

Appendix 1

OPTUM HEALTH SOLUTIONS (UK) LIMITED

CLOUD SUBSCRIPTION SERVICES AND LICENSE AGREEMENT

This Cloud Subscription Services and License Agreement (the “**Agreement**”) is of even date as the Call Off Contract (the “**Effective Date**”), by and between Supplier (referred to as “**Optum**”), and the Buyer (referred to as “**Customer**”).

Customer wishes to obtain certain Software and Services from Optum under the G Cloud 15 Framework Agreement. This Agreement sets forth the Supplier Terms and Conditions (as defined in the G Cloud 15 Framework Agreement) under which Optum will provide the requested Software and Services.

1. Software and Services.

1.1. The following definitions shall apply to this Agreement, including all product schedules referencing this Agreement (the “**Schedules**”):

- 1.1.1. “**Affiliate**” shall mean a company, which controls, is controlled by or is under common control with a party to this Agreement. For this purpose “control” shall mean majority ownership or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization.
- 1.1.2. “**Contract**” means the call off contract under G Cloud 15 Framework Agreement.
- 1.1.3. “**Cloud Services**” shall mean any infrastructure management services, hardware installation and maintenance services, hosting and administration services for internet-based applications (including Optum hosting of its Software to provide services), application management services, remote storage, information security, business continuity, or other similar services that Customer obtains from Optum pursuant to this Agreement as specified in a Schedule, but does not include Professional Services.
- 1.1.4. “**Customer Content**” shall mean data, text, audio, video, images or other content that Customer or a Data Source delivers to and runs on the Cloud Services.
- 1.1.5. “**Customer Data**” shall mean any data that Customer, its End Users or a Data Source make available to Optum or which is posted or uploaded by the Customer, its End Users or Data Sources onto the Software in connection with the Services provided under this Agreement, including Personal Data.
- 1.1.6. “**Customer Resources**” shall mean, the Customer Content delivered to Optum by Customer.
- 1.1.7. “**Data**” shall mean all databases, data sets and other collections of information that Customer licenses from Optum pursuant to this Agreement.
- 1.1.8. “**Data Protection Laws**” shall mean the applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("GDPR"), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities.
- 1.1.9. “**Data Sources**” shall mean Customer and its administrators, subcontractors, consultants, vendors and other sources of Customer Data to be delivered to Optum.
- 1.1.10. “**Documentation**” shall mean all user manuals and other written specifications distributed to Customer in connection with the Software.
- 1.1.11. “**End User**” shall mean any end user of Software or a Customer Resource.
- 1.1.12. “**Optum Personnel**” means Optum’s employees and its Affiliates, licensors and subcontractors and their respective employees and subcontractors.
- 1.1.13. “**Optum Policies**” shall mean Optum’s Acceptable Use Policy, Privacy Policy, Administration Policy, and any other policy or terms governing the Services that may be delivered by Optum or referenced in or incorporated into this Agreement.

Commented [PS1]: Drafting Note: Applicable only for Cloud Services. Should be deleted in the event of hybrid services.

