8.28 In the event that the external system ceases to be assured or fails assurance, Optum may suspend or terminate the use of the relevant Integration Tool by the Customer, the Service Providers and/or any other relevant third parties.

8.29 In the event that the relevant external system is owned or operated by, or licenced to, the Customer, the Customer must not:

8.29.1 use the Integration Tool(s) in relation to any immoral, fraudulent or illegal purpose or for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to Optum's reputation;

8.29.2 use the Integration Tool(s) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);

8.29.3 misuse the Integration Tool(s) and through it the System or the relevant Optum System by knowingly introducing viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful;

8.29.4 attempt to gain unauthorised access to the Integration Tool(s) and through it the System or any relevant Optum System, the server(s) on which the Integration Tool(s) and through it the System or any relevant Optum System is hosted or any server, computer or database connected to the Integration Tool(s) and through it the System or any relevant Optum System; or

8.29.5 attack the Integration Tool(s) and through it the relevant Optum System via a denial-of-service attack or a distributed denial-of service attack.

By breaching the terms of clauses 8.29.3 to 8.29.5 of this provision, you may be committing a criminal offence under the Computer Misuse Act 1990. Optum will report any such breach to the relevant law enforcement authorities and Optum will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use

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the Integration Tool(s) and through it the System and any relevant Optum System will cease immediately.

8.30 You must ensure that if the Integration Tool(s) is updated (as notified by Optum from time to time) then you make (as soon as is reasonably practicable) such consequential modifications (if any) as are necessary within the external system such that they continue to interoperate with the Integration Tool. If you fail to comply with this clause then Optum may suspend assurance in respect of the relevant external system.

8.31 In the event that the relevant external system is not owned or operated by, or licenced, the Customer, Optum may require that the Customer procures that the relevant third party owner complies with the provisions of clauses 8.29 and 8.30 and Optum shall be entitled to hold the Customer responsible for such third party's compliance with the same.

Consultancy Services

8.32 In the event the Quote specifies that Optum will provide the Customer with Consultancy Services:

8.32.1 such Consultancy Services shall be provided using reasonable skill and care;

8.32.2 Optum shall use its reasonable endeavours to meet and deadlines or dates for delivery, and time shall not be of the essence in terms of Optum provision of the Consultancy Services; and

8.32.3 the Customer shall provide Optum will all such necessary access (including to the Sites), assistance and information as Optum may reasonably request in relation to the Consultancy Services, and should the Customer fail to do so and such failure prevents Optum from delivering the Consultancy Services (in whole or in part) Optum shall have no liability for any non-delivery of the Consultancy Services and the Customer shall remain liable to pay Optum for any Charge(s) which would payable for the provision of the Consultancy Services by Optum.

System/Solution Fair Usage Policy

8.33 Use of the System and/or any Solutions and/or any Optum System is conditional on compliance with the following obligations (the "**Fair Use Policy**"):

8.33.1 the System/Solution(s) and/or any relevant Optum System will be used only in accordance with the terms of the Agreement;

8.33.2 use of the System/Solution(s) and/or any relevant Optum System by the Customer must not (effectively) cause a denial of service for other users through excessive, prolonged and/or continual usage or otherwise; and

8.33.3 there must be no attempts to interfere with, disrupt, or disable any features of the System and/or relevant Solution(s) and/or any relevant Optum System.

8.34 Without prejudice to any other rights available to it, if Optum (acting reasonably) identifies any actual or apparent breach of the Fair Use Policy then Optum may immediately (and where necessary without notice) suspend the Customer's access to the System and/or relevant Solution(s) and/or relevant Optum System pending an investigation into the same.

Medical Devices

8.35 Certain of the Solutions, Templates and/or Services, or elements thereof (including the triage functionality in the Referral Service and the QRISK tool), constitute a Medical Device and are displayed with appropriate CE marking. The Customer shall not:

8.35.1 amend any of the Templates, Solutions, Services or elements thereof which constitute a Medical Device without the prior written consent of Optum; or

8.35.2 utilise any Medical Device made available by Optum available through the Templates, Solutions and/or Services other than as provided and/or directed by Optum; or

8.35.3 use any such Medical Device as part of any Template, other than as specifically provided for / agreed by Optum.

8.36 The Customer shall be deemed the manufacturer, and shall ensure compliance with the MD Rules and Regulations in respect, of any Medical Device which it creates, or has created on its behalf (whether by Optum or a third party) (each a "**Customer Medical Device**"). The Customer shall indemnify and hold Optum harmless against any liability, loss, damages, costs or expenses arising from or in connection with any Customer Medical Device or the Customer's non-compliance with the MD Rules and Regulations.

