

SOLUTION DELIVERY AGREEMENT – ORDER COMMS

This Solution Delivery Agreement is entered into pursuant to the Master Services Agreement (the “MSA”) dated [Insert Date of MSA]

BETWEEN:

1. **Egton Medical Information Systems Limited** a company incorporated in England with registration number 02117205 having its registered office at Fulford Grange, Micklefield Lane, Rawdon, Leeds, LS19 6BA (“**Optum**”); and
2. **[FULL CUSTOMER NAME]** having its registered office at **[REGISTERED OFFICE ADDRESS]** (“**Customer**”).

BACKGROUND

- A. The terms and conditions of this Solution Delivery Agreement comprise the terms and conditions set out below (including the relevant Schedules listed below) together with the relevant terms and conditions of the main body of the MSA (including, clause 14 (limitation of liability), and such terms and conditions are incorporated by reference into this Solution Delivery Agreement, and shall apply to all Optum Solutions and Services forming the subject matter of this Solution Delivery Agreement, to the exclusion of any other terms and conditions
- B. This Solution Delivery Agreement may include some or all of the following Schedules. In order to maintain correct Schedule numbering where a Schedule is not required that Schedule should be left blank and described as not applicable:-

	Summary of Schedules
1	Software Specification
2	Service Description
3	Licensing Terms and Conditions
4	Implementation Activities
5	Dependencies & Supported Environment
6	Support & Maintenance & Service Levels
7	Fees
8	Personnel
9	Agreements required for this Solution Delivery Agreement
10	Details of Personal Data as required by GDPR Article 28.3

- C. In this Solution Delivery Agreement:

Optum Solution Service (as described at Schedule 1 and Schedule 2):	Purchased Y/N	Commencement Date	The Initial Term
tQuest		[INSERT DATE]	[x] Years
Review		[INSERT DATE]	[x] Years
Keystone		[INSERT DATE]	[x] Years

1. Optum Solution and Services

- 1.1. Optum hereby grants the Customer the right to access and use the Optum Solution(s) during the Term of this Solution Delivery Agreement subject always to the terms of this Solution Delivery Agreement (including, the relevant terms of the MSA) and any Licence Restrictions set out in Schedule 3. If the Customer wishes to vary any of the Licence Restrictions then it may do so by following the process set out in clause 10 of the MSA and agreeing with Optum an appropriate adjustment to the Fees shown in Schedule 7.
- 1.2. Optum shall, during the Term of this Solution Delivery Agreement, use its reasonable endeavours to provide the Customer with those Services, if any, set out in Schedule 2 in accordance with any applicable Service Levels set out in Schedule 6.
- 1.3. The Customer consents to Optum appointing those Third Party(ies) detailed in the table below, sub-contractors to act as a third-party processor of Personal Data under this Solution Delivery Agreement. Optum confirms that it has entered into or (as the case may be) will enter into with the third-party processor a written agreement incorporating terms, which are substantially similar to those set out in clause 6 of the MSA. As between the Customer and Optum, Optum shall remain liable for the acts or omissions of any third-party processor appointed by it pursuant to this Solution Delivery Agreement.

Name of sub-contractor	Address of sub-contractor
NHS Digital – MESH and EDT clients.	1 Trevelyan Square, Boar Lane, Leeds West Yorkshire, LS1 6AE
Name of sub-contractor	Address of sub-contractor
Script X	Thp Limited 24 High Street, Saffron Walden, Essex, CB10 1AX
QT Print	23 Clermiston Road, Edinburgh EH12 6XD
InPS Vision	The Bread Factory, 1a Broughton Street, Battersea, London SW8 3QJ
TPP SystmOne	TPP House, 129 Low Lane, Horsforth Leeds, LS18 5PX
Microtest Evolution	Bodmin Head Office, 18 Normandy Way, Bodmin, PL31 1EX
EMIS Web	Egton Medical Information Systems Limited, Fulford Grange, Micklefield Lane Yeadon, LS19 6BA
SSL Certificates	Herald Information Systems, PO Box 429, Epsom, Surrey, KT17 2WX, UK

Name of sub-contractor	Address of sub-contractor
Herald Information Systems - SSL Certificates	Herald Information Systems, PO Box 429 Epsom, Surrey, KT17 2WX

2. Term and Termination

- 2.1. This Solution Delivery Agreement shall commence on the Commencement Date and shall continue for the Initial Term set out in the particulars at the beginning of this Solution Delivery Agreement (subject to any earlier termination in accordance with the terms of this Solution Delivery Agreement (including,

the relevant terms of the MSA)). After the expiry of the Initial Term, this Solution Delivery Agreement shall automatically renew for yearly periods commencing on an anniversary of the Commencement Date unless either party gives to the other an effective notice in writing to terminate this Solution Delivery Agreement at the end of the then current term of this Solution Delivery Agreement, and in order to be effective any such notice must be given not less than ninety (90) days' before the end of the then current term of this Solution Delivery Agreement.

- 2.2. On termination or expiry of this Solution Delivery Agreement for any reason the terms set out in clause 15.3 of the MSA will apply.
- 2.3. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Solution Delivery Agreement without liability to the other if:
- (a) the other party fails to pay any amount due under this Solution Delivery Agreement on the due date for payment and that other party remains in default not less than ten (10) Business Days after being required in writing to make such payment; or
 - (b) the other party commits a material breach of any of the terms of this Solution Delivery Agreement, provided that if such a breach is remediable, the party in breach has failed to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
 - (c) the other party becomes insolvent, is the subject of a winding up order, bankruptcy order or any similar court order for creditor protection or any other proceedings under insolvency or similar laws, or makes an assignment for the benefit of creditors (or any event occurs, or order is made with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).
- 2.4. On termination or expiry of this Solution Delivery Agreement for any reason:
- (d) all licences granted under this Solution Delivery Agreement shall immediately terminate and the Customer shall destroy all copies of the Software within its possession or control;
 - (e) each party shall return and make no further use of any equipment, property, materials and other items belonging to the other party (and all copies of them) which have been provided to it under or pursuant to this Solution Delivery Agreement;
 - (f) the Customer shall for a period of twelve (12) months following termination of this Solution Delivery Agreement be entitled to require access to Customer Data held by Optum (in which event the Customer will reimburse Optum's reasonable expenses incurred in providing such access);
 - (g) the accrued rights of the parties as at termination, or the continuation after termination of any provision of this Solution Delivery Agreement which is expressly stated to survive or which implicitly is intended to survive termination shall not be affected or prejudiced; and
 - (h) Optum shall render reasonable assistance to the Customer (if so requested and at the Customer's expense), to the extent reasonably required by the Customer, to effect an orderly assumption by a replacement contractor of software and support services similar to the Optum Solution and/or Services provided by Optum under this Solution Delivery Agreement.
- 2.5. For the avoidance of doubt, any notice given pursuant to and in accordance with this paragraph 2 of this Solution Delivery Agreement shall be effective to terminate this Solution Delivery Agreement only but shall not terminate the MSA or any other Solution Delivery Agreement.

3. Terms

- 3.1. Defined terms used but not defined herein shall have the meanings give to them in the MSA. In accordance with clause 27 of the MSA, in the event of any conflict between the terms of the MSA and the terms of this Solution Delivery Agreement, the terms of this Solution Delivery Agreement (including its Schedules) shall prevail).
- 3.2. For the purpose of this Solution Delivery Agreement the expression Previous Agreement shall mean [Insert details of any Previous Agreement that is terminated and replaced by this Solution Delivery Agreement].

-----Signature page after the schedules-----

Schedule 1: Software Specification

The Software consists of the following components:

Keystone:

Core Module	Sub Module	Functions
Core Keystone	License	- Acute Trust - Private Organisation
	Electronic Prescribing	Optum Keystone facilitates the creation and sending of electronic results.
Modules		- Pathology – returns the results of blood test electronically in the nationally defined standard to any PMS. - Radiology - returns the results of radiology examinations electronically in the nationally defined standard to any PMS. - Cytology - returns the results of cytological tests/examinations electronically in the nationally defined standard to any PMS. - eDischarge provides seamless handover between secondary and primary care for the ongoing care of patients after their episode of care in hospital. - Pre-Processor – Uses bespoke table lookups to determine what action should be taken for specific data/codes. - File Splitter – Splits reports into separate translation streams dependant on data item being used. - Housekeepers – Moves/Deletes files from the system which are older than a specific number of days. - Activity Reports – Produces reports based on activity within the tQuest system.
Interfaces	Pathology	Bidirectional messaging flow as results are sent out to PMS and acknowledgements can be received.
	Radiology	Unidirectional interface pushing messages out to PMS
	Cytology	Unidirectional and Bidirectional as messages can be sent out and also received and decoded
	Discharge	- A unidirectional interface pushing out messages to - Standard outbound discharge interface sending structured medications and allergies, it can also include a discharge summary document.
Deployment	Project Management	A single point of contact within Optum to manage the overall progress of the project against an agreed plan, including the risks, issues, milestones and invoicing. They will be responsible for the allocation and prioritisation of project resources to deliver to the agreed plan.
	Product Consultancy	Responsible for the overall roadmap and prioritisation of developments for each of Optum's product set. Product managers may also be involved in advising on the configuration of modules, where decisions from customers are required.
	Configuration	The configuration and setup of workflows and modules within each product, as per recommendation from Product Management or Domain Specialists and in line with pre-determined configuration options in the product. Domain specialists, based on an agreement between Optum and the customer, will undertake this configuration.
	Implementation	The installation and configuration of Optum product set, by technical and domain implementation specialists, to an agreed and tested set of installation notes for each release

Core Module	Sub Module	Functions
	Training	Optum trainers will be responsible for the training of customer System Managers and trainers to deliver end user training, following a cascade-training model. Trained System Managers are expected to act as first line support within the Trust, triaging calls before logging with Optum. Trained customer trainers are expected to deliver end user training.
	Data Migration	Responsible for the migration of data from one system to another, where applicable. This team will work with the customer to agree the format of any data upload, and the required customer testing in order to sign off any uploads to a live environment.
	Business Transformation	Optum's Business Transformation team are responsible for managing the customer's transition to new ways of working, where required. Business Transformation consultants will work with customers to accurately map out processes and work with stakeholders to overcome any blockers to moving to a new way of working
	Reporting and analytics	This team will work customer's to ensure that the reporting of any data from Optum's systems is accurate and in line with customer requirements, where applicable. This team may also deliver training to the customer to ensure they have the requisite skills to run and write reports. For customers using third party reporting tools, this team may work with customers to ensure data feeds are accurate.
	Level 1	- Software application support - Monday to Friday prime time - Between the hours of 0900 to 1700 on each Business Day

tQuest

Core Module	Sub Module	Functions
Core tQuest	License	- Small organisation - Medium organisation - Large organisation
	tQuest	Optum Electronic tQuest is launched directly from the practice management system, allowing GPs to quickly order pathology tests and request radiology examinations.
Modules		- Radiology Vetting (Request approval by radiologists) - Radiology Check-in (Record patient attendance by receptionists) - Sampler (Phlebotomy workflow) - Reception Point (Sample reception workflow in lab) - Community Order Printing (Printing labels for District/Community Nurses) - Request Annotator (Manually adding hospital numbers to primary care requests) - Cytology Manager (Managing lists of Smear Takers) - Send Away Printing (Printing sample labels for third party laboratories) - Daughter Tube Printing (Printing labels for aliquot samples) - Radiology Upload Failures (Displays any radiology requests which have failed to send across to RIS system) - tQuest Sampler Module allows sample collectors to print off sample collection test requests locally, without access to a tQuest system
Interfaces		LIMS Interfaces (Upload requests to lab systems). Most are site specific written in Delphi. New ones going in with the Generic Interface written in .Net.

Core Module	Sub Module	Functions
		- RIS Interfaces (Upload requests to radiology systems). Most are site specific written in Delphi. New ones going in with the Generic Interface written in .Net. - ADT Interfaces (Process ADT, rarely used). Most are site specific written in Delphi. New ones going in with the Generic Interface written in .Net. - Patient Lookup Service (Resolve NHS Number to Hospital Number). Typically this is done against Review, sometimes against PAS. - Interlink (Upload request and catalogue data to Review, issue access tokens for Review's Clinical User Interface)
	Discharge medications or full discharge outbound interface	- A unidirectional interface pushing out messages to - Standard outbound discharge interface sending structured medications and allergies, it can also include a discharge summary document.
Deployment	Project Management	A single point of contact within Optum to manage the overall progress of the project against an agreed plan, including the risks, issues, milestones and invoicing. They will be responsible for the allocation and prioritisation of project resources to deliver to the agreed plan.
	Product Consultancy	Responsible for the overall roadmap and prioritisation of developments for each of Optum's product set. Product managers may also be involved in advising on the configuration of modules, where decisions from customers are required.
	Configuration	The configuration and setup of workflows and modules within each product, as per recommendation from Product Management or Domain Specialists and in line with pre-determined configuration options in the product. Domain specialists, based on an agreement between Optum and the customer, will undertake this configuration.
	Implementation	The installation and configuration of Optum product set, by technical and domain implementation specialists, to an agreed and tested set of installation notes for each release
	Training	Optum trainers will be responsible for the training of customer System Managers and trainers to deliver end user training, following a cascade-training model. Trained System Managers are expected to act as first line support within the Trust, triaging calls before logging with Optum. Trained customer trainers are expected to deliver end user training.
	Data Migration	Responsible for the migration of data from one system to another, where applicable. This team will work with the customer to agree the format of any data upload, and the required customer testing in order to sign off any uploads to a live environment.
	Business Transformation	Optum's Business Transformation team are responsible for managing the customer's transition to new ways of working, where required. Business Transformation consultants will work with customers to accurately map out processes and work with stakeholders to overcome any blockers to moving to a new way of working
	Reporting and analytics	This team will work customer's to ensure that the reporting of any data from Optum's systems is accurate and in line with customer requirements, where applicable. This team may also deliver training to the customer to ensure they have the requisite skills to run and write reports. For customers using third party reporting tools, this team may work with customers to ensure data feeds are accurate.