- 1.1.14. **“Optum Security Standards”** means Optum’s security standards as updated by Optum from time to time.
- 1.1.15. **“Optum Systems”** means Optum’s then current data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are used to provide the Services.
- 1.1.16. **“Optum Tools”** shall mean any software, documentation, APIs, or other tools that Optum makes available in connection with the Services to allow access to and use of the Services.
- 1.1.17. **“Party”** means Customer or Optum, as applicable.
- 1.1.18. **“Parties”** means Customer and Optum.
- 1.1.19. **“Personal Data”** shall have the meaning given to such term in the Data Protection Laws.
- 1.1.20. **“Professional Services”** shall mean any implementation, integration, configuration, training, analytical, data management, support, maintenance, reporting, consulting and other services that Customer obtains from Optum pursuant to this Agreement as specified in a Schedule.
- 1.1.21. **“Schedule”** shall mean either a Product Schedule or Statement of Work or Call-Off Order under the G Cloud 15 Framework Agreement which sets forth products and/or services purchased, licensed or to which access is provided by Optum to Customer.
- 1.1.22. **“Service Credit”** shall mean a financial credit payable to Customer as further described in a Service Level Agreement.
- 1.1.23. **“Service Level Agreement”** shall mean the agreement for Service Levels for the applicable Cloud Services attached to the applicable Schedule, if any.
- 1.1.24. **“Service Levels”** is defined in the applicable Service Level Agreement.
- 1.1.25. **“Services”** shall mean Professional Services and Cloud Services, as the context dictates, provided by Optum hereunder.
- 1.1.26. **“Software”** shall mean all computer software programs Optum grants Customer a license or access to pursuant to a Schedule, all updates and revisions to such Software that Optum provides to Customer, and all Documentation provided with such Software.
- 1.1.27. **“Useable Data”** shall mean complete, readable Customer Data in the format required for the applicable Software or Services product, conforming to the source data standard set forth in a Schedule, and including appropriate documentation, which has been tested and inspected by Optum, and determined to be Useable Data by Optum.
- 1.1.28. Definitions and terms used in this Agreement will have the same meaning as set out under the Call-Off Contract unless expressly set out otherwise herein.
- 1.2. When Customer agrees to purchase or receive Professional Services, access Cloud Services or license Software Services or access from Optum pursuant to this Agreement, the parties shall sign an appropriate Schedule to this Agreement. Execution of this Agreement does not bind Customer to any particular Services or Software until the parties execute a written Schedule. Each Schedule shall define the Software and/or Services to be provided to Customer and the prices and terms applicable to them. To the extent the terms of a Schedule conflict with the terms of this Agreement, the terms of the Schedule shall control.
- 1.3. The following applies to Customer’s right to access and/or use any of the Software:
 - 1.3.1. As of the Effective Date of the applicable Schedule, Optum grants Customer and its End Users a nonexclusive, nontransferable license to access and use the Software for Customer’s and its End Users internal use within UK, pursuant to the terms of this Agreement and the applicable Schedule. Customer and its End Users may access and use the Software only as permitted in the applicable Schedule, and for no other purposes.
 - 1.3.2. The Software may only be accessed by End Users who have been properly issued access credentials or a valid password and in accordance with the terms of the applicable Schedule and the Agreement. End Users shall be required to maintain their ID and password or SSO access information in strict confidence and to choose a password and change their passwords from time to time in accordance with Optum’s applicable security policies.
 - 1.3.3. In the event that Customer wishes to use a third party as its agent to access the Software or a database of Customer Data produced through use of any Software (if applicable), Optum must

approve access by such third party and the third party must sign an appropriate nondisclosure agreement with Customer or with Optum. However, Optum's approval is not required for third party contractors that will have only incidental contact with or use of such items. Customer, however, remains responsible for protecting the confidentiality of the Software and Services it obtains from Optum. Except as permitted by this Agreement, Customer shall have no right to allow any person or entity who is not a party to this Agreement or an End User of Customer to access the Software directly or indirectly in any way.

- 1.3.4. Customer may make copies of the Software only for backup, archival, disaster recovery, and disaster recovery testing purposes. On each such copy of the Software Customer shall reproduce all notices or legends appearing on the original copy, including the copyright notice. All copies of the Software made or received by Customer can be used only as permitted under this Agreement. At any time within ten (10) days after Optum's written request, Customer shall inform Optum of the number and location of all copies of the Software Customer has made or received.
- 1.3.5. Customer shall not (i) copy, reproduce, modify, or excerpt any of the Software for any purpose other than as expressly permitted under this Agreement; (ii) distribute, rent, sublicense, share, transfer or lease the Software to any person or entity that is not a party to this Agreement or an Affiliate of Customer, or use the Software to provide service bureau or similar services to third parties (unless expressly permitted on a Schedule); or (iii) attempt to reverse engineer or otherwise obtain copies of the source code for the Software or the identity of individual patients or members, Data Sources, persons, payers, or providers reflected in any Data Products.
- 1.3.6. Optum shall furnish to Customer without charge only those updates to or new versions of Software that Optum furnishes without charge to all other licensees for the Software. If Optum notifies Customer that an update supersedes the preceding version, Customer shall have a reasonable time in which to move to the updated version, and thereafter, Optum will have no further obligation to provide maintenance services for the superseded Software versions. When Optum hosts Software for Customer, Optum will use the then-current version of the Software on behalf of Customer.