9. SUPPORT

9.1 Optum shall, during the Term, use its reasonable endeavours to provide the Support Service(s) in accordance with Schedule 1 to these Master Terms.

9.2 On raising an incident for resolution by Optum, the Customer shall provide Optum with all relevant information (including, the Minimum Data Set) as requested by Optum.

9.3 The Customer acknowledges that Optum will be unable to investigate and resolve an incident without the relevant information (including, the Minimum Data Set) and agrees that any timescales

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for resolution of an incident shall be paused until Optum receives the same. For the avoidance of doubt, the period during which the timescales are paused shall be disregarding in calculating the availability of the Services and/or System.

10. CHARGES AND PAYMENT

10.1 In consideration of the provision of the System and relevant Service(s), Goods and/or Solution(s) by Optum, the Customer shall pay the Charges as set out in the relevant Quote(s) (as may be amended in writing from time to time in accordance with the terms of the Agreement).

10.2 Save as expressly provided for in the relevant Quote, all Charges are payable in advance (with the frequency being detailed in the Quote (or in the absence of any such detail, annually in advance)) and on the dates specified in the Quote (or in the absence of any such detail, on the date on which the relevant Quote is entered into and each anniversary thereof).

10.3 In the event that an Quote provides for payment upon receipt of an invoice, then the Customer shall pay each undisputed invoice in full and in cleared funds, within thirty (30) days of the date of such invoice to a bank account nominated in writing by Optum (save that, if Optum appoints an authorised reseller (as detailed in clause 3.3) then it may (at its discretion) instruct the Customer to pay the relevant Charges to the relevant reseller rather than directly to Optum (and it may cancel any such instruction at any time by notice in writing)).

10.4 Subject to any fixed pricing agreed in the relevant Quote, Optum may adjust the Charges:

10.4.1 by Indexation at the end of each relevant Index Year to reflect the effects of inflation; and/or

10.4.2 on written notice from the Customer of the applicable increase, pro-rata until the end of the Initial Licence Term or Renewal Licence Term (as relevant), and then at full price for any Renewal Licence Term thereafter, to account for any increase in Sites benefitting from the Service(s) and/or Solution(s) where such increase is more than 5% of the number of Sites at the Commencement Date (or relevant Licence Start Date), or the date that Optum last increased the Charges pursuant to this clause 10.4.2. This adjustment may take place at any time during the relevant Licence Term. In the event that the Customer fails to provide Optum with written notice of any applicable increase in Sites pursuant to this clause 10.4.2, Optum may retrospectively charge the Customer for the total increased number of Sites for the full duration of the Licence Term of Renewal Licence Term (and, for the avoidance of doubt, each Renewal Licence Term thereafter).

10.5 For the avoidance of doubt all Charges are exclusive of VAT, which Optum shall add to its invoices at the appropriate rate.

10.6 Optum may increase the price of any Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Optum that is due to any factor beyond the control of Optum (including, any increase in price imposed by the relevant third party manufacturer).

10.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Optum on the due date, Optum may:

10.7.1 charge interest on such sum from the due date for payment at the annual rate of four percent (4%) above the base lending rate from time to time of Clydesdale Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand (or, Optum may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or

10.7.2 demand payment of the overdue Charges and, if such Charges are not paid within 10 Business Days of the date of demand, suspend use of the System and/or all Service(s), the delivery of any Goods and any licence to use (and access) any Solution(s), without any liability to the Customer, unless or until payment has been made in full.

10.8 Notwithstanding any provision in the Agreement to the contrary, all sums payable to Optum under the Agreement shall become due immediately on its termination. This clause 10.8 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

10.9 If Optum is unable to deliver the System and/or any Service(s) ordered by the Customer (including, installation services, support service or training services) due to any act or omission on the part of the Customer and/or any relevant Service Provider (including, as a result of Sites being unsafe or the unavailability of the relevant members of the Customer's staff) then Optum shall be entitled to charge the Customer in respect of any time spent attempting to deliver the same (in addition to any charges due in respect of any replacement Service(s) provided).

10.10 Optum may, without prejudice to any other rights it may have, set off any liability of the Customer to Optum against any liability of Optum to the Customer.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 In the event that new software, inventions, designs or processes evolve in performance of, or as a result of delivering the Service(s) (including, any consulting services) or providing the System or Solution(s), the Customer acknowledges that the same shall be the property of Optum.