Core Module	Sub Module	Functions
Support Models	Level 1	• Software application support • Monday to Friday prime time • Between the hours of 0900 to 1700 on each Business Day

Review:

Core Module	Sub Module	Functions
Review	License	• Small organisation • Medium organisation • Large organisation
Modules	• Pathology report import • Radiology report import • Discharge report import • Utility (FTP, Housekeepers, File Copy, etc.) • Various custom (reporting, patient index maintenance etc.) • Exporters (Exporting to Keystone)	• Pathology report import - Processes Pathology reports by importing the report data into the Review system. • Radiology report import - Processes Radiology reports by importing the report data into the Review system. • Discharge report import - Processes Discharge reports by importing the report data into the Review system. • Utility (FTP, Housekeepers, File Copy, etc.) ➢ FTP: Downloads/uploads data from the source system to the destination system. ➢ Housekeepers: remove/copy/archive data from the source directory. ➢ File Copy: Moves/copies files from one directory to another. • Various custom (reporting, patient index maintenance etc.) - • Patient Import: Imports patient demographics from the customer PAS system into Review. • Reporting: Generates a report based on whether specific criteria has been completed. • Exporters (Exporting to Keystone) - Exports a copy of the pathology/radiology/discharge report which was received by Review into a destination directory for Keystone/Third Party systems to collect.
Interfaces	• PAS Interface – unidirectional • Port Listener • Port Talker • SMTP Mailer • Service Watcher • Database Watcher	• A unidirectional interface accepting messages from PAS/TIE • Receive HL7 messages via MLLP • Send HL7 messages via MLLP • Send SMTP Mail • Monitor, restart other Services • Monitor database availability/activity
	Discharge medications or full discharge outbound interface	• A unidirectional interface pushing out messages to • Standard outbound discharge interface sending structured medications and allergies, it can also include a discharge summary document.
Deployment	Project Management	• A single point of contact within Optum to manage the overall progress of the project against an agreed plan, including the risks, issues, milestones and invoicing. They will be responsible for the allocation and

Core Module	Sub Module	Functions
		prioritisation of project resources to deliver to the agreed plan.
	Product Consultancy	Responsible for the overall roadmap and prioritisation of developments for each of Optum's product set. Product managers may also be involved in advising on the configuration of modules, where decisions from customers are required.
	Configuration	The configuration and setup of workflows and modules within each product, as per recommendation from Product Management or Domain Specialists and in line with pre-determined configuration options in the product. Domain specialists, based on an agreement between Optum and the customer, will undertake this configuration.
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	Data Migration	Responsible for the migration of data from one system to another, where applicable. This team will work with the customer to agree the format of any data upload, and the required customer testing in order to sign off any uploads to a live environment.
	Business Transformation	Optum's Business Transformation team are responsible for managing the customer's transition to new ways of working, where required. Business Transformation consultants will work with customers to accurately map out processes and work with stakeholders to overcome any blockers to moving to a new way of working
	Reporting and analytics	This team will work customer's to ensure that the reporting of any data from Optum's systems is accurate and in line with customer requirements, where applicable. This team may also deliver training to the customer to ensure they have the requisite skills to run and write reports. For customers using third party reporting tools, this team may work with customers to ensure data feeds are accurate.
Support Models	Level 1	- Software application support - Monday to Friday prime time - Between the hours of 0900 to 1700 on each Business Day

Please note that the Software is highly configurable. This flexibility allows each Customer to tailor the solution to meet their own specific requirements within their clinical setting but the Customer should be aware that such configuration might result in the Software not operating in accordance with the Specification. Optum cannot accept responsibility for any such configuration changes or for the consequences thereof.

It is important that the Customer ensures that only individuals who have the necessary knowledge and experience are allowed to configure the Software so as to reduce the chance of unforeseen clinical risks arising as a result of such changes.

It is similarly important that the Customer ensures that every configuration is properly tested prior to use in a live environment to check that the new configuration does not adversely affect workflows or procedures or otherwise create any clinical risk(s).

Schedule 2: The Services

The Services shall comprise:-

- Implementation Activities as described in Schedule 4;
- Configuration Services as described in Schedule 4;
- Training Services as described in Schedule 4;
- Maintenance and Support Services as described in Schedule 6;
- Fees as described in Schedule 7;
- Other Services

Schedule 3: Licensing Terms and Conditions

1. The Permitted Purposes

- 1.1. The Software is intended to be used to enable requests for pathology tests and radiology examinations from primary care to be actioned by the acute settings LMIS and RIS.
- 1.2. The Software is intended to be used directly from the practice management system, allowing GPs to quickly order pathology tests and request radiology examinations. Review is a reporting and secondary care requesting portal that provides a web-based repository for all patient-related clinical data. Review is an integral part of tQuest that allows clinicians to access patients' pathology, radiology, endoscopy and retinology test results via an intuitive, easy-to-use interface.
- 1.3. The Software is intended to be used to receive pathology results from the LMIS, Cytology, and/or radiology results from the RIS and/or discharge information from numerous systems, in order that they can be taken from local formats, validated and messages meeting national guidelines can be sent on via the MESH client.
- 1.4. Any pre-release version of the Software supplied by Optum to the Customer is to be used only for product familiarisation, integration testing or user acceptance testing, as appropriate, and shall not be used in any clinical setting or for any clinical purpose. It is not to be used to manage any aspect of patient care.
- 1.5. Save as expressly set out above, the rights and obligations of the parties with regard to the Software as set out in this Solution Delivery Agreement (including, the terms of the MSA) shall not apply in relation to any pre-release versions of the Software as Optum may make available from time to time.

2. Sites

- 2.1. The Sites are as follows:

Name of Site	Site Address	Specified Departments
[INSERT]	[INSERT]	
[INSERT]	[INSERT]	
[INSERT]	[INSERT]	
	Total Number	[x]

3. Authorised Users

- 3.1. Authorised Users are employees, workers, consultants and other personnel authorised by the Customer to work within one or more of the Specified Departments listed in the table above.
- 3.2. In relation to Authorised Users the Customer's access to the Software shall be limited to the total number of departments as shown in the table above.

If the number of Specified Departments at any time exceeds the total number specified in the table above (or otherwise agreed between the parties) then Optum shall not be deemed to be in breach of any failure to meet any of its obligations in relation to the Maintenance and Support Services (including, those set out in Schedule 6) as a result of the increased demand, and Optum reserves the right to increase the amount of the Licence Fees and annual Maintenance and Support Fees set out in Schedule 7 to reflect such increased usage. Optum shall promptly advise the Customer of any such increase in Fees payable by Customer under this Solution Delivery Agreement resulting from such increase in the total number of Specified Departments.

- 3.3. The Customer shall ensure that each Authorised User keeps a secure password for their access to, and use of, the Software, that such password is changed reasonably frequently and that each Authorised User keeps their password confidential. The Customer shall be responsible for ensuring that necessary user rights are given to Authorised Users as appropriate, for example, so as to ensure that only those Authorised Users who are prescribers are given access to prescribing functionality.

4. Licence Restrictions

- 4.1. If the Customer wishes to vary any of the Licence Restrictions, which apply in respect of the relevant Optum Solution(s), including, varying the total number of Specified Departments or the scope of the permitted use, then it will give notice to Optum in accordance with clause 10 of the MSA detailing the requested changes. Upon receipt of any such request Optum will advise the Customer as to whether it is willing and able to adjust the relevant Licence Restrictions, and if it is, the change to the relevant Fees which will apply.

Schedule 4: Implementation Activities

This schedule is not applicable as no implementation is required.

1. Implementation Activities

- 1.1. Optum shall perform the Implementation Activities by reference to the timetable established between the parties in the Project Plan. Optum shall use its reasonable endeavours to meet any performance dates set out in the Project Plan, but any such dates are estimates only, and time for performance by Optum shall not be of the essence in relation to the Implementation Activities
- 1.2. The ability of Optum to perform the Implementation Activities is dependent upon the Customer observing and performing its obligations under clause 8 and Schedule 5, and Optum shall not be liable for any delay or failure to perform the Implementation Activities that is caused by a failure by the Customer to comply with its obligations under clause 8 or under Schedule 5.
- 1.3. In respect of each Deliverable, the Customer and Optum may agree a "Deliverable Sign Off" process. Within ten (10) days of Optum's delivery to the Customer of any Deliverable, the Customer shall review the relevant Deliverable to confirm that it functions (in all material respects) in accordance with the applicable portion of the Software Specification or this Solution Delivery Agreement. If the Deliverable fails in any material respect to conform to the applicable portion of the Software Specification or this Solution Delivery Agreement, then the Customer shall give Optum a detailed description of any such non-conformance, in writing, within the ten (10) day review period.
- 1.4. Optum shall use reasonable endeavours to correct any material error in the Deliverables, made known to Optum pursuant to paragraph 1.3, within a reasonable time. Upon correction of any such material error Optum shall submit the corrected Deliverable to the Customer, whereupon the terms of paragraph 1.3 shall apply (in relation to the corrected elements of such Deliverable only).
- 1.5. If Optum does not receive any written comments from the Customer within the ten (10) day period described at paragraph 1.3, or if any Authorised Users or Workstation uses the Software (other than for the purposes of paragraph 1.3) then the Deliverable shall be deemed to have been accepted by the Customer and to conform with the Software Specification.

2. Project Plan & Timetable

- 2.1. Optum shall agree the Project Plan in co-operation with the Customer during the initial stage of the Implementation Activities. The Project Plan shall detail all Deliverables, pre-deployment planning and preparation, deployment phases, training and implementation.
- 2.2. Optum and the Customer shall agree a date for commencement of deployment, but Optum shall be entitled to require commencement of deployment within a reasonable period if no date can be agreed.

3. Project Management

- 3.1. Optum will use the principles of PRINCE2 Methodology to manage the project supported by project plans. Optum's Project Manager shall act as coordinator for all aspects of the implementation.
- 3.2. Optum's Project Manager will liaise with the Customer's Project Manager with a view to ensuring that project deadlines are met, resources are allocated accordingly and quality procedures and recommendations are implemented. Project management will include some or all of the following:
 - (a) implementation planning;
 - (b) organisation / service structures;
 - (c) sharing agreements; and/or
 - (d) training planning.
- 3.3. Project management is scalable depending on the scope of the project.

4. Implementation

- 4.1. Optum and the Customer shall co-operate in implementing the Services in accordance with the deployment, implementation and training provisions of the Project Plan. Installation of the Software shall be undertaken remotely via HSCN Connectivity connection (to be provided by the Customer).

5. Training

- 5.1. In accordance with the implementation and roll out provisions of the Project Plan, training will be provided by Optum using a variety of learning methods as agreed with the Customer. Training will be delivered in accordance with the Project Plan. Optum shall provide learning materials to the Customer to support training delivery allowing proper use, operation and management of the System.

6. Rollout

- 6.1. Optum and the Customer shall co-operate in rolling out the Services to the Customer's Authorised Users in accordance with the roll-out provisions of the Project Plan.

Schedule 5: Dependencies and Supported Environment

The following items of hardware, software and other items or actions are required to be provided or performed by the Customer in accordance with the timescales set out below in order to enable Optum to perform the Services. The requirements set out below may be amended by Optum from time to time, acting reasonably, to reflect changes in third party systems (including, upgrades to Microsoft Windows) or other technologies.

1. Required Hardware

- 1.1. Optum will require access to the Customer's infrastructure and current specifications in order to ensure that this meets appropriate performance requirements sufficient to enable Optum to deploy its Software and to perform the Services. The Customer may be required to provide at its own expense infrastructure upgrades where the need for such upgrades is identified during the Implementation Activities.

2. Supported Environment

- 2.1. The Customer shall ensure that the Software is, at all times, used within a Supported Environment in which all aspects of the required Hardware described above, the operating system and network environments are maintained to the correct standards and that any software required for such operating system and network environment is current and up to date and in each case as recommended by Optum. In particular the Customer must be able to satisfy, at its own expense, the requirements set out in the document entitled Optum Secondary Care Hardware and Software Requirements (which can be found at Annex 1 of this Schedule 5).

HSCN Connectivity (former NHS N3 Connectivity)

- 2.2. The Customer must have, and comply fully with the terms of, (i) a HSCN Connection Agreement with the Health and Social Care Information Centre and (ii) a HSCN Consumer Contract with an approved provider of HSCN Connectivity Services, in order to allow Optum to provide Maintenance and Support Services remotely, otherwise Optum may have to carry out onsite work at the Customer's premises which will be charged additionally at Optum's then current standard rates for provision of support.