1.4. The following applies to Customer's purchase of, or subscription to, any Services:

- 1.4.1. Optum shall use commercially reasonable efforts to perform the Services in accordance with this Agreement, including each Schedule, subject to the terms and conditions of this Agreement. Professional Services may be subject to a project plan agreed by the Parties as part of an Schedule or as part of performance of the Services.
- 1.4.2. Optum will implement reasonable and appropriate measures for the Cloud Services, as reasonably determined by Optum, which are designed to secure Customer Content against accidental or unlawful loss, access or disclosure, in accordance with the Optum Security Standards. Optum may modify the Optum Security Standards from time to time, but will continue to provide at least the same level of security as is described in the Optum Security Standards on the applicable Schedule Effective Date.
- 1.4.3. Optum shall not be liable for any failure to comply with its obligations or duties arising under or in connection with this Agreement to the extent such failure is caused by any failure by Customer to comply with its obligations under this Agreement or other acts or omissions of Customer or Customer personnel or third parties outside of Optum's control.

1.5. Changes.

- 1.5.1. Changes in scope of the Services and/or Customer Resources may require an equitable adjustment to Optum's fees and/or date of performance, and Optum shall not be required to undertake such additional work until the Parties have agreed, in writing, to such adjustment through the change control process set forth in the applicable Schedule.

2. Intellectual Property.

- 2.1. Optum may use Optum Tools to perform Services for Customer. Customer acknowledges and agrees and, shall procure that End Users acknowledge and agree that the Optum Tools, including any modifications, improvements, adaptations, or enhancements thereto or new versions thereof developed by or for Optum, remain the sole property of Optum.
- 2.2. Cloud Services. If applicable to the Cloud Services and set forth in the applicable Schedule:

2.2.1. Service Levels. If applicable to the Cloud Services, Optum shall use commercially reasonable efforts to meet the Service Levels as specified in the applicable Service Level Agreement attached to a Statement of Work or Schedule hereunder.

- a) Measurement. Optum shall implement the measurement tools and procedures required to measure and report Optum performance of the Service Levels. The measurement tools and procedures shall: (a) permit reporting at a level of detail sufficient to verify compliance with the Service Levels; and (b) be subject to audit by Customer or its designee, subject to the terms hereof. Optum shall provide Customer or its designees, as applicable, with information concerning access to such measurement tools and procedures upon request, for inspection and verification purposes.
- b) Exclusive Remedies. If Optum fails to achieve one or more Service Levels to which Service Credits apply, as Customer's sole and exclusive remedies for such failure to achieve Service Levels: (a) Optum shall incur the Service Credits set forth in the applicable Service Level Agreement, and (b) under the circumstances set forth in the applicable Service Level Agreement, Customer shall have the right to terminate the applicable Cloud Service in accordance with such Service Level Agreement. Except as otherwise specified in a Statement of Work, a Service Credit shall be credited by Optum to Customer on the invoice that contains the fees for the month during which the right to such Service Credit arose. Service Credits shall be allocated among the Service Levels and calculated in accordance with the procedure set forth in the applicable Service Level Agreement.