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11.2 All Intellectual Property Rights and all other rights subsisting in the System and any Solution(s), Goods, Service(s) and/or any Optum Materials and/or relevant Optum System shall remain exclusively with Optum (or its third party licensor(s) as appropriate) and the Customer shall have no rights in or to the same other than the right to use the same in accordance with the terms of the Agreement.

11.3 The Customer acknowledges that where Optum does not own the Intellectual Property Rights in the System or any Solution(s) or Optum Materials, then the Customer's use of the System or such Solution(s) or Optum Materials shall be conditional on Optum obtaining the necessary licence(s) from the relevant licensor(s) of such materials on such terms as will entitle Optum to sub-license such rights to the Customer.

11.4 The Customer shall not remove or alter any copyright or trade mark notices included in the System or any Solution(s), Goods or Optum Materials and it shall reproduce the same in any and all copies which it may make in accordance with the terms of the Agreement.

11.5 In the event a claim, relating to the infringement of any third party rights, is made, or in Optum's reasonable opinion is likely to be made, against the Customer in relation to any of the System, Solution(s), Service(s) and/or Optum Materials, Optum may, at its sole option:

11.5.1 procure for the Customer the right to continue to use the relevant Solution(s), Service(s) and/or Optum Material(s) in accordance with the terms of the Agreement;

11.5.2 modify the relevant Solution(s), Service(s) and/or Optum Material(s) so that it ceases to be infringing;

11.5.3 replace the relevant Solution(s), Service(s) and/or Optum Material(s) with non-infringing materials; or

11.5.4 terminate the Agreement immediately by notice in writing to the Customer.

11.6 Optum shall defend the Customer in relation to any claim that the System, Service(s), Good(s) or Solution(s) or the Customer's use thereof infringes the Intellectual Property Rights of any third party, provided that:

11.6.1 Optum is given prompt notice of any such claim;

11.6.2 use of the System, Service(s), Solution(s) and/or Good(s) is in accordance with the terms of the Agreement;

11.6.3 the Customer provides reasonable co-operation to Optum in the defence and settlement of such claim, at Optum's reasonable expense; and

11.6.4 Optum is given sole authority to defend or settle the relevant claim.

12. CONFIDENTIALITY

12.1 Each party receiving Confidential Information belonging to the other party shall:

12.1.1 hold all Confidential Information in strict confidence and keep it secure, applying to any Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (and in any case not less than a reasonable standard of care);

12.1.2 seek to access Confidential Information, and use Confidential Information, in each case only:

12.1.2.1 for the purpose of performing its obligations under the Agreement; and

12.1.2.2 in accordance with the Agreement;

12.1.3 specifically refrain from seeking to access Confidential Information, and from using Confidential Information, for its own or any third party's benefit or in any other manner not authorized in writing by the disclosing party;

12.1.4 disclose, or permit access to, Confidential Information only to persons who are its employees, or its independent contractors, who both:

12.1.4.1 have a need to know the Confidential Information in order to give effect to the Agreement or advise in connection with it (or both); and

12.1.4.2 are subject to nondisclosure obligations substantially similar to those of the Agreement,

12.1.5 accept responsibility for any access to, use, or disclosure of any Confidential Information in violation of the terms of the Agreement and to take such steps as may be required by applicable law to enforce this obligation;

12.1.6 return to the disclosing party (or, at the disclosing party's request, destroy in such manner as not to allow its re-creation and confirm to the disclosing party the receiving party's compliance with this obligation) within fourteen (14) days of the expiry (or earlier termination) of the Agreement (or the relevant Quote or such earlier date as the disclosing party may reasonably request) all materials (in writing or otherwise, including copies) containing any Confidential Information; and

12.1.7 promptly notify (where it is permitted to do so by law) the disclosing party if the receiving party is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing party may if it chooses seek an appropriate protective order.

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12.2 Notwithstanding clause 12.1, a receiving party's obligations of confidentiality contained in the Agreement shall not apply:

12.2.1 to the extent required by law (including under the FOIA), by any court of competent jurisdiction, or by an official regulatory body provided that the receiving party:

12.2.1.1 where it is legally permitted to do so, gives the disclosing party as much notice as is reasonably possible of the disclosure;

12.2.1.2 provides reasonable assistance in contesting the required disclosure at the request and cost of the disclosing party; and

12.2.1.3 discloses only the minimum Confidential Information necessary to comply with its legal obligations; or

12.2.2 to information that:

12.2.2.1 at the time of disclosure was in the public domain or comes into the public domain other than through breach of the Agreement by the receiving party;

12.2.2.2 was known by the receiving party (as established by its own records or other competent proof) before it received the Confidential Information, or was exposed to it, or had the ability to access it; or

12.2.2.3 is lawfully disclosed to the receiving party by a third party acting in good faith and not bound by a confidentiality obligation.