3. Installation and Testing of Software Updates

- 3.1. The Customer agrees that in respect of all Software Updates that are provided by Optum under this Solution Delivery Agreement it shall:
 - (a) allow the installation of all such Updates in a timely manner; and
 - (b) carry out all necessary user acceptance testing and notify Optum of any issues as soon as possible.

4. Agreed Corrective Actions

- 4.1. The Customer shall promptly perform any corrective actions that have been agreed between Optum and the Customer as being appropriate to be undertaken by the Customer in connection with the correction of any failure or which is otherwise the responsibility of the Customer.

5. Records and Fault Reporting

- 5.1. The Customer is responsible for keeping a record of operation of the Software which shall include the following details (as appropriate):
 - Fault Log number.
 - Fault date and time.
 - Fault description and name of the person who logged it.
 - Log of network problems, including date and time of problem, nature of problem and resolution.

- Log of Hardware problems, including date and time of problem, nature of problem and resolution.
 - Successful completion of backups appropriate to the Customer's needs.
- 5.2.** Optum will require access to the Customer's key personnel/stakeholders throughout the duration of the Implementation Activities.
- 5.3.** The Customer shall during the remainder of the Term of this Solution Delivery Agreement maintain a minimum of two (2) members of staff who have been trained as system managers by Optum. The Customer acknowledges that if it fails to maintain this level and such failure adversely affects Optum's ability to deliver the Maintenance and Support Services then Optum shall be entitled to increase the Maintenance and Support Fees set out in Schedule 7 for the Contract Year in question by 25%, such increase being agreed by the parties to be a reasonable pre-estimate of the extra cost to Optum of providing the Maintenance and Support Services in such circumstances.

6. Software Housekeeping Procedures

- 6.1.** The Customer shall maintain the normal operation of the System in line with current Optum training and guidelines.

Annex 1 to Schedule 5



EMIS Health
Secondary Care Hard

Schedule 6: Maintenance and Support Services and Service Levels

1. Maintenance and Support

1.1. This Schedule 6 sets out the Maintenance and Support Services to be provided by Optum, together with the associated Service Levels.

1.2. For the purposes of this Schedule 6 the following definitions shall apply:

“Business Hour”	means an hour during the service cover time stipulated below. Monday to Friday 9:00am-5:00pm.
Duration”	means the time taken to resolve an Incident, from the time the Incident is initially reported in accordance with the agreed Incident reporting procedures, until the function or performance of the System is returned to operation. The time required by the Customer to recover the System or data, recompile or reload or any similar procedure necessary to allow full use of the System shall not be taken into account in calculating the Duration of an Incident.
“Optum Help Desk”	means Optum’s help desk service provided in accordance with paragraph 3.2 of this Schedule 6.
“Incident”	means any occurrence encountered during the operation of the System which is detrimental to the System fulfilling its planned purpose.
Information Technology Infrastructure Library (ITIL)	means a comprehensive set of best practices that are used to develop and execute IT service management.
“Priority”	means the category of Incident according to its prioritisation in accordance with paragraph 4 of this Schedule 6.
“Respond” or “Response”	means contact by properly qualified personnel on behalf of Optum with an appropriate employee of the Customer in an agreed manner following the report of an Incident by the Customer, including provision of a call log number.
“Resolution” or “Resolve”	means an action or series of actions taken to resolve an Incident and shall include a fix or workaround, and/or an action plan agreed between the Customer and Optum.
“Service Improvement Plan”	means a plan to be agreed between the parties in the event of a failure by Optum to achieve the Service Levels.
“Support Hours”	means the hours detailed in the table at Schedule 6 clause 2.1, during which the Optum Help Desk will provide Maintenance and Support Services.
“System Manager”	means an employee of the Customer who has been trained on the use and maintenance of the Software.
“Target Response Time”	means the target time for Optum to Respond to an Incident, (as set out in the table at paragraph 4 of this Schedule 6).

“Target Resolution Time”

means the target time for Optum to Resolve an Incident (as set out in the table at paragraph 4 of this Schedule 6).

2. Maintenance and Support Service Cover

2.1. Periods of Maintenance and Support Service Cover

The period during which Optum provides Maintenance and Support Services shall depend on the level of support selected by the Customer as follows:-

Level	Support Hours chosen by Customer
1	Monday to Friday prime time Between the hours of 0900 to 1700 on each Business Day, excluding English public and statutory holidays

2.2. Levels of Service Cover

The levels of cover that will be provided during the period of Support Services set out at paragraph 2.1 are as follows:-

- The Optum Help Desk will be available for the reporting of faults and to answer queries as per the below breakdown;
- Priority 1 and 2 incidents will be responded to in accordance with the Priorities and Response Levels set out at clause 4 of this Schedule during the Support Hours;
- Priority 3 and 4 incidents will be responded to in accordance with the Priorities and Response Levels set out at clause 4 of this Schedule during Business Hours.
- Any Updates or Upgrades agreed between the parties will be installed during Business Hours at a time to be agreed with the Customer;
- Faults can be reported/logged outside the contracted Support Hours via Optum's support centre and these will be responded to on the next Business Day; and
- The Customer may request Optum to provide services outside normal Support Hours provided that the Customer agrees to pay Optum for any such requested services at Optum's normal commercial rates. Optum agrees to provide its services to respond to Priority 1 and Priority 2 Incidents notwithstanding that doing so may involve it in the provision of such services outside normal Support Hours on the understanding that the Customer shall pay Optum for such services at Optum's normal commercial rates.

3. Overview and Conditions regarding Provision of Maintenance and Support Services

3.1. Maintenance and Support Services

3.1.1. Maintenance and Support Services are provided on an annual basis. The Fees payable in respect of Maintenance and Support Services include access to the Optum Help Desk, membership of Optum's user group and Software Updates for all modules purchased. Services associated to any defined Upgrade will be charged at the discretion of Optum. Members of the Optum user group are invited to inform Optum of any suggestions for enhancements that would be of interest, and these will be considered by Optum for inclusion in future Updates.

3.1.2. It is a pre-condition of the performance by Optum of the Maintenance and Support Services that the Customer complies fully with its obligations under Schedule 5 of this Solution Delivery

Agreement, including the satisfactory provision of Hardware, any software to be provided by the Customer, the availability of the network via which Maintenance and Support Services are to be provided and the availability of two trained System Managers.

3.2. Customer/Optum Contact

3.2.1. The following procedures shall apply:-

- (a) The Optum Help Centre may be contacted during Support Hours online via the Support centre – <https://www.optumhelpcentre.com/csm>
- (b) Whenever possible the Customer's trained System Manager or the Customer's first line help desk should log all faults and/or assistance requests with the Optum Help Desk.
- (c) Whenever possible Optum will record the name of the person reporting the fault or assistance request and will allocate each fault/request an Optum reference number. The reference number will be used on all correspondence/communication with the Customer.
- (d) Where possible faults and assistance will be dealt with remotely, either by telephone, HSCN Connectivity or dial in access. If access is via HSCN Connectivity then the Customer must have full HSCN Connectivity Code of Connection for remote fixes otherwise an onsite fix will be necessary, and all associated expenses will be charged to the Customer. Where connection is not available due to no fault of Optum, then any resulting delay or failure to resolve the Incident shall not constitute a failure to achieve a Service Level or be taken into account when determining whether or not Optum has failed to achieve a Service Level.

3.2.2. Problem/Issue Management

Optum will follow the procedure set out in this Schedule 6 when responding to reported Incidents to enable Optum and the Customer to manage Incidents as they arise and to monitor the performance of the Software.

- (a) Target Response/Resolution times for Incident reporting/rectification are detailed in paragraph 4;
- (b) All Optum staff will have relevant experience and the relevant qualifications and manufacturer's training in the area they are expected to carry out work. Where possible staff will have a previous working history with the Customer and the installed equipment;
- (c) All onsite visits may be supervised by the relevant Customer ICT staff and will be in accordance with existing permit to works, IM & T security and Health & Safety regulations and the Customer's safety and security policies and procedures, made available to Optum by the Customer from time to time. The Customer has the right to refuse admission to or remove from site any member of Optum's staff who does not comply with these requirements;
- (d) If an Incident is found to be the responsibility of the Customer or a third party then Optum shall be entitled to charge the Customer for Optum's time involved in resolving the Incident at Optum's then current standard commercial rates; and
- (e) Where an Incident is found to be the Customer's responsibility the Customer will take any remedial action necessary to prevent a recurrence of the Incident in accordance with the Customer's undertakings in Schedule 5.

3.2.3. Service Reviews

- (a) An annual review meeting ("**Annual Review**") shall be held via teleconference (unless otherwise agreed), at the request of the Customer, on a date to be agreed between the parties,

throughout the Term. Where additional meetings are requested, it will be at the discretion of Optum to charge for these at the prevailing day rate.

- (b) The Annual Review will be attended by the Customer representative and Optum representative and any other persons considered by the Authority necessary for the review. The Supplier may ask the Authority for permission to bring other relevant parties to the Annual Review. The Authority shall consider each request acting reasonably and in good faith.
- (c) The party requesting a Service Review Meeting shall provide a draft agenda for the proposed Service Review Meeting and the other party shall be entitled to add to such agenda any additional items to be discussed at such Service Review Meeting.
- (d) Optum shall, if so requested by the Customer, provide in advance of the Service Review Meeting a status report on Service Level targets for all areas with details of all fault calls logged since the last Service Review Meeting.
- (e) The Customer shall identify any specific requirements that it may have prior to the Service Review Meeting and provide to Optum prior to the review such information as may be reasonably necessary to enable Optum to have a full understanding of the matter.
- (f) The Customer shall ensure that appropriate personnel are available for consultation during the Service Review Meeting.

3.3. Product Updating & Charges for new Software Updates and Upgrades

3.3.1. Licensing fees and other costs for Upgrades and new releases may be included in the Fees if the Customer has chosen a Maintenance and Support option that includes the provision of such Upgrades, but otherwise Optum reserves the right to charge for Licensing Fees relating to such Upgrade and/or Updates and for all professional services associated with the implementation of any such Upgrades and/or Updates at its then prevailing standard rates for such services, as may be notified to the Customer from time to time.

3.4. Software Upgrades

3.4.1. The Software must be upgraded with the latest software Upgrade where appropriate.

3.4.2. During the Term of this Solution Delivery Agreement Optum will offer to make Upgrades available to the Customer from time to time.

3.4.3. Upgrade management and implementation will be co-ordinated between Optum and the Customer.

3.4.4. Optum may require the Customer to receive an Upgrade where the clinical software version installed on the Customer estate has become End of Life. The Customer agrees to keep all Software within three 3 version releases of the latest Upgrade. Optum will supply 3 months' notice in writing when this is the case in order for the Customer to prepare for the Upgrade. All Upgrades will be scheduled within Business Hours (9:00am-5:00pm Monday-Friday). Where the Upgrade is required outside this period it will be subject to additional commercial agreement.

3.4.5. The Customer will carry out appropriate user acceptance testing and to notify Optum promptly of any issues.

3.4.6. Except in the case of a disaster or emergency, Software Upgrades will firstly be installed on a test system.

3.5. Hardware engineering changes

3.5.1. Optum will work with the Customer to agree any changes to the Hardware that may be required from time to time. Any change to the Hardware will be at the Customer's expense.

3.6. Optum Software Maintenance and Support Services

3.6.1. Optum will maintain and support the Software by:

- (a) the introduction of new Updates, Upgrades and other routine (non-urgent) maintenance changes (as periodic Updates or a new "version" of the Software) on a pre-planned basis;
- (b) making good functional deficiencies (i.e. non-conformance with Optum's published specification) which may be applied as part of periodic Software Updates or, with agreement of the Customer, on a case by case basis;
- (c) the provision of permanent fixes or temporary fixes (by-passes or work-arounds) followed by a permanent fix according to Optum's standard specifications and procedures, or where Optum is not the owner of the software in question, according to the standard specifications and procedures of the owner of such software. In the event that a temporary solution is applied which allows Service Level criteria to be satisfied, permanent fixes may be applied as part of a periodic Software Update; and
- (d) using reasonable endeavours to follow the Priorities and Target Response Times and Target Resolution Times assigned to each Incident as specified in paragraph 4 of this Schedule 6 in order to achieve the Service Levels set out in paragraph 5.2.

3.7. Customer Information

3.7.1. The Customer will be responsible for providing all relevant information requested by Optum relating to an Incident, which is reasonably required by Optum to resolve the relevant Incident. Failure to provide information in a timely manner will suspend the recording of System availability and Responses and Resolutions for remedial actions.

3.8. Releases and Exclusions from Maintenance and Support Services

3.8.1. Release from responsibility - Optum will be released from its responsibility for the performance of the Maintenance and Support Services:

- (a) where the System is not available due to the failure of the Customer's network which results in the Software being unavailable to the Customer or which prevents Optum from accessing the Software remotely in order to undertake remedial action;
- (b) where there is any failure in the Hardware, or in any software of the Customer or any third party which Optum requires to be operational in order that Optum can perform the Maintenance and Support Services;
- (c) where the System is not available due to a failure by the Customer to comply with any of its obligations set out in Schedule 5 of this Solution Delivery Agreement;
- (d) where Optum is prevented, hindered or delayed in complying with its obligations to provide the Maintenance and Support Services by reason of circumstances beyond its reasonable control in accordance with clause 16 (force majeure); and/or
- (e) where the Customer uses the Software using hardware or third party software which is not recommended by Optum.