2.2.2. Use.

- a) Customer will comply with the terms of this Agreement, including the Optum Policies, and all laws, rules, and regulations applicable to Customer's/End User's use of the Services. When accessing and using the Cloud Services, Customer agrees that it and its End Users will access the Cloud Services only as authorized by Optum and will comply with the Administration Policy and all security controls, policies, standards, and guidelines which are disclosed to Customer including the Optum Security Standards.
- b) Customer agrees it will not: (i) knowingly introduce any virus or disabling code into the Optum IP; (ii) allow third parties to have access to the Optum IP; (iii) attempt to access any portions of the Optum IP that are not required for Customer's use of the Services under this Agreement; (iv) use the Optum IP in any manner that may damage or impair the Optum IP, Optum, or its Affiliates; or (v) attempt to circumvent or bypass Optum's security procedures for the Optum IP.
- c) Optum's log-in credentials are for Customer's internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its login credentials to its agents and subcontractors performing work on behalf of Customer.

2.2.3. End Users. Customer is responsible for End Users' use of Customer Resources and the Services. Customer will ensure that all End Users comply with Customer's obligations under this Agreement and that the terms of its agreement with each End User are not inconsistent with this Agreement. If Customer becomes aware of any violation of its obligations under this Agreement by an End User, Customer will immediately suspend access to Customer Resources and the Services by such End User. Except as otherwise specified in a Schedule, Customer is responsible for providing customer service (if any) to End Users.

2.2.4. Ownership of Optum Cloud Services IP.

- a) Customer acknowledges and agrees that the Cloud Services, Optum Systems and Optum Tools, and all other methodologies, processes, procedures, work flows, tools, software, ideas, concepts, know-how, materials and information used by Optum and the Optum Personnel to perform the Cloud Services (except for the Customer Resources), including any modifications, improvements, adaptations, or enhancements thereto or new versions thereof, and all related technology and intellectual property rights remain the sole property of Optum or the applicable Optum Personnel (collectively, "Optum Cloud Services IP"). Optum and the Optum Personnel reserve all rights therein not granted herein.
- b) Subject to the terms and conditions of this Agreement, Optum grants Customer a limited, revocable on termination of the applicable Schedule, non-exclusive, non-sublicensable, non-transferable (except as permitted herein) license to access and use the Cloud Services solely in accordance with this Agreement during the term of each applicable Schedule.

- c) Optum may provide Optum Tools for use in connection with Customer's receipt of Cloud Services, for example for purposes of communication regarding service requests and incident response. Such Optum Tools may be identified in a Schedule. As of the applicable Schedule Effective Date, subject to the terms and conditions of this Agreement, Optum grants Customer a limited, revocable on termination of the applicable Schedule, non-exclusive, non-sublicensable, non-transferable (except as permitted herein) license to use the Optum Tools for Customer's internal use within the United States, pursuant to the terms of this Agreement and only for the term of the applicable Schedule Customer may use the Optum Tools only as permitted in the applicable Schedule, and for no other purposes. Additional terms may apply to use of the Optum Tools.
- d) Neither Customer nor any End User may use the Optum Cloud Services IP in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Customer nor any End User may, or may attempt to: (i) copy, reproduce, modify, excerpt, alter, tamper with, repair, or otherwise create derivative works of the Optum IP including any content included in the Cloud Services (except for Customer Content) for any purpose; (ii) distribute, rent, sublicense, share, transfer or lease the Optum Cloud Services IP to any person or entity that is not a Party to this Agreement, or use the Optum Cloud Services IP to provide service bureau or similar services to third parties (unless expressly permitted in a Schedule); (iii) attempt to reverse engineer, disassemble, or decompile or otherwise obtain copies of the source code for the Optum Cloud Services IP; or (iv) access or use the Cloud Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- e) If Customer elects to provide any suggestions or feedback to Optum or its Affiliates, Optum and its Affiliates will be entitled to use the suggestions and feedback without restriction. Customer hereby grants a non-exclusive, perpetual and irrevocable, transferable and sublicensable, royalty-free, license to Optum and its Affiliates to use the suggestions and feedback.
- f) Customer acknowledges that Optum is in the business of providing cloud and other services, and that Optum and the Optum Personnel will continue these activities. Notwithstanding anything to the contrary in this Agreement, Optum and the Optum Personnel shall have the right to use in the normal course of their business the general knowledge, know-how, methods, information and procedures developed, learned or observed in the course of providing the Cloud Services.