12.3 The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of seven (7) years following the termination or expiry of the Agreement.

12.4 The parties acknowledge that either party's breach of this clause 12 may cause the other party irreparable injury for which damages would not be an adequate remedy. Therefore, in the event of such breach, the non-breaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.

12.5 Without prejudice to clause 12.1.6, Optum shall, where promptly requested by the Customer, within thirty (30) days of the expiry (or earlier termination) of the Agreement for any reason (or such earlier date that the Customer may reasonably request), applying its standard Charges in respect of such Service(s):

12.5.1 return, in an industry standard format, a copy of any Customer Data that it (or its subcontractors) is electronically storing (or is under its (or its subcontractors') possession or control);

12.5.2 following the Customer's confirmation of receipt of the returned Customer Data referred to above, delete or destroy, in accordance with its standard operating procedures, the relevant Customer Data; and

12.5.3 notify the Customer, in writing, that the relevant Customer Data have been successfully returned and destroyed in accordance with this clause 12.5.

13. LIMITATIONS OF LIABILITY

13.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 13, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

13.2 This clause 13 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, third party licensor(s) and subcontractors) to the Customer in respect of:

13.2.1 any breach of the Agreement;

13.2.2 any use made by the Customer of the System, Service(s), the Goods and/or Solution(s) (or any part of them) and/or any relevant Optum System; and

13.2.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

13.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement (including, any terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982).

13.4 Nothing in the Agreement limits or excludes the liability of either party for:

13.4.1 death or personal injury resulting from negligence;

13.4.2 any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or

13.4.3 any liability which cannot be excluded or limited pursuant to applicable law.

13.5 Subject to clause 13.4, Optum shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

13.5.1 loss (whether direct or indirect) of revenue or profits;

13.5.2 loss (whether direct or indirect) of business opportunity;

13.5.3 loss (whether direct or indirect) of goodwill or injury to reputation;

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13.5.4 loss (whether direct or indirect) of anticipated savings;

13.5.5 loss (whether direct or indirect) of, or corruption to, any data;

13.5.6 wasted expenditure (whether direct or indirect); or

13.5.7 indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement (including, pursuant to any Quote).

13.6 Subject to clause 13.4 and clause 13.5, Optum's (and its affiliates and sub-contractors) total aggregate liability (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise) arising out of or in connection with the Agreement:

13.6.1 in respect of all claims arising in any Contract Year in respect of a specific Solution, Goods or Service will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to Optum under the relevant Quote in that Contract Year (or in respect of any and all such claims arising after the relevant Quote has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid and/or due to be paid in the final twelve (12) months of the relevant Quote); and

13.6.2 in respect of all other claims arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to Optum under the Agreement in that Contract Year (or in respect of any and all claims arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid or due to be paid in the final Contract Year of the Agreement).

13.7 For the avoidance of doubt, if Optum appoints an authorised reseller and the Customer pays the Charges to the reseller (rather than directly to Optum) then the relevant Charges paid to the reseller shall apply for the purposes of determining the appropriate limits under clause 13.6.

13.8 For the avoidance of doubt, the terms of clauses 13.4 to 13.6 shall apply equally to any claim brought against any third party licensor of Optum (with those clauses being read as though a reference to Optum were to the relevant licensor) whose solution(s) or service(s) are provided to the Customer under the Agreement (and such third party may rely upon and enforce the same in accordance with the terms of the Agreement and the Contracts (Rights of Third Parties) Act 1999.

13.9 Optum recommends that the Customer obtains appropriate business continuity (or other) insurance cover in order to protects its business in the event that there is any issue with the delivery of the System or any Service(s) and/or Solution(s).

13.10 The Customer shall procure that the relevant terms of the Agreement are brought to the attention of the Service Recipients and shall be responsible for ensuring the Service Recipients compliance with the same. As between Optum and the Customer, the Customer agrees and acknowledges that it shall, at all times, remain responsible for the actions and omissions of all Service Recipients and, to the extent that such actions or omissions would breach the terms of the Agreement, this shall constitute a breach on the part of the Customer.