3.8.2. Exclusions from responsibility - Optum shall not be liable to provide the Maintenance and Support Services where any relevant third party software becomes unsupported for reasons outside the control of Optum.

4. Priorities of Incidents and Response Times

The Customer will report each Incident to Optum in accordance with the agreed fault reporting procedure. Each Incident will be assigned a Priority by Optum in consultation with the Customer. The categories of Priority and Target Response Times and Target Resolution Times are as set out below:-

Priority	Priority Description	Target Response Time	Target Resolution Time
1	Access to the entire System is unobtainable or severely limited with no Authorised User access.	Within 1 Support Hour	Fix/Interim Workaround within 4 Support Hours
2	Access to parts of the System is unobtainable such that the function of the System is severely limited and for which a workaround is not available.	Within Support 1 Hour	Fix/Interim Workaround within 8 Support Hours
3	There is persistent disruption to the operation of the System for which a workaround is available so that the Customer is able to fulfil its obligations to patients in all material respects.	Within 1 Business Day	Fix/Interim Workaround within 10 Business Days.
4	Intermittent and minor operational inconveniences, which do not materially affect the Customer's ability to fulfil its obligations to patients.	Within 1 Business Day.	Included in the next available release

The Priority assigned to an Incident may be re-assessed by the parties to either increase or decrease the level of severity as additional information or a partial solution such as a workaround becomes available.

An Incident may be suspended whilst Optum is waiting for the Customer to fulfil its obligations (such as to provide information, install a Software Update etc.). In this event the liability of Optum to meet the Target Response Times and Target Resolution Times shall also be suspended until the Customer has fulfilled its obligations.

5. Performance Monitoring

5.1. Support Service History

5.1.1. The Customer shall be responsible for collection and collation of information in respect of the performance of the Software and Maintenance and Support Services as specified in Schedule 5.

5.1.2. Optum shall provide to the Customer on an annual basis at the request of the Customer, the following information namely:-

- (a) the cause of each Incident or possible class of cause (e.g. Hardware, application software, system software, third party software);
- (b) the actions taken to try to resolve the Incident; and
- (c) the solution to each Incident.

5.2. Service Levels

5.2.1. Optum confirms that it will achieve the Target Response Times set out at paragraph 4 for 95% of all Incidents logged on a quarterly basis starting from the Go Live date, in accordance with the provisions of paragraph 3.2.1.

5.3. Failure to meet Service Levels

5.3.1. In the event that Optum fails to meet the Service Levels set out at paragraph 5.2 then the provisions of this clause 5.3 shall apply.

5.4. Corrective Actions

5.4.1. In the event that at any Service Review Meeting it is identified that the Maintenance and Support Services have failed to conform to any Service Level specified in paragraph 5.2 for the period under review then Optum and the Customer (where appropriate and as specified in Schedule 5) shall take such corrective action as is necessary to rectify the non-conformance and as shall be agreed between Optum and the Customer at the relevant time in accordance with the following process:

5.4.2. the Customer shall specify in writing the manner and extent to which it claims Optum has failed to meet a Service Level in respect of its performance of the Maintenance and Support Services;

5.4.3. Optum shall carry out a root cause analysis and where appropriate provide an analysis of why the Service Level has not been met to the Customer, such root cause analysis to be carried out in accordance with the Optum's ITIL approved procedures and any service management plan (if applicable);

5.4.4. the parties will agree a Service Improvement Plan to be implemented by Optum which will include the actions identified by the root cause analysis and may require actions by Optum and/or the Customer; and

5.4.5. the parties will review the Service Improvement Plan at the Service Review Meetings, or more regularly if agreed and the Service Improvement Plan will remain in force until such time as the performance of the Maintenance and Support Services conforms with the agreed Service Level.

5.5. Performance

5.5.1. Optum shall, and its performance of the Maintenance and Support Services shall, conform to the Optum Quality Management System.

6. Escalation procedure

6.1. Priority (1) Faults

If Optum's Support Analyst is unable to resolve a Priority (1) problem within the Target Resolution Time as described in paragraph 4 then the following escalation procedure is invoked:

- On the expiry of the allotted time the problem will be referred to a Support Team Manager
- On the expiry of a further four (4) Business Hours the problem will be referred to the Support Operations Manager
- On the expiry of a further sixteen (16) Business Hours the problem will be referred to the Head of Support

Contact Telephone for all three above mentioned post-holders: 0845 123 2297.

Schedule 7: Fees

1. Fees

- 1.1. The Fees shall comprise the [Implementation Fees, the Licensing Fee(s), the Training Fees and the Maintenance and Support Fee(s)] as described in the tables set out in this Schedule 7.

2. Implementation Fees

- 2.1. The fees detailed in the table below shall be payable by the Customer in respect of the Implementation Activities and shall become due for payment in accordance with the criteria or trigger for payments shown:-

Description of Implementation Activity or Deliverable with criteria/trigger for payment	%	Amount (£)

- 2.2. The items appearing in the table above are not necessarily set out in a chronological order and an Implementation Activity or Deliverable might be achieved and used to trigger an invoice notwithstanding that an earlier Implementation Activity or Deliverable remains to be achieved.

3. Licensing Fees

- 3.1. The fees detailed in the table below shall be payable by the Customer in consideration of the rights and licences granted or to be granted by Optum to the Customer for the use of the Software and/or the provision of the Services and shall become due for payment on the dates or in accordance with the triggers for payments shown below:-

Description with date or trigger for payment	Amount (£)
Annual Licence Fee for first Contract Year (starting on the Go Live date) payable within thirty (30) days of Optum's invoice which may be presented on or following the Go Live date :	
Annual Licence Fee for each subsequent Contract Year (starting on an anniversary of the Go Live date) payable within thirty (30) days of Optum's invoice which invoice may be presented no sooner than thirty (30) days prior to the relevant anniversary date :	

- 3.2. The annual Licensing Fees set out above shall include the annual licence fee, and fees for standard Maintenance and Support Services for the level of Maintenance and Support chosen by the Customer and shall be payable in respect of each Contract Year within thirty (30) days of Optum's invoice presented on or following the Go Live date or an anniversary of the Go Live date.
- 3.3. The annual Licensing Fees assume that the Customer requires the level of support outlined in Schedule 6. If the Customer requires additional support that is not provided for in this Solution Delivery Agreement such support shall be chargeable by Optum at its then current standard rates for provision of support.
- 3.4. In the event of an increase in the number of Authorised Users or Specified Departments above the number that is agreed in Schedule 3 then Optum shall be entitled to submit an invoice in respect of the increase in the Fees attributable to such increase promptly following the increase in question

3.5. All Licensing Fees are subject to Indexation.

4. Training Fees

4.1. Training fees if required are included in the Implementation Fees.

5. Maintenance and Support Fees

5.1. The fees detailed in the table below shall be payable by the Customer in consideration of the provision by Optum of the Maintenance and Support Services, and shall become due for payment on the dates or in accordance with the criteria and triggers for payments shown below:

5.2. Licensing Fees are included in the Maintenance and Support Fees and shall be payable by the Customer in consideration of the rights and licences granted or to be granted by Optum to the Customer for the use of the Software and/or the provision of the Services. Maintenance and Support Fees are included in the Implementation Fees/Licensing Fees.

Description with date or trigger for payment	Amount £
Maintenance and Support Fees for first Contract Year (starting on the Go Live date) including the Licensing Fee for the first Contract Year :	N/A
Maintenance and Support Fees for each subsequent Contract Year (starting on an anniversary of the Go Live date) include Licensing Fees and are payable annually in advance within thirty (30) days of Optum's invoice which invoice may be presented no sooner than thirty (30) days prior to the relevant anniversary date :	[]

5.3. The annual Maintenance and Support Fees assume that the Customer requires the level of support outlined in Schedule 6. If the Customer requires additional support that is not provided for in this Solution Delivery Agreement such support shall be chargeable by Optum at its then current standard rates for provision of support

5.4. All Maintenance and Support Fees, are subject to Indexation.

6. General

6.1. All Fees are non-refundable.

6.2. If Optum has not received payment of the relevant Fee(s) by the due date then (without prejudice to any other rights and remedies of Optum) while the Fee(s) or invoice(s) concerned remain unpaid Optum may suspend any licences granted to the Customer under this Solution Delivery Agreement, and Optum shall be under no obligation to provide any or all of the Services under this Solution Delivery Agreement;

6.3. For the purposes of clause 9.5(c) of the MSA the interest rate shall be an annual rate equal to three (3) percentage points above the then current Bank of England base rate as at the date the relevant invoice was issued.

6.4. The Customer acknowledges that Optum has calculated its charges for the provision to the Customer of the System and the Services in the expectation that this Solution Delivery Agreement shall continue in force for a minimum period of **three** years, and in the event of the termination of this Solution Delivery Agreement for any reason prior to the **third** anniversary of the Commencement Date of this Solution Delivery Agreement then the Customer shall, within thirty (30) days of such termination pay to Optum the appropriate sum shown in the table below.

Amortised Amount	If termination occurs prior to the 1st anniversary of	If termination occurs prior to the 2 nd anniversary of	If termination occurs prior to the 3 rd
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	the Commencement Date	the Commencement Date	anniversary of the Commencement Date

Schedule 8: Personnel

1. Optum

Optum shall provide in relation to each Solution Delivery Agreement, the below key individuals.

1. Optum Senior Project Manager
2. Optum Project Implementation Specialist
3. Optum Head of Solution Delivery

2. Customer

The Customer shall provide in relation to each Solution Delivery Agreement, the below key individuals.

1. Project Sponsor
2. Customer Project Manager
3. Customer Finance Representative
4. Customer Senior User
5. Customer System Manager
6. Customer IT Representative

Each party hereby agrees that during the Term of this Solution Delivery Agreement and for a period of twelve (12) months after the date of expiry or termination howsoever arising of this Solution Delivery Agreement it shall not offer employment to any of the other party's staff who have been associated with the performance of this Solution Delivery Agreement without the other party's prior written agreement, but this provision shall not apply in the case of offers of employment resulting from general recruitment advertising.

Schedule 9: Agreements required under the Solution Delivery Agreement

1. Escrow Agreement

The Customer is entitled to take escrow protection in respect of the Software detailed in Schedule 1.

If escrow protection is required, charges for any licensee agreement which is concluded pursuant to and in accordance with clause 7.4 of the MSA will be due under and in accordance with the terms of this Solution Delivery Agreement, and Optum will liaise directly with NCC Group to implement such escrow protection on the Customer's behalf in accordance with clause 7.4.

[The Customer hereby confirms that it does require escrow protection in respect of all the Software detailed in Schedule 1.]

Or

[The Customer hereby confirms that it does not require escrow protection in respect of any of the Software detailed in Schedule 1.]

The above decision will form part of the Solution Delivery Agreement.

Schedule 10: Details of Personal Data as required by GDPR Article 28.3

Article 28.3 of the General Data Protection Regulation (GDPR) (EU) 2016/679 requires that processing by a processor shall be governed by a contract that sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects.

Keystone:

Subject matter	Keystone can process Pathology, Radiology, Cytology results and Discharge notifications to primary care from acute. In addition to sending the commissioning data sets, CDS and ECDS to the SUS+.
Nature of processing	Splitting the feeds into three, Result reporting, Discharge notifications and commissioning data sets, the following is true: Result reporting – will typically be passed to Keystone via FTP/port listener etc. in a local format, typically HL7 v2.n, which is taken apart into its component elements, validated and restructured as edifact for onwards submission to primary care via the NHS D provided MESH client. Data, and the messaging workflow record can be stored for a configurable period of n months, whereupon it is removed completely from the server. Discharge notifications - will typically be passed to Keystone via FTP/port listener etc. in a Indigo4/HL7 v2.n format which is taken apart into its component elements, validated and restructured as Kettering XML for onwards submission to primary care via the NHS D provided MESH client. Data, and the messaging workflow record can be stored for a configurable period of n months, whereupon it is removed completely from the server. Worth noting that within the discharge notifications there will be a payload, the discharge letter, that will be embedded in the Kettering XML or attached to an email for onward submission. Commissioning data sets, are an audit data set which are sent daily and monthly to SUS for PbR. This is again stored for a configurable period of n months, apart from the translation service where the data is removed after 2 months.
Purpose of processing	Splitting the feeds into three, Result reporting, Discharge notifications and commissioning data sets, the following is true: Result reporting – exactly that, reporting the results of pathological tests, radiology exams and cytology smears etc. Discharge notifications - the notifications should contain the PRSB headings Commissioning Data Sets – a detailed list of every diagnosis, procedure carried out for each patient at that particular submitting organisation.