2.2.5. Continued Provision of Cloud Services.

- a) Force Majeure Events. Optum will maintain a plan covering business continuity in the event of a Force Majeure Event which affects Optum's ability to provide the Cloud Services ("Business Continuity Plan"). Upon a Force Majeure Event, Optum will use commercially reasonable efforts to undertake all applicable actions and precautions under the Business Continuity Plan, and diligently pursue them as necessary to avoid, or if not avoidable, minimize any interruption to the Cloud Services. Except as set forth in the preceding sentence, any failure or delay by Customer or Optum in the performance of its obligations pursuant to this Agreement shall not be deemed a default of this Agreement or a ground for termination hereunder to the extent such failure or delay is caused by a Force Majeure Event. A Force Majeure Event shall not affect Customer's payment obligations hereunder. The Party whose performance is affected by a Force Majeure Event shall immediately notify the other Party by telephone and email (to be confirmed in a notice within five (5) days of the inception of such delay).
- b) Suspension. Optum reserves the right to suspend provision of any Service (i) fifteen (15) days after notice to Customer of nonpayment of any fees owed to Optum under a Statement of Work that are thirty (30) days or more past due, where such breach remains uncured, (ii) immediately if Optum determines in its reasonable discretion that such suspension is necessary to comply with any applicable law, regulation or order of any governmental authority, (iii) immediately if Optum determines in its reasonable business judgment that the performance, integrity or security of any of Optum's services, facilities or property is being adversely impacted or in danger of being compromised, including as a result of Customer's use of the Cloud Services, or (iv) immediately if Customer or any End User is not in compliance with the Optum Policies or Section 6.4 (Customer Warranties and Acknowledgments) or sub Section 8.1 (of Section 8, Limitation of Remedies and

Indemnification) of this Agreement. Optum will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Cloud Services that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension. During any suspension, Customer remains responsible for all fees and charges Customer incurs during the period of suspension and Customer will not be entitled to any Service Credits under the Service Level Agreements.

- 2.3. All rights, title and interest in patents, copyrights, trademarks and trade secrets subsisting in or in relation to the Software and Services will remain the property of Optum or its licensors, as applicable. Neither Customer nor any End User(s) shall acquire any rights in the Software or Services except the limited right to receive, access and/or use the Software or Services as provided herein and in the Schedules.
- 2.4. In the event that Customer or its End Users provide Optum or its Affiliates, with observations, comments, criticisms, suggested improvements, general concepts, ideas or other feedback related to the Software or Services (collectively "Feedback"), Optum (and its Affiliates) may use the Feedback (including by incorporating it into a product or service) and the Customer hereby grants to Optum (and its Affiliates) a perpetual, nonexclusive, royalty-free, irrevocable license to use the Feedback in such manner, provided that this permission and license does not extend to any third party intellectual property rights.

3. Customer's Responsibilities.

- 3.1. Customer will, and will require its End Users to, provide and maintain all computer hardware, software, communications equipment, and associated peripherals and support necessary to access and use the Software and Services. Any failure to perform by Optum shall not be considered a breach of this Agreement if such failure to perform results from Customer's or its End Users failure to provide the recommended computer hardware, software, communications equipment, and/or associated peripherals and/or support. If a Schedule requires Customer to deliver Customer Data to Optum, Customer shall provide Optum with all Useable Data required, in the format required for the applicable Software or Services. Customer's failure to provide Useable Data shall relieve Optum of all obligations under this Agreement that are contingent upon receipt of Useable Data, until such time as Customer has delivered Useable Data to Optum.
- 3.2. Customer and the Data Sources shall be responsible for their data entry activities, and for the accuracy of any Customer Data delivered to Optum. Customer agrees that the Customer Data it provides to Optum under this Agreement (if any) contains true and accurate data and information, to the best of Customer