13.11 Optum shall have no liability to the Customer and/or any Service Providers in relation to any of the information or data that is inputted into the System (via Templates or otherwise) by those parties. Optum gives no warranty in relation to the accuracy of any such data and the Customer shall hold Optum harmless in relation to any claims or losses arising out of Optum using inaccurate or incomplete data/information when discharging its obligations under the Agreement.

14. DATA, DATA PROTECTION & SECURITY

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Optum is the Processor.

14.3 The parties further acknowledge that Optum may process Personal Data under the EULA in connection with this Agreement and that the EULA shall govern such processing. The applicable Service Provider shall be the Controller of Personal Data inputted into the System by such provider and Optum shall be that Service Provider's Processor. The Customer acknowledges that Optum may be required to amend, delete, update or otherwise process any Personal Data to the extent necessary for Optum to comply with an Service Provider's processing instructions under a EULA. As such, for the avoidance of doubt, the Customer hereby instructs Optum to amend its version of the Personal Data shared within the System in accordance with such amendments as have been made by the relevant Service Provider(s). In the event that the Customer has any queries or concerns regarding such changes, the Customer agrees it shall be responsible for discussing this directly with the relevant Service Provider and not Optum.

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14.4 Annex 1 sets out the scope, nature and purpose of processing by Optum under this Agreement, the duration of the processing and the types of Personal Data and categories of Data Subject.

14.5 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to the Optum for the duration and purposes of the Agreement.

14.6 Optum shall, in relation to any Personal Data processed in connection with the performance by Optum of its obligations under the Agreement:

14.6.1 process that Personal Data on the written instructions of the Customer (unless otherwise required by law under which circumstances we will notify you before processing such data, where the law permits such notice);

14.6.2 immediately notify the Customer if, in Optum's opinion, such instruction(s) infringes the Data Protections Laws;

14.6.3 ensure that it has in place appropriate technical and organisational measures, as may be reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

14.6.4 ensure the reliability and integrity of personnel who have access to and/or process Personal Data;

14.6.5 not transfer any Personal Data outside of the UK or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

14.6.5.1 the Customer or Optum has provided appropriate safeguards in relation to the transfer;

14.6.5.2 the Data Subject has enforceable rights and effective legal remedies;

14.6.5.3 Optum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

14.6.5.4 Optum complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

14.6.6 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

14.6.7 notify the Customer without undue delay on becoming aware of a Personal Data breach and, where feasible, not later than 48 hours after becoming aware of it;

14.6.8 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this agreement unless required by law to store the Personal Data; and

14.6.9 allow for audits by the Customer or the Customer's designated auditor in respect of Optum's data processing activities under this agreement.

14.7 For the avoidance of doubt, Optum may appoint a sub-processor in relation to its obligations under the Agreement, provided that it shall remain responsible for ensuring that it imposes on any such sub-processor obligations equivalent to the Agreement and it will remain liable for any acts or omissions of any such sub-processor. A list of Optum's material sub-processors as at the date of this Agreement is set out here: https://www.optum.co.uk/tech-enabled-services/legal/ (in respect of which for the avoidance of doubt, the Customer hereby gives its written authorisation). Any objection to an amendment to the list of sub-processors may be escalated for discussion within 10 days after receipt of a notification of any change (such notification to include the list of material sub-processors being updated on the webpage provided above). If the parties are (acting reasonably) unable to resolve the objection and Optum informs the Customer that it nevertheless intends to appoint the relevant sub-processor then the Customer may either: (i) accept the change; or (ii) terminate this Agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, Optum will refund any unused prepaid Charges).

14.8 The Customer shall ensure that, throughout the Term, it has all necessary rights, consents and permissions (including from any Data Subjects) such that Optum's processing of any Customer Data in accordance with the terms of the Agreement will not breach any third party rights or relevant law.

14.9 In the event of any loss of, or damage to, any Customer Data, Optum shall use its reasonable endeavours to restore the lost or damaged Customer Data from the latest backup version of the Customer Data available to it. If the loss or damage was caused by Optum then it shall undertake such restoration at its own cost and expense and in any other circumstances it shall be entitled to charge the Customer in respect of any time spent at its then standard rates.

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14.10 Optum may, from time to time, extract Transaction Data in respect of the Customer's use of the Solution(s) and/or Services it may use that Transaction Data (either alone or amalgamated with data extracted from other customers) for its own internal business purposes or it may make the same available to third parties (including, to regulators and manufacturers). For the avoidance of doubt, the Transaction Data shall not include any Personal Data.

15. TERMINATION

15.1 Termination of an individual Quote (by providing the necessary notice under clause 2.1 or under this clause 15) shall result in the termination of the relevant Service(s) and/or Solution(s) detailed in the relevant Quote but shall not, in itself, result in the termination of the Agreement or any other Quote.