	This is across inpatient, outpatient, waiting list and accident and emergency
Duration of processing	Data processing by Optum under this Solution Delivery Agreement will commence on the Commencement Date and continue during the Term of the Solution Delivery Agreement and shall continue thereafter for so long as Optum is required by this Solution Delivery Agreement or by legislation as to archiving of medical records to hold such Subject Matter.
Types of Personal Data	Patient NHS Number, name, address, postcode, pertinent observations/results for a particular period.
Categories of Data Subject	Patient

Review:

Subject matter	Review is a clinical data repository in addition to reporting and is also a requesting portal for secondary care order comms.
Nature of processing	Requests for pathological tests and radiological examinations within secondary care, in addition to being a repository.
Purpose of processing	The data has to be passed to the LMIS or RIS so that the request can be actioned, and the test/examination can be carried out.
Duration of processing	Data processing by Optum under this Solution Delivery Agreement will commence on the Commencement Date and continue during the Term of the Solution Delivery Agreement and shall continue thereafter for so long as Optum is required by this Solution Delivery Agreement or by legislation as to archiving of medical records to hold such Subject Matter.
Types of Personal Data	Patient NHS Number, name, address, postcode, pertinent observations/results for a particular period.
Categories of Data Subject	Patient

tQuest:

Subject matter	tQuest can receive requests to action Pathology tests and Radiology examinations, from any Primary care provider, via an API call which is passed to the LMIS or RIS.
Nature of processing	Requests for pathological tests and radiological examinations from primary care systems, which are received via an API from the PMS.
Purpose of processing	The data has to be passed to the LMIS or RIS so that the request can be actioned, and the test/examination can be carried out.

Duration of processing	Data processing by Optum under this Solution Delivery Agreement will commence on the Commencement Date and continue during the Term of the Solution Delivery Agreement and shall continue thereafter for so long as Optum is required by this Solution Delivery Agreement or by legislation as to archiving of medical records to hold such Subject Matter.
Types of Personal Data	Patient NHS Number, name, address, postcode, pertinent observations/results for a particular period.
Categories of Data Subject	Patient

IN WITNESS WHEREOF this agreement is executed as follows:

SIGNED for and on behalf of **Egton Medical Information Systems Limited** by:

Signature:	
Print name:	
Job Title:	
Date:	

SIGNED for and on behalf of **[INSERT NAME]** by:

Signature:	
Print name:	
Job Title:	
Date:	

UNIVERSAL MASTER SERVICE AGREEMENT (MSA)

These general terms and conditions (“**General Terms**”) govern the Services (as defined) as provided by Egton Medical Information Systems Limited (“**Optum**”) to you (the “**Customer**”) and/or, where agreed by the parties in writing, for the benefit of the relevant Service Recipients. These General Terms, together with the relevant Product Schedule(s) and Quote provided by Optum, form the entire agreement between Optum and the Customer in respect of the provision of Services (collectively, the “**Agreement**”).

BACKGROUND

(A) Optum has developed, and provides, a range of services.

(B) The Customer wishes for Optum to provide certain services, as specified in the Quote and Product Schedule(s).

(C) Optum has agreed to provide, and the Customer has agreed to take and pay for, the Services subject to the terms and conditions of the Agreement.

AGREED TERMS

1. INTERPRETATION

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

Affiliate: means any business entity from time to time controlling, controlled by, or under common control with, either party, whereby a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Annex: means an annex to these General Terms including where applicable any appendices to such annex.

Authorised Users: means individual users (whether employed by the Customer or not) who use the Service under the Agreement, as further described in clause 5.

Business Go Live: means the date the first Authorised User or Client accesses the Software.

Client: means a single workstation installed with the Software.

Confidential Information: means all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed to one party (and/or where appropriate any Service Recipient) by the other (and/or its employees, agents, consultants or subcontractors) and any other confidential information concerning the disclosing party’s business or its services which the receiving party may obtain under or in its connection with the Agreement.

Commencement Date: means the date on which the Customer accepts the Quote from Optum through signing the Quote or placing a purchase order and Optum begins to perform its obligations under the Agreement.

Configuration Services: means the configuration and related work referred to in clause 4, the Quote and/or the relevant Product Schedule, to be performed by Optum to configure the relevant Software so that it materially conforms to the relevant Software Specification.

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 Agreement).

Customer Data: means data inputted into the information fields of the Software by the Customer (including, via the Authorised Users, and /or by Optum on the Customer's behalf).

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Data Protection Legislation: means all applicable data protection and privacy laws in force from time to time in the UK, including the Data Protection Act 2018 (**DPA**) and UK GDPR (having the meaning given to it in the DPA (in each case as may be amended from time to time)).

Deliverable: means a defined level of functionality or other preset milestone within a particular phase of the Configuration Services, to be more particularly described in the relevant Project Plan.

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.

Optum Engineer: has the meaning attributed to it at clause 10.4.2.

Equipment: means any equipment, including tools, systems, cabling or facilities, provided by Optum (or its subcontractors) and used directly or indirectly in the provision of the Services and which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Fees: means the fees payable by the Customer to Optum, as described in the Quote or as otherwise agreed in writing with Optum, as may be modified from time to time by Optum in accordance with the terms of the relevant Product Schedule. This includes applicable day rates for any Optum staff involved in the provision of the Services.

Hardware: means the items of hardware, equipment or goods as detailed in the Quote and/or Product Schedule or as otherwise agreed in writing with Optum.

Hosting Services: means the services that Optum provides to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in the relevant Product Schedule.

Indexation: means the values identified as "*subject to indexation*" may be adjusted to reflect the effects of inflation after the Effective Date in accordance with the following formula:

Value x (RPI_d / RPI_o) where RPI is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and RPI_o is the value of the Retail Prices Index on the Effective Date.

Initial Term: means the period detailed in the Quote or as otherwise agreed in writing with Optum and commencing on the Commencement Date.

In-put Material: means all Documents, information and materials provided by the Customer to Optum relating to the Services.

Intellectual Property Rights: means all patents, rights to inventions, copyright and related rights, trade marks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses: means any claims, demands, actions, liabilities, costs, expenses, fines, monetary penalties, losses and/or damages.

Maintenance and Support: means any error corrections, updates and upgrades that Optum may provide or perform with respect to the Software and Hosting Services, as well as any other support or Training Services provided to the Customer under the Agreement, all as described in the relevant Product Schedule.

Pre-existing Materials: means all Documents, information and materials provided by Optum in relation to the Services which existed prior to the Commencement Date, including any computer programs, data, reports and specifications.

Product Schedule: means the schedule applicable to the relevant Services purchased by the Customer which describes the Services, including, details of the deliverables (if any), applicable service levels, fees and/or any other additional terms and conditions not detailed in these General Terms. The applicable Product Schedule(s) will be identified by an LCC reference number in the relevant Quote and each Product Schedule will be available to view on this website.- <https://www.optum.co.uk/contractsrepository> The Customer acknowledges that it is its responsibility to ensure that it carefully reviews the terms of any relevant Product Schedule(s) and that the terms of the same will form part of the Agreement.

Project Plan: means the plan to be developed during the planning stage of the Configuration Services.

Quote: means the quote provided by Optum to the Customer prior to the formation of the Agreement, which includes details of the Fees and states the applicable Product Schedule(s) and which forms part of the Agreement.

Service Commencement Date: means the date on which Optum begins providing the relevant Services to the Customer.

Service Level Agreement: means the service level agreement set out in the relevant Product Schedule applicable to the provision of the relevant Services.

Service Recipient(s): means, where the Customer is contracting for delivery of the Services to one or more third parties (for example, GP practices), those third parties as identified in the Quote or as otherwise agreed in writing with Optum.

Services: means the services Optum is to supply as specified in the Quote and relevant Product Schedule(s), including, access to the relevant Software.

Sites: means the locations at which Optum will provide the Services as detailed in the Quote or as otherwise agreed in writing with Optum.

Software: means the proprietary software (in machine-readable object code form only) as described in the relevant Product Schedule (including any error corrections, updates, upgrades, modifications and enhancements to the same provided to the Customer under the Agreement). **Software Specification:** has the meaning set out in the relevant Product Schedule.

Supported Environment: means an environment which supports use of the Software (as detailed in the relevant Product Schedule or as otherwise notified by Optum from time to time).

Term: means the Initial Term, and any options to extend the Term, as detailed in the Quote or Product Schedule or as otherwise agreed in writing with Optum.

Training Services: means the training services (if any) to be provided by Optum in connection with the Software and other Services as detailed in the Quote or as otherwise agreed in writing with Optum.

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

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

Working Days: means any day that is not a Saturday, Sunday or public or statutory holiday in England and Wales.

- 1.2. Clause, annex, attachment and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3. 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.
- 1.4. A reference to: (i) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (ii) words in the singular shall include the plural and vice versa; (iii) one gender shall include a reference to the other genders; (iv) 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; (v) writing or written shall include communications sent by email (unless expressly

excluded); and (vi) clauses and Annexes are to the clauses and Annexes of these General Terms and references to sections are to sections of the relevant Annex.

- 1.5. The term “including” shall be construed without implying limitation (and variants of “including” shall be interpreted accordingly).
- 1.6. Where the terms of the Product Schedule conflict with these General Terms, the terms of the Product Schedule shall prevail. Where the terms of the Quote conflict with these General Terms and/or the terms of the Product Schedule, the terms of the Product Schedule and General Terms shall prevail (in that order).
- 1.7. To the extent Optum sells Hardware, supplies Equipment, and/or licences software, and/or performs Services for the benefit of any Service Recipients, the Customer shall:
 - 1.7.1. procure that the Service Recipients comply with the Customer’s obligations pursuant to the Agreement to the extent such Customer obligations relate to the Hardware sold to, Equipment supplied to, software licensed to and/or Services received by the Service Recipients (other than the obligation to pay the Fees) or that are otherwise stated in the Agreement to apply to such Service Recipients (including pursuant to clause 1.8) (collectively the “Service Recipient Obligations”); and
 - 1.7.2. be liable to Optum for the acts and omissions of such Service Recipients to the extent they breach the Customer’s or the Service Recipient Obligations, as if they were acts or omissions of the Customer.
- 1.8. In the Agreement, unless the context requires otherwise:
 - 1.8.1. references to the Customer receiving the Hardware, Equipment, licensed software and/or Services shall include, to the extent that they are receiving the Hardware, Equipment, licensed software and/or Services, the Service Recipients;
 - 1.8.2. references to the Customer’s:
 - a) assets, systems, business, operations and the like; and
 - b) customers, contractors, advisors and other similar third parties,shall include, to the extent that they are receiving the Hardware, Equipment, licensed software and/or Services, those of the Service Recipients; and
 - 1.8.3. other references to the Customer shall be deemed to include the Service Recipients where such reference relates to a right of the Customer which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Hardware, Equipment, licensed software and/or Services under the Agreement.
- 1.9. Without prejudice to the generality of clause 1.8, a number of clauses refer specifically to both the Customer and/or the Service Recipients for the sake of clarity.

2. APPLICATION OF TERMS

- 2.1. The terms of the Agreement shall apply to the provision of the Services under the Agreement and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer’s purchase order, confirmation of order, acceptance of a quotation, or specification or other Documents supplied by the Customer (and/or any Service Recipient), or implied by law, trade custom, practice or course of dealing.
- 2.2. The Customer’s standard terms and conditions (if any) attached to, enclosed with, or referred to in, any purchase order or any other Document issued by or on behalf of the Customer shall not govern the contract and/or the provision of any Services.
- 2.3. Quotes are given by Optum on the basis that no contract shall come into existence except in accordance with the terms of the Agreement. A Quote will be valid for a period of thirty (30) days from its date, provided that Optum has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

- 3.1. The Agreement shall commence on the Commencement Date and shall continue in force for the Term unless or until it is terminated pursuant to clause 16 or otherwise in accordance with its terms.

- 3.2. Subject to any alternative terms being provided in the Quote and/or Product Schedule, following expiry of the Initial Term, the Agreement shall continue on an annual rolling basis unless or until it 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 any subsequent anniversary of the Commencement Date.

4. CONFIGURATION SERVICES

- 4.1. Where Optum has agreed to provide any Configuration Services, Optum shall use its reasonable endeavours to perform them by reference to the timetable established between the parties in the Project Plan. Optum shall use its reasonable endeavours to meet any performance dates set out in the Project Plan, but any such dates are estimates only, and time for performance by Optum shall not be of the essence of the Agreement.
- 4.2. In respect of each Deliverable, the Customer and Optum may agree a "*Deliverable Sign Off*" process. Within ten (10) days of Optum's delivery to the Customer of any Deliverable, the Customer shall review the relevant Deliverable to confirm that it functions (in all material respects) in accordance with the applicable portion of the Software Specification. If the Deliverable fails in any material respect to conform to the applicable portion of the Software Specification, then the Customer shall give Optum a detailed description of any such non-conformance, in writing, within the ten (10) day review period.
- 4.3. Optum shall use its reasonable endeavours to correct any material error in the Deliverables, made known to Optum pursuant to clause 4.2, within a reasonable time. Upon correction of any such material error(s), Optum shall submit the corrected Deliverable to the Customer, whereupon the terms of clause 4.2 shall apply (in relation to the corrected elements of such Deliverable only).
- 4.4. If Optum does not receive any written comments from the Customer within the ten (10) day period described at clause 4.2, or if any Authorised User(s) or Client uses the Software (other than for the purposes of clause 4.2) then the Deliverable shall be deemed to have been accepted by the Customer and to conform with the Software Specification.

5. HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 5.1. Where the Customer purchases Hosting Services and/or Maintenance and Support Services, subject to clauses 5.7, 5.9 and 5.10 Optum shall perform the Hosting Services and Maintenance and Support services. The Service Level Agreement shall apply as appropriate with effect from the start of the month after any Configuration Services have been satisfactorily completed pursuant to clause 4 (to allow for a 'bedding in' period).
- 5.2. In relation to Authorised Users:
- 5.2.1. the Customer's access to the Hosting Services shall be limited to the agreed number of Authorised Users able to access the Software at any time (as detailed in the Quote and/or Product Schedule);
- 5.2.2. the number of individual Authorised Users will be subject to a quarterly review;
- 5.2.3. Optum may monitor the number of Authorised Users on an annual basis and shall notify the Customer should the number of Authorised Users at any time exceed the agreed limit (such notification shall also set out any additional Fees payable by Customer resulting from such additional Authorised Users);
- 5.2.4. the Customer shall maintain a written list of current Authorised Users of the Software; and shall provide such list to Optum as may be reasonably requested by Optum from time to time; and
- 5.2.5. if the Customer exceeds the agreed number of Authorised Users, then Optum shall not be deemed to be in breach of any failure to meet any of its obligations in relation to Maintenance and Support (including those set out in the Quote and/or Product Schedule) or under the Service Level Agreement as a result of the increased demand.
- 5.3. The Customer shall ensure that: (i) each Authorised User keeps a secure password for their access to and use of the Software and that such password is changed no less frequently than every ninety (90) days; and (ii) each Authorised User keeps their password confidential.

- 5.4. Without limiting Optum's other rights of audit, Optum may audit use of the Software and the Customer will promptly provide any requested information. Such audit may be conducted no more than once per quarter, at Optum's expense.
- 5.5. Should an audit reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to Optum's other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional users have been paid).
- 5.6. In relation to the Software:
- 5.6.1. Optum hereby grants to the Customer, on and subject to the terms and conditions of the Agreement, a non-exclusive, non-transferable licence to:
- 5.6.2. install the Software on Clients at the Sites; and
- 5.6.3. allow Authorised Users to access and use the Software solely for the Customer's internal business purposes;
- 5.6.4. the Customer shall:
- 5.6.5. configure, connect and design its network and IT infrastructures (including the security and integrity thereof) in accordance with recognised best practice to mitigate the risk of it being a target or a source of disruptions or network defects or attacks, including having in place at all times industry standard encryption software and adequate and appropriate protections against any Virus; and
- 5.6.6. not store, store, distribute or transmit any Viruses, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive;
- 5.6.7. the rights provided under this clause 5.6 are granted to the Customer only, and shall not be considered granted to any Customer Affiliate (or any other third party);
- 5.6.8. the Customer shall not:
- 5.6.9. attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software (save to the extent expressly set out in the Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
- 5.6.10. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to humanperceivable form all or any part of the Software, (save as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
- 5.6.11. access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services;
- 5.6.12. use the Software or Hosting Services to provide services to third parties or use the Software on Clients other than at the Sites unless otherwise authorised in writing by Optum to do so;
- 5.6.13. subject to clause 27.1, transfer temporarily or permanently any of its rights or obligations under the Agreement;
- 5.6.14. attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided in this clause 5.6.8; or
- 5.6.15. permit more than the agreed number of Authorised Users to access and use the Software at any time.
- 5.7. If the Customer wishes to use the Software in an environment which is not a Supported Environment, then it shall notify Optum in writing. The Customer acknowledges that the Software has not been designed to function within an unsupported environment and that any such use is at its own risk and that the Software may not function correctly (or at all). The Customer further acknowledges that any timescales, warranties or representations made by Optum in terms of the Services relate only to the use of the Software within a Supported Environment and that the delivery of the Services may be adversely affected. Optum shall have no liability to the Customer for any delays, clinical risks or failure to support the Software to the extent that such issues are caused by the Customer's system not being a Supported Environment.
- 5.8. The Customer may access certain third party applications stored on Optum's hosted environment. Any such access and use will be subject to the licencing terms in effect as between the relevant third

party and the Customer in respect of the same. The Customer acknowledges that such access is provided on an “as is” basis and Optum gives no warranties or undertakings in respect of any such third party applications or the Customer’s access to, or use of, the same.

5.9. The Customer agrees to contact Optum to agree a schedule for any Training Services so that all such services are delivered no later than 6 months after the Business Go Live date. To the extent that any Training Services have not been delivered by that date, the parties agree that they shall be deemed to have been fully delivered and the Customer agrees that it shall be liable to pay the full Fees for the Training Services.

5.10. If the Customer needs to reschedule any of the Training Services, it shall give Optum at least ten (10) days’ notice before the scheduled delivery date and, to the extent the Customer gives less notice, it agrees that it shall be liable to pay additional Fees at Optum’s current daily rate.

6. OPTUM’S OBLIGATIONS

6.1. Optum shall use its reasonable endeavours to:

6.1.1. provide the Services in accordance in all material respects with the relevant Quote and Product Schedule;

6.1.2. provide the Services to meet any relevant key dates stated in the applicable Quote and/or Product Schedule or as otherwise agreed in writing with Optum, but any such dates shall be estimates only and shall not be of the essence in relation to the performance of the Services; and

6.1.3. observe all applicable health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer’s relevant premises (and that have been reasonably communicated to it pursuant to clause 7.1.11), 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 the Product Schedule).

6.2. Optum warrants that the Services will be performed with reasonable skill and care.

6.3. The warranty at clause 6.2 shall not apply to the extent of any non-conformance which is caused by use of the Services (including, any Software) contrary to the terms of the Agreement, Optum’s instructions or modification to (or alteration of) the Services by any party other than Optum or Optum’s duly authorised contractors or agents, or the use of the Software in any environment which is not a Supported Environment.

6.4. If the Services do not conform with the terms set out in clause 6.1 or the warranty in clause 6.2, Optum will, at its expense, use its reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with agreed alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer’s sole and exclusive remedy for any breach of the same. Notwithstanding the foregoing, Optum does not warrant that the Customer’s use of the Software and the Services will be uninterrupted or error-free.

6.5. For the avoidance of doubt, the Agreement shall not prevent Optum from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Agreement.

7. CUSTOMER’S OBLIGATIONS

7.1. The Customer shall:

7.1.1. co-operate with Optum in all matters relating to the provision of the Services, including providing it with:

7.1.2. all necessary co-operation in relation to the Agreement; and

7.1.3. access to such information as it may reasonably require in order to perform the Services, including access to the Customer Data, security access information and software interfaces to the Customer’s other business applications;

7.1.4. contact Optum at the earliest available opportunity to schedule delivery of the Services. Where the contract term is 12 months (or less), the Customer will ensure it has contacted Optum in sufficient time to ensure that all services will be delivered during the relevant contract term and to the extent that the Services have not been fully delivered by that date and unless

agreed in writing that an extension is warranted, the Services will be deemed to have been fully delivered and the Customer shall be liable to pay the full Fees for the Services;

- 7.1.5. give notice to Optum of any adjustments or cancellations at least ten (10) Working Days before the scheduled delivery date and, to the extent the Customer gives less notice, it agrees that the adjusted days may become liable or payment at Optum's then current daily rate;
- 7.1.6. where relevant, provide a copy of the Agreement to any Service Recipients and ensure that each is aware of the same;
- 7.1.7. provide Optum (including, its agents, subcontractors, consultants and employees), in a timely manner and at no charge, with access to such Sites, information, data and other facilities as Optum may require from time to time;
- 7.1.8. provide Optum with such remote access to the Customer's systems as it may reasonably require for the purposes of providing the Services and complying with its obligations under the Agreement;
- 7.1.9. provide Optum, in a timely manner, with such In-put Materials and other information as it may require (and shall ensure that the same is accurate in all material respects);
- 7.1.10. be responsible (at the Customer's own cost) for preparing and maintaining the relevant premises for the supply of the Services (including identifying, monitoring, removing and disposing of any hazardous materials from any relevant premises in accordance with all applicable laws, before and during the supply of the Services);
- 7.1.11. inform Optum of any relevant health and safety rules and regulations and any other reasonable security requirements that apply in respect of the Customer's and/or any Service Recipient's premises or systems;
- 7.1.12. ensure that the Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards and requirements;
- 7.1.13. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its receipt of the Services, the use of In-put Material and the use of the Customer's equipment, in all cases before the Commencement Date;
- 7.1.14. keep, maintain and insure the Equipment whilst it is on any Site in good condition, and it shall not dispose of, or use, the Equipment other than in accordance with Optum's written instructions or authorisation;
- 7.1.15. provide such personnel assistance as Optum may reasonably require from time to time in order for Optum to be able to provide the Services;
- 7.1.16. where applicable, appoint a project manager (as may be updated from time to time), who shall have the authority to contractually bind the Customer on all matters relating to the Agreement, and the Customer shall inform Optum of the name and relevant credentials of the project manager;
- 7.1.17. use its reasonable endeavours to maintain consistency in respect of any project manager referred to in clause 7.1.14, but should the Customer need to replace the project manager, then it shall notify Optum as to their replacement;
- 7.1.18. promptly install any updates, patches or upgrades to the Software made available by Optum, ensuring at all times that the Customer's version of the Software remains within two minor versions of the latest version of the Software made available by Optum;
- 7.1.19. without prejudice to clause 7.1.16, accept promptly and take all reasonable commercial steps to facilitate the installation of any urgent clinical safety releases in respect of any Software on the basis that a risk assessment has been conducted by Optum (through accredited clinicians) and it has determined that the functionality used by the Customer poses (or is likely to pose) a risk to patients;
- 7.1.20. where applicable, accept monthly static data updates including terminology, medication and data dictionary files (these updates being a prerequisite for interoperability, safe prescribing and clinical decision support by those customers who use this functionality, but also is key in clinical coding and data dictionary management);

- 7.1.21. comply with all laws and regulations with respect to its activities under the Agreement;
 - 7.1.22. carry out, and procure that all Authorised Users carry out, all other Customer responsibilities set out in the Agreement (including in any relevant Product Schedules or in any agreed Project Plan) in a timely and efficient manner. In the event of any delays in the Customer's compliance with its obligations under the Agreement, Optum may adjust any timetable or delivery schedule set out in the Agreement or otherwise agreed as reasonably necessary; and
 - 7.1.23. comply with any instructions issued by Optum pursuant to the maintenance provisions contained within the relevant Product Schedule.
- 7.2. If Optum's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (and/or any Service Recipient), its agents, subcontractors, consultants or employees, then:
- 7.2.1. Optum shall not be liable for any 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); and
 - 7.2.2. the Customer shall (and/or where appropriate shall procure the Service Recipient shall) agree with Optum a reasonable extension of time corresponding to the delay.
- 7.3. Optum shall not be liable for any delays, faults or interruptions in the Services caused by a failure or inadequacy in any Customer (and/or where appropriate any Service Recipient) or other third party equipment or processes or any incompatibility between any Customer (and/or where appropriate any Service Recipient) and third party equipment or processes.
- 7.4. The Customer shall be liable to pay Optum, on demand, all reasonable Losses sustained or incurred by Optum arising from the Customer's (and/or any Service Recipient's) fraud, negligence or failure to perform, or delay in the performance of, any of its obligations under the Agreement. Optum shall confirm all such Losses to the Customer in writing.

8. PRODUCT SCHEDULES

- 8.1. Each Service supplied to the Customer by Optum may be subject to additional terms set out in the relevant Service's associated Product Schedule. The Product Schedules are set out on this website - <https://www.optum.co.uk/contracts-repository> and it is the Customer's responsibility to review the terms set out in the Product Schedule for the Service(s) it wishes to purchase. Each Quote issued to the Customer will refer to the applicable Product Schedule by its LCC reference number.
- 8.2. The Product Schedules form part of the Agreement together with these General Terms and the Quote provided by Optum.

9. SALE OF HARDWARE

- 9.1. Where applicable, Optum shall sell and supply the Hardware to the Customer on the terms of the Agreement, including as set out in this clause 9.
- 9.2. The Hardware is described in the Quote and/or Product Schedule (or as otherwise agreed in writing). Optum may amend any specification in respect of the Hardware, as detailed in the Quote and/or Product Schedule or as otherwise agreed in writing with Optum, to reflect any changes made by the relevant manufacturer(s) or if required by any applicable statutory or regulatory requirements.
- 9.3. Optum shall deliver the Hardware to the agreed delivery location as detailed in the Quote and/or Product Schedule (or as otherwise agreed in writing) (the "**Delivery Location**") at any time after Optum notifies the Customer that the Hardware is ready. Delivery of the Hardware shall be completed on its arrival at the Delivery Location.
- 9.4. Any dates quoted for delivery of the Hardware 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 Hardware 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 Hardware.
- 9.5. If the Customer fails to accept or take delivery of the Hardware, then (except where such failure or delay is caused by Optum's failure to comply with its obligations under the Agreement):
 - 9.5.1. delivery of the Hardware shall be deemed to have been completed at 9.00 am on the first Working

Day following the day on which Optum notified the Customer that the Hardware was ready; and

9.5.2. Optum may store the Hardware until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

9.6. If ten (10) Working Days after Optum notified the Customer that the Hardware was ready for delivery the Customer has not accepted delivery, Optum may (without prejudice to any other rights or remedies) resell or otherwise dispose of part or all of the Hardware without any liability to the Customer.

9.7. The Customer shall not be entitled to reject the Hardware if Optum delivers up to and including five (5) per cent more or less than the quantity of Hardware ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice that the wrong quantity of Hardware was delivered.