15.2 In the event that the provision of all Good(s), Services and/or Solutions under the Agreement are terminated pursuant to the relevant Quote(s) then either party may give not less than one month's notice in writing to the other party to terminate the Agreement.

15.3 In the event that the Agreement is terminated by either party in accordance with clause 2.1, the parties agree that all existing Quotes as at the date of the notice of termination shall continue until the end of the Initial Licence Term or Renewal Licence Term (as appropriate) and shall thereafter terminate.

15.4 No Charges paid by the Customer pursuant to the Agreement shall be refundable by Optum on termination of the relevant Service(s) or Solution(s) except if caused by Optum's breach in which case Optum will refund a pro rata amount of any relevant Charges paid in advance by the Customer for the relevant Service(s) or Solutions(s).

15.5 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement (and/or the relevant Quote(s)) without liability to the other immediately on giving written notice to the other if:

15.5.1 the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and it remains in default not less than ten (10) Business Days after being notified in writing to make such payment;

15.5.2 the other party commits a material breach of any of the terms of the Agreement provided, if such a breach is remediable, the party in breach fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or

15.5.3 the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).

15.6 In the event that the Customer wishes (for operational reasons or otherwise) to terminate the Agreement (or any individual Quote) early for convenience then it may request that Optum consent to such termination (such consent not to be unreasonably withheld, provided always that the Customer pays to Optum any Charges due to be paid, or which would be due to be paid had the Agreement (or the relevant Quotes) not been terminated early).

15.7 From time to time, Optum may deem it necessary to discontinue (or '**sunset'**) certain Solutions and/or Services or part thereof for reasons including product enhancement, upgrade or end of life or end of support (each a "**Discontinued Service**").

15.8 In the event of a Discontinued Service, Optum will use its reasonable endeavours (taking into account factors including any notice received from any relevant third party vendor or licensor) to notify you in advance of the discontinuance and any key details relating to the relevant Discontinued Service including, where applicable, the dates of any end of support or licence.

15.9 Notwithstanding the term of the relevant Quote, Optum may terminate a Discontinued Service (including the relevant Quote and/or licence to use a Service or Solution) at any time and shall use its reasonable endeavours to give you not less than three (3) months' prior written notice. If Optum introduces an alternative or replacement service in respect of any Discontinued Service then it will endeavour to make the same available to you (on the terms relevant to that service).

15.10 If Optum agrees to continue to provide you with any support or related services in respect of a Discontinued Service then such services will be provided on an 'as is' basis and for such period as Optum confirms it is willing to deliver the same. If the relevant service is dependent on any third party input then you accept that the relevant third parties' support to Optum's efforts to resolve an issue may be limited or nil.

15.11 On termination of the Agreement (or on termination of an Quote) for any reason:

15.11.1 the Customer shall immediately pay to Optum any and all outstanding unpaid invoices and interest and, in respect of any relevant Service(s), Goods and/or Solution(s) supplied but for which no invoice has been submitted, Optum may submit an invoice, which shall be payable immediately on receipt; and

15.11.2 the Customer shall immediately destroy or return to Optum (at Optum's option) all relevant Optum Materials and/or Solution(s)) then in its possession, custody or control and, in the case of

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destruction, certify to Optum that it has done so. Until they have been returned or destroyed, the Customer shall be solely responsible for their safe keeping.

15.12 Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will:

15.12.1 be without prejudice to any obligation or right of any party which has accrued prior to such expiry or termination (or will thereafter accrue in respect of the period before such expiry or termination); and

15.12.2 not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

15.13 Without prejudice to the generality of clause 15.12, the provisions of clauses 11, 12, 13, 14, 15, 17, and 25 will survive expiry or termination of the Agreement for any reason.

16. CORRUPT GIFTS AND PAYMENT

Each party shall ensure that it (and any person associated with it in connection with the Agreement) shall refrain from committing, facilitating, encouraging or allowing a Prohibited Act. Each party shall be responsible for any Prohibited Act carried out by any person associated with it in connection with the Agreement.

17. AUDIT

17.1 Optum shall have the right (upon giving reasonable notice and within normal business hours) to inspect the Customer's use of the relevant Solution(s) and/or Service(s) (whether physically or remotely) and its compliance with the terms of the Agreement.

17.2 Optum may perform an inspection under clause 17.1:

17.2.1 either itself (e.g. through an internal auditor) or through an external auditor; and

17.2.2 no more than once per year (and once during the twelve (12) months immediately following the termination or expiry of the Agreement) unless a breach of the Agreement or of security has occurred in which case a further inspection may take place.

17.3 Optum shall use its reasonable endeavours to ensure that the conduct of any inspection does not unreasonably disrupt the business of the Customer.

17.4 The Customer shall provide such access and assistance (and access, including, remote access, to the relevant Sites, records and/or systems) as Optum may reasonably require in connection with any inspection or audit. Each party shall bear its costs of preparing for and undertaking an inspection pursuant to clause 17.1.

17.5 If an inspection pursuant to clause 17.1 finds material irregularities, errors or non-compliance by the Customer then, without prejudice to any other remedies available to Optum, the Customer shall promptly remedy the same.

18. FORCE MAJEURE

Neither party shall have any liability to the other party under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of Optum or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, pandemic or epidemic, 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 suppliers or subcontractors.

19. VARIATION

19.1 Without prejudice to clause 5.5, Optum may, from time to time, amend the terms of the Agreement by updating these terms online. If, in Optum's reasonable opinion, any change to the terms would have a material adverse effect on the Customer then Optum shall give not less than thirty (30) days' notice in writing of the relevant amendment and the Customer may, at any time within sixty (60) days of receiving the relevant notice, terminate the Agreement by giving one (1) months' notice to Optum during which time the original terms shall apply (unless, during that one (1) month period Optum gives notice that it is withdrawing the proposed variation in respect of the Customer in which case the Agreement shall continue as drafted in full force and effect).

19.2 Subject to clause 19.1, no variation of the Agreement or of any of the documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

19.3 Additional Service(s) and/or Solution(s) may be added to the Service(s) and/or Solution(s) provided by Optum to the Customer under the Agreement by both parties entering into new Quotes each of which shall be subject to and be incorporated into (and form part of) the Agreement.

20. WAIVER

20.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of

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such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

20.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

21. SEVERANCE

Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (an "**Ineffective Provision**"), such Ineffective Provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provisions or the remaining provisions of the Agreement. The parties agree to attempt to substitute for any Ineffective Provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the Ineffective Provision.

22. ENTIRE AGREEEMENT

22.1 Without prejudice to clause 2.5, the Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

22.2 Each party represents and agrees that in entering the Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of the Agreement.

22.3 Where the Customer's Service Providers/Sites are using the System, Solution(s) or Services in accordance with any relevant Quote then, in the event that there is any conflict or inconsistency between a term in an Quote, any term in these Master Terms and the EULA the following order of precedence shall apply, unless the parties expressly agree otherwise in writing:

22.3.1 Quote;

22.3.2 these Master Terms; and

22.3.3 the EULA.

22.4 Where the Customer, or any of its employees, are using the System to deliver/participate in a service commissioned by a different customer of Optum (i.e. where the Customer's employees are pharmacists inputting information into the System in respect of a service commissioned by a local CCG as opposed to the Customer itself), then the EULA shall apply to such use of the System to the exclusion of the Agreement.

22.5 Nothing in this clause 22 shall limit or exclude any liability for fraud.

23. ASSIGNMENT AND THIRD PARTY RIGHTS

23.1 The Customer shall not, without the prior written consent of Optum, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

23.2 Optum may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under this and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

23.3 Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

23.4 Subject to clause 13.8, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, the Agreement. For the avoidance of doubt, the terms of the Agreement may be varied pursuant to clause 19 without reference to any third party.

24. NOTICES

24.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at such address as may have been notified by that party for such purposes. Notices may also be sent by email where agreed between the parties to such email address as may have been nominated by the relevant party. Emails to Optum should be sent for the attention of Legal Counsel to uk.contracts@optum.com

24.2 A notice delivered by hand (or by email (where permitted)) shall be deemed to have been received when delivered (or if delivery is not during Optum's normal working hours, at 9:00am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

24.3 All notices sent to Optum shall be marked for the attention of Legal Counsel.

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25. DISPUTE RESOLUTION; GOVERNING LAW AND JURISDICTION

25.1 Any dispute arising out of or in connection with the Agreement (each a "**Dispute**") shall be referred by either party first to representatives of each of the parties for resolution.

25.2 If the Dispute cannot be resolved by the relevant representatives of the parties within ten (10) Business Days after the Dispute has arisen, either party may give notice to the other party in writing (each a "**Notice**") that a Dispute has arisen.