- 9.8. Optum may deliver the Hardware by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 9.9. Optum shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer's warranty regarding the relevant Hardware.
- 9.10. Optum warrants that on delivery, the Hardware shall:
- 9.10.1. subject to clause 9.2, conform in all material respects with the relevant specification (if any) set out in the Quote and/or Product Schedule (or as otherwise agreed in writing); and
 - 9.10.2. be free from material defects in design, material and workmanship.
- 9.11. Subject to clause 9.12, if:
- 9.11.1. the Customer gives notice in writing within a reasonable time of discovery that some or all of the Hardware items do not comply with the warranty set out in clause 9.10;
 - 9.11.2. Optum is given a reasonable opportunity of examining such Hardware; and
 - 9.11.3. the Customer (if asked to do so by Optum) returns such Hardware to Optum's place of business at the Customer's cost,
- then Optum shall, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full.
- 9.12. Optum shall not be liable for the Hardware's failure to comply with the warranty in clause 9.10 if:
- 9.12.1. the Customer makes any further use of such Hardware after giving a notice in accordance with clause 9.11;
 - 9.12.2. the defect arises because the Customer failed to follow Optum's instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;
 - 9.12.3. the Customer alters or repairs such Hardware without the written consent of Optum;
 - 9.12.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
 - 9.12.5. the Hardware differs from the relevant Hardware specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 9.13. Except as provided in this clause 9, Optum shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 9.10.
- 9.14. The terms of the Agreement shall apply to any repaired or replacement Hardware items supplied by Optum under clause 9.11.
- 9.15. Risk in the Hardware shall pass to the Customer on completion of delivery.
- 9.16. Title to the Hardware shall not pass to the Customer until Optum receives payment in full (in cash or cleared funds) for the Hardware 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 Hardware shall pass at the time of payment of all such sums. For the avoidance of doubt, title relates only to the physical Hardware and not to any software (and/or any software as may be embedded within the Hardware) provided by Optum, or any third party licensor, as it is only ever licensed to the Customer in accordance with the terms of the Agreement.
- 9.17. Until title to the Hardware has passed to the Customer, the Customer shall:
- 9.17.1. store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Optum's property;
 - 9.17.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;

- 9.17.3. maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on Optum's behalf from the date of delivery;
 - 9.17.4. notify Optum immediately if it becomes subject to any of the events listed in clauses 17.1.3 to 17.1.6; and
 - 9.17.5. give Optum such information relating to the Hardware as Optum may require from time to time.
- 9.18. If, before title to the Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clauses 17.1.3 to 17.1.6, then, without limiting any other right or remedy Optum may have:
- 9.18.1. the Customer's right to use the Hardware in the ordinary course of its business ceases immediately; and
 - 9.18.2. Optum may at any time: (i) require the Customer to deliver up all Hardware in its possession; and (ii) if the Customer fails to do so promptly, enter any sites where the Hardware items are stored in order to recover them.

10. CHARGES AND PAYMENT

- 10.1. The Customer shall pay the Fees in accordance with the terms of the Agreement.
- 10.2. The Quote and/or Product Schedule will detail whether the Fees are to be calculated on a time and materials basis, a fixed price basis, a combination of both or by applying some other pricing model (if for any reason such details are not provided in either document then Optum will notify the Customer in writing as to the applicable pricing model).
- 10.3. Clause 10.4 applies if Optum provides Services on a time and materials basis. Clause 10.5 applies if Optum provides Services for a fixed price. The remainder of this clause 10 shall apply in any event. In relation to the sale of Hardware and/or licensing of software (where applicable), the:
- 10.3.1. total price for the sale or licence (as applicable) of such items; and/or
 - 10.3.2. any additional payment terms, shall be set out in the
Quote (or as otherwise agreed in writing with Optum).
- 10.4. Where Services are provided on a time and materials basis:
- 10.4.1. the charges payable for the Services shall be calculated in accordance with Optum's standard daily fee rates, as identified in the Quote or as otherwise agreed in writing with Optum (as may be amended from time to time by Optum giving not less than thirty (30) days' written notice);
 - 10.4.2. Optum's standard daily fee rates for each individual Optum employee, engineer, contractor and/or agent (each an "**Optum Engineer**") performing the Services are calculated on the basis of an eight (8) hour day, worked between such times as shall be specified in the Product Schedule on Working Days;
 - 10.4.3. Optum shall be entitled to charge an overtime rate of two hundred percent (200%) of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by Optum Engineers in delivering the Services outside the hours referred to in clause 10.4.2;
 - 10.4.4. Optum shall ensure that each Optum Engineer that it instructs completes time sheets recording time spent delivering the Services, and Optum shall use such time sheets to calculate the charges included in each monthly invoice referred to in clause 10.4.5; and
 - 10.4.5. subject to clause 10.14, Optum shall invoice the Customer monthly in arrears for its charges for time, expenses and materials for the month concerned, calculated as provided in this clause 10.4. Each invoice shall set out the time spent by each Optum Engineer whom it engages on the Services and provide details of any expenses and materials, accompanied by the relevant receipts.

- 10.5. Where Services are provided on a fixed price basis, the price for the Services shall be the amount set out in the Quote or as otherwise agreed in writing with Optum.
- 10.6. The Fees, along with any fixed price and/or daily rate as identified in the Quote or as otherwise agreed in writing with Optum excludes:
- 10.6.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Optum Engineers whom Optum engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by Optum for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Optum at cost; and
 - 10.6.2. VAT, which Optum shall add to its invoices at the appropriate rate.
- 10.7. The Customer shall pay each invoice submitted by Optum, in full and in cleared funds (without deduction or set-off) to a bank account nominated in writing by Optum, within thirty (30) days of the date of such invoice.
- 10.8. Without prejudice to any other right or remedy that it may have available to it, if the Customer fails to pay Optum on the due date, Optum may:
- 10.8.1. charge interest on such sum from the due date for payment at the rate of four percentage points a year above the Bank of England's base rate, 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, at its option, Optum may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or
 - 10.8.2. suspend the performance of any and all Services (without any liability to the Customer or any Service Recipient) until payment has been made in full.
- 10.9. Time for payment shall be of the essence of the Agreement.
- 10.10. 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 10.10 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 10.11. 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.
- 10.12. Where the Customer is purchasing Hardware, software licences, Services and/or the supply and use of Equipment for the benefit of a number of Service Recipients the date of actual receipt of Services, software licences and/or delivery and installation of Equipment and/or Hardware may not be uniform across all Service Recipients, and accordingly Service Recipients will likely receive the benefit of the same at various points following the Commencement Date.
- 10.13. For the purposes of clause 10.14, Service Recipients who have received the benefit of the Services, software licences, Equipment and/or Hardware are referred to as **"Actual Service Recipients"**, and those who have not yet received the benefit of the same are referred to as **"Pending Service Recipients"**.
- 10.14. Notwithstanding clause 10.12, Optum shall be entitled to invoice the Customer in respect of Fees as follows:
- 10.14.1. for the first Contract Year, Optum shall be entitled to invoice the Customer in advance, immediately following the Commencement Date, for all Fees due in respect of all Service Recipients in the first Contract Year, on the basis that all Service Recipients are deemed to be Actual Service Recipients on or immediately following the Commencement Date;
 - 10.14.2. where the Term exceeds 12 months:
 - 10.14.3. for the second Contract Year, Optum shall adjust the Fees, on a pro rata basis, to reflect any period in the first Contract Year during which any Service Recipients were Pending Service Recipients; and

10.14.4. for the third and subsequent Contract Years, Optum shall be entitled to invoice the Fees in full, in respect of all Service Recipients; and/or

10.14.5. where the Term is only 12 months (or less), then at the expiry of the Term, Optum shall issue the Customer with a credit note in respect of the Fees a pro rata basis, equivalent to the period during the Term that any Service Recipients were Pending Service Recipients.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. As between the Customer and Optum, all Intellectual Property Rights and all other rights (including, any arising rights) in respect of the Services, any Software, Documents provided by Optum (together with the Pre-existing Materials) shall be owned by Optum. Subject to clause 11.2 and any specific terms set out in the relevant Product Schedule, Optum licenses such rights to the Customer on a personal, nonexclusive and non-transferable (without prejudice to any access and use required by any relevant Service Recipients) basis to such extent as is necessary to enable the Customer to receive the Services. If the Agreement terminates, this licence shall automatically terminate.

11.2. The Customer acknowledges that, where Optum does not own the Intellectual Property Rights in any Pre-existing Materials, then the Customer's use of the same is conditional on Optum obtaining the necessary licence(s) from the relevant licensor(s) of such Pre-existing Materials on such terms as will entitle Optum to license such rights to the Customer under clause 11.1.

11.3. The Customer acknowledges that, save as expressly agreed herein, the Agreement does not grant the Customer any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Software, Services or any related Documents.

11.4. Optum warrants that it has all rights in relation to the Services, including any Software, that are necessary to grant all the rights that it purports to grant under, and in accordance with, the terms of the Agreement.

12. CONFIDENTIALITY

12.1. A party receiving Confidential Information under this Agreement (the "**Recipient**") shall keep the Confidential Information in strict confidence.

12.2. The Recipient (and/or where appropriate a Service Recipient) may disclose the relevant Confidential Information:

12.2.1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such Confidential Information for the purposes of carrying out the Recipient's obligations under the Agreement and/or of providing or receiving the Services, provided those individuals are subject to nondisclosure obligations substantially similar to those of the Agreement; and

12.2.2. as may be required by law, court order or any governmental or regulatory authority.

12.3. The Recipient shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any Confidential Information comply with this clause 12.

12.4. The Recipient shall not use any Confidential Information for any purpose other than to provide or receive the Services, or to perform its obligations, under the Agreement.

12.5. All materials, Equipment and tools, drawings, specifications and data supplied to the Recipient (including, any Pre-existing Materials and Equipment) shall, at all times, be and remain the exclusive property of party sharing the Confidential Information (the "**Discloser**"), but shall be held by the Recipient in safe custody at its own risk and maintained and kept in good condition by the Recipient until returned to the Discloser, and shall not be disposed of or used other than in accordance with the Discloser's written instructions or authorisation.

12.6. On termination of the Agreement, the Recipient may return to the Discloser (or at the Discloser's request, destroy in such a 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 termination of the Agreement all materials (in writing or otherwise, including copies) containing any Confidential Information.

- 12.7. The Recipient shall promptly notify the Discloser where permitted to do so by law) 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 to do so seek an appropriate protective order.
- 12.8. The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of five (5) years following the termination or expiry of the Agreement.
- 12.9. The parties acknowledge that breach of this clause 12 may cause the Discloser irreparable injury for which damages may not be an adequate remedy. Therefore, in the event of such breach, the nonbreaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.
- 12.10. The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services form part of Optum' Confidential Information.
- 12.11. Optum acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.12. The obligations in this clause 12 shall not apply to any information which is already in the public domain or which enters the public domain during the term of the Agreement other than through the fault of the recipient.

13. IPR INDEMNITY

- 13.1. Optum shall defend the Customer (and its officers, directors and employees) against any claim that the Software (but not any third party software) infringes any United Kingdom patent (effective as at the Service Commencement Date), copyright, database right or right of confidentiality, and it shall indemnify the Customer for any amounts awarded against the Customer in final judgment or settlement of such claims, provided that:
 - 13.1.1. Optum is given prompt notice of any such claim;
 - 13.1.2. the Customer provides reasonable co-operation to Optum in the defence and settlement of any such claim (at Optum' expense); and
 - 13.1.3. Optum is given sole authority to defend or settle the claim.
- 13.2. In the defence or settlement of a claim pursuant to clause 13.1, Optum may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement without further liability to the Customer.
- 13.3. Optum shall have no liability pursuant to clause 13.1 if the infringement is based on:
 - 13.3.1. modification of any Software by anyone other than Optum;
 - 13.3.2. use of any Software in a manner contrary to any instructions given by Optum;
 - 13.3.3. use of any Software contrary to the terms of the Agreement;
 - 13.3.4. maintenance of any Software (or any part thereof) by the Customer or on its behalf other than in accordance with the terms of the Agreement;
 - 13.3.5. use of a non-current version of any Software; and/or
 - 13.3.6. use of any Software after notice of the relevant (alleged or actual) infringement from Optum or any appropriate authority.
- 13.4. Nothing in this clause 13 shall restrict or limit each party's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under an indemnity.

13.5. Clauses 13.1, 13.2 and 13.3 state the Customer's sole and exclusive rights and remedies, and Optum's entire obligations and liability, for the infringement of any third party Intellectual Property Rights.

14. LIMITATIONS OF LIABILITY

14.1. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 14, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

14.2. This clause 14 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors), including in respect of:

14.2.1. any breach of the Agreement;

14.2.2. the delivery of the Services and any use made of the Services or any part of them; and

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

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

14.3.1. death or personal injury resulting from its negligence;

14.3.2. any Losses incurred as a result of fraud or fraudulent misrepresentation; and/or

14.3.3. any Losses which cannot be limited or excluded pursuant to applicable law.

14.4. Subject to clause 14.3, Optum shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

14.4.1. loss (whether direct or indirect) of revenue or profits;

14.4.2. loss (whether direct or indirect) of business opportunity;

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

14.4.4. loss (whether direct or indirect) of anticipated savings;

14.4.5. loss (whether direct or indirect) of use;

14.4.6. loss (whether direct or indirect) of, or corruption to, data or information;

and/or 14.4.7. indirect, consequential or special loss or damage, in each case arising out of or in connection with the Agreement.

14.5. Subject to clause 14.3, Optum's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including, negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise arising out of or in connection with the Agreement in respect of all Losses (including under any indemnities and including in respect of any Service Recipient Losses) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Fees paid and/or due to be paid by the Customer under the Agreement in that Contract Year (or in respect of any and all Losses arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Fees paid and/or due to be paid in the final Contract Year of the Agreement).

14.6. Any Losses suffered by a Service Recipient under or in connection with the Agreement ("**Service Recipient Losses**") shall be deemed for the purposes of the Agreement to be Losses suffered by the Customer under the Agreement, and that the Customer shall be entitled to seek to recover from Optum any such Service Recipient Losses, subject always to the provisions of this clause 14, as though the relevant Losses had been suffered by the Customer (provided always that under no circumstances shall any Service Recipient have any right to bring any claim or action against Optum other than via the Customer and subject to the terms of the Agreement and if any such claim should be brought then the Customer will indemnify Optum in respect of the same).

15. DATA PROTECTION

- 15.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.2. The parties acknowledge that (save as may be expressly agreed to the contrary) for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is a controller and Optum is a processor (where controller and processor have the meanings as defined in the Data Protection Legislation).
- 15.3. Annex 1 (as may, from time to time, be updated to reflect any changes to the scope of the processing) sets out the scope, nature and purpose of processing by Optum, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update Annex 1 to reflect any changes to the scope of the processing. Product Schedules may also include service specific processing details where this differs from Annex 1.
- 15.4. Without prejudice to the generality of clause 15.1, the Customer (and/or where appropriate the relevant Service Recipient) will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Optum for the duration and purposes of the Agreement.
- 15.5. Optum shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Agreement:
- 15.5.1. process that Personal Data on the written instructions of the Customer or where appropriate the relevant Service Recipient (unless otherwise required by law);
 - 15.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer (and/or where appropriate the relevant Service Recipient), designed 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;
 - 15.5.3. take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;
 - 15.5.4. not transfer any Personal Data outside of the UK and/or the European Economic Area unless the prior written consent of the Customer (and/or where appropriate the relevant Service Recipient) has been obtained and the following conditions are fulfilled:
 - a) the Customer (and/or where appropriate the relevant Service Recipient) or Optum has provided appropriate safeguards in relation to the transfer;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) 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
 - d) Optum complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;
 - 15.5.5. assist the Customer (and/or where appropriate the relevant Service Recipient), 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;

- 15.5.6. notify the Customer (and/or where appropriate the relevant Service Recipient) without undue delay on becoming aware of a Personal Data breach (as defined in the Data Protection Legislation);
 - 15.5.7. at the written direction of the Customer (and/or where appropriate the relevant Service Recipient), delete or return Personal Data and copies thereof to the Customer (and/or where appropriate the relevant Service Recipient) on termination of the Agreement unless required by law to store the Personal Data; and
 - 15.5.8. allow for audits by the Customer (and/or where appropriate the relevant Service Recipient) or its designated auditor in respect of Optum's data processing activities under the Agreement.
- 15.6. Optum is given general authorisation to engage third parties to process the Personal Data (each a **"SubProcessor"**) without obtaining any further written, specific authorisation from the Customer (or where appropriate the relevant Service Recipient). Optum will notify the Customer in writing about the identity of a potential Sub-Processor and the Customer will have the right to object to the same by giving notice in writing within one month from receiving the notification from Optum. If the Customer objects to the change, then Optum may either accept the objection and not appoint the relevant Sub-Processor or it may terminate the Agreement without any liability to the Customer. Optum shall complete a written agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. Optum is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of Optum's material sub-processors as at the date of the Agreement is set out on Optum's website (or will otherwise be notified to the Customer). 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. 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 the 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 fees).
- 15.7. The parties may, acting reasonably, agree to amend the Agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.
- 15.8. Optum acknowledges that the Customer may have (and the relevant Service Recipients may have) duties and obligations under the Freedom of Information Act 2000 (FOIA) and Optum will upon request give reasonable assistance where appropriate or necessary in relation to their compliance with any such duties.

16. CUSTOMER DATA

- 16.1. The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 16.2. Where the relevant Product Schedule expressly provides that Optum will take a backup of Customer Data, Optum shall follow its own backup procedures in respect of the Customer Data. In the event of any loss of, or damage to, any Customer Data, the Customer's sole and exclusive remedy shall be for Optum to use its reasonable endeavours to seek to restore the lost or damaged Customer Data from the latest back-up of such Customer Data as may be maintained by Optum. Optum shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except for any third party sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 16.3. Optum shall use reasonable endeavours to achieve an "all standards met" performance level against all requirements in the NHS data security and protection toolkit. If Optum has not achieved an "all standards met" performance level by the Service Commencement Date, the Customer may, in its sole discretion, agree a plan with Optum to enable Optum to achieve an "all standards met" performance level within a reasonable time thereafter.

17. TERMINATION

17.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement, without liability to the other, immediately on giving notice to the other if:

- 17.1.1. the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than ten (10) days after being notified in writing to make such payment;
- 17.1.2. 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;
- 17.1.3. the other party ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the first party in writing) or is dissolved or struck off;
- 17.1.4. the other party is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings; and/or
- 17.1.5. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 17.1.3 or 17.1.4; or
- 17.1.6. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

17.2. Optum may terminate the Agreement in whole or in part by giving not less than thirty (30) days' notice in writing if:

- 17.2.1. there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001); and/or
- 17.2.2. Optum decides to withdraw one or more of the Services being provided to the Customer from general sale.

17.3. On termination of the Agreement for any reason:

- 17.3.1. the Customer shall immediately pay to Optum all Optum's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Optum may submit an invoice, which shall be payable immediately on receipt; and
- 17.3.2. the Customer shall (and shall ensure that any Service Recipients shall) return all Optum's Equipment and Pre-existing Materials. If the Customer fails to do so, then Optum may enter the Customer's (and/or where appropriate the relevant Service Recipient's) premises and take possession of them. Optum reserves the right to charge the Customer or Service Recipient (where applicable) for any costs it incurs as a result of taking the actions outlined in this clause 17.3.2. Until they have been returned or repossessed, the Customer (and/or where appropriate the relevant Service Recipient) shall be solely responsible for their safe keeping.

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

- 17.4.1. be without prejudice to any obligation or right of either 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
- 17.4.2. 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.

17.5. Without prejudice to the generality of clause 17.4, the provisions of clauses 10, 11, 12, 13, 14, 26, and

32 will survive expiry or termination of the Agreement for any reason.

17.6. No element of the Fees shall be refundable by Optum on termination of the Agreement or any of the Services by the Customer.

18. CORRUPT GIFTS AND PAYMENTS

18.1. The term “**prohibited act**” means offering, giving or agreeing to give to any person employed by or otherwise associated with Optum any gift or consideration of any kind as an inducement or reward for:

18.1.1. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement;

18.1.2. showing or not showing favour or disfavour to any person in relation to the Agreement;

18.1.3. entering into the Agreement where commission has been paid or has been agreed to be paid by Optum or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to Optum; and includes committing any offence under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010; or

18.1.4. committing any offence under any act creating offences in respect of bribery or fraudulent acts; or at common law, in respect of fraudulent acts in relation to the Agreement or any other related agreement; or defrauding or attempting to defraud Optum.

18.2. The Customer shall ensure that it (and any person associated with the Customer in connection with the Agreement, including, where applicable, a Service Recipient) shall refrain from committing, facilitating, encouraging or allowing a prohibited act. The Customer shall be responsible and directly liable for any such prohibited act carried out by any person associated with the Customer in connection with the Agreement (including any Service Recipient).

19. INDEMNIFICATION

19.1. The Customer shall defend, indemnify and hold harmless Optum (its directors, officers, agents and employees) at all times from and against any Losses suffered, sustained or incurred in relation to any claim relating to or arising from:

19.1.1. any injury or harm suffered by any Optum employee involved in the provision of the Services, arising out of any act or omission by the Customer and/or any Service Recipient, the Customer's and/or any Service Recipient's employees, the Customer's and/or any Service Recipient's agents and/or the Sites; or

19.1.2. the Customer's and/or any Service Recipient's (or any of its or their directors, officers, agents and employees) use of the Services or any licensed software other than in accordance with the terms of the Agreement.

19.2. In the event Optum is able to claim under the indemnity in clause 19.1 (or such a claim seems likely to arise), then Optum may suspend delivery of the Services unless or until such time as Optum is certain, in its reasonable opinion, that there is not likely to be a claim or the claim has been resolved.

20. WARRANTY DISCLAIMER

20.1. Except as expressly stated in the Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Optum. Any condition, warranty, representation or other term concerning the sale of Hardware, supply of Equipment, licence of software and/or provision of the Services which might otherwise be implied into, or

incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

20.2. Optum DOES NOT WARRANT THAT ANY SOFTWARE LICENSED UNDER THE AGREEMENT WILL BE ERROR FREE.

20.3. The Customer acknowledges that any software licensed under the Agreement has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of any such software meet its requirements.

21. FORCE MAJEURE

Optum shall have no liability under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by any 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, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

22. NON-SOLICITATION

22.1. During the Term and for twelve (12) months thereafter, the Customer shall not employ or contract for the services of any individual who is or has been in the employ of Optum and has been concerned with the performance of the Services hereunder except with the prior written consent of Optum.

23. VARIATION

23.1. Optum may, from time to time and without notice, change the Services in order to comply with any applicable safety or legal requirements, provided that such changes do not materially and adversely affect the nature, scope of, or the charges for the Services. If Optum requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

23.2. Without prejudice to clause 23.1, Optum may, from time to time, amend the terms of the Agreement by giving the Customer notice in writing. If any change to the terms would have a material adverse effect on the Customer then Optum shall give no less than thirty (30) days' notice 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) month's 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).

23.3. Additional Services may be added to the Services provided by Optum to the Customer under the Agreement by the parties entering into new Quotes and/or Product Schedules, each of which shall be subject to and be incorporated into (and form part of) the Agreement.

23.4. Subject to clauses 23.1 and 23.2, 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.

24. WAIVER

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

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

25. SEVERANCE

- 25.1. If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 25.2. If a provision of the Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

26. ENTIRE AGREEMENT

- 26.1. The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 26.2. 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.
- 26.3. Nothing in this clause 26 shall limit or exclude any liability for fraud.

27. ASSIGNMENT

- 27.1. The Customer shall not, without the prior written consent of Optum, assign, transfer, charge, mortgage, subcontract or deal in any other manner with any or all of its rights or obligations under the Agreement (this is without prejudice to the express rights noted in relation to Service Recipients).
- 27.2. Optum may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

28. THIRD PARTY RIGHTS

- 28.1. Save as expressly provided for under the Agreement in respect of any Service Recipients each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.
- 28.2. The Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except always that, subject to clause 28.3, each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.
- 28.3. Notwithstanding clause 28.2, the parties may by agreement rescind, vary or terminate the Agreement without the consent of any Service Recipient, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

29. NO PARTNERSHIP OR AGENCY

Nothing in the Agreement is intended, or shall be deemed, to constitute a partnership or joint venture of any kind between the parties, nor constitute either party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

30. CONTRACT MANAGEMENT

- 30.1. Each party shall nominate an individual to act as their representative in respect of the Services to be provided under the Agreement (each a **"Service Manager"**).

- 30.2. The principal point of contact between the parties in relation to any issues arising out of the Agreement or the performance of the Services will be the Service Managers who will meet from time to time or upon request to discuss matters relating to the Agreement. Either Party may change the identity of its Service Manager at any time by written notice to the other.
- 30.3. If an issue should arise which the parties are unable to resolve via the Service Managers then the Customer may (without prejudice to clause 32) escalate the same by following Optum's formal complaint's procedure (a copy of which will be provided by Optum's Service Manager promptly upon request).

31. NOTICES

- 31.1. 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 its registered office address, or such other address as may have been notified by that party for such purposes, or (in respect of notices sent by the Customer) by email to uk.contracts@optum.com.
- 31.2. A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9:00am on the first Working 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.
- 31.3. All notices sent to Optum shall be marked for the attention of legal counsel.

32. DISPUTE RESOLUTION; GOVERNING LAW AND JURISDICTION

- 32.1. 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. If the Dispute cannot be resolved
- by the relevant representatives of the parties within ten (10) Working 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. Within ten (10) Working 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) Working 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 32 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.
- 32.2. 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 law of England and Wales.
- 32.3. 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 Subject

Processing by Optum

As noted in clause 15, the parties may from time to time agree one or more separate, service specific, data processing annexes in relation to individual Product Schedule(s) which shall take precedence over this Annex as appropriate.

Purpose of Processing:	for the purposes of delivering the relevant services and meeting other obligations specified in the Agreement.
Duration of the Processing:	for the Term (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 services 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, data of birth, addresses, telephone numbers, email addresses and other contact details together, where relevant dependent on the relevant services being delivered, with data concerning health.
Categories of Data Subject:	data subjects may include: members of the Customer's (and/or where applicable any Service Recipient's) staff (including those of its associated entities or third party suppliers) and, where relevant dependent on the relevant services being delivered, patients (and next of kin/carers).