25.3 Within ten (10) Business Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Optum and the Customer for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Business Days after the date of the Notice, then each party shall be entitled to pursue such remedies as may be available to it under the Agreement or otherwise at law or in equity. This clause 25 is without prejudice to either party's right to seek interim relief against the other party (such as injunction) through local courts, as defined herein, to protect its rights and interests, or to enforce the obligations of the other party.

25.4 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

25.5 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Annex 1

Processing, Personal Data and Data Subjects

Processing by Optum

Purpose of Processing: for the purposes of delivering the System, Solution(s) and/or Services and meeting other obligations specified in the Agreement.

Duration of the Processing: for the term of the Agreement and as required by NHS England guidelines (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the relevant services).

Nature: such processing as is necessary to enable Optum to provide the System, Services and Solutions provided for under the Agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).

Types of Personal Data: data which may be processed under the Agreement includes: names, addresses, dates of birth, NHS numbers, telephone numbers, email addresses and other contact details. In particular it will include special category Personal Data relating to health (including, medical records, images and biometric data).

Categories of Data Subject: data subjects may include: members of the Customer's staff (including those of its associated entities or third party suppliers), other clinical staff with whom the Customer or the relevant patients are interacting (i.e. from the Service Providers), patients and members of the public with whom the Customer is interacting.

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Schedule 1

Service Levels

1. Hours of Business

The core hours of business of Optum are 08:30 to 18:00 on each Business Day ("**Core Hours**").

2. Methods of Communication

The Customer may communicate with Optum's service desk to log an incident via phone on 0345 4506279 during Core Hours. Incidents cannot be validly logged by email, or via Optum's online portal.

3. Service Levels

Optum shall use its reasonable endeavours to meet the target times set out below to resolve (including by way of a workaround) an issue, in accordance with the severity/priority level allocated to it by Optum, acting reasonably.

Severity Level	Description	Target Fix Time (Hours)	Examples
1	Incidents which cause significant business impact and prevent Authorised Users from providing a normal clinical or administrative service. • Complete loss of availability across all customers (including the Customer) • Incorrect processing of data • Incident that poses clinical safety/patient risk	<4 Hours (24x7x365)	• No access to the system for all customers and Authorised Users • Missing data for multiple patients
2	Incidents which cause localised business impact and limit the ability of Authorised Users to provide a normal clinical or administrative service. • Loss of availability at a single customer • Key module of major function unavailable at multiple customers	<8 hours (24x7x365)	• Multiple users at a single site • Key module unavailable for Authorised Users at multiple customers
3	Incidents which cause minor business impact and affect non-critical functions. These would typically be Incidents which: • do not cause disruption of clinical or administrative services; and/or • leave functions available but restrict performance, causing inconvenience but not material disruption	<16 hours (Core Hours)	• Single Authorised User issues • Slow performance
4	All incidents, other than those assigned to Severity Level 1, 2 or 3	<24 hours (Core Hours)	• Non-service impacting errors

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			• Reporting issues
5	Service requests and general enquiries, inclusive of all training queries.	<144 hours (Core)	• Password Resets • Training Requests • "How do I?" questions

The Customer shall provide the relevant information (including, the Minimum Data Set) to Optum on request and shall update this on request from time to time. Any period of time where the relevant information (including, the Minimum Data Set) has been requested by Optum, but not supplied by the Customer shall not be taken into account when calculating the time taken to fix the relevant incident, nor the Availability of the System.

4. Availability

Optum will use its reasonable endeavours to achieve target availability for the Services and the System of 99.5% measured across each Service Period.

The availability is calculated as follows:

(Total Uptime Minutes in Service Period - Total Downtime Minutes in Service Period) / Total Uptime Minutes * 100

5. Planned Maintenance

Optum shall endeavour to provide (whether by posting an announcement on the System or otherwise) a minimum of 5 Business Days' notice of any planned maintenance to the Customer (and the Customer shall notify all Authorised Users) which will disrupt the Service during the hours of 08:00 and 20:00 on any Business Day. Optum shall endeavour to carry out any planned maintenance outside of these hours.

6. Measuring Service Levels and Availability

Optum shall not be liable to the Customer whatsoever in the event that it is prevented from performing all or any of its obligations under this Schedule 1 as a consequence of:

(i) any Customer Cause;

(ii) the Customer's or any of its employees, agents or sub-contractor's actions or omissions; and/or

(iii) any failure on the Customer's part to provide Optum with such reasonable assistance as it may require to fulfil its obligations.

The parties will 'stop the clock' during any period that Optum is unable to fulfil its obligations under this Schedule 1 for any of the aforementioned reasons.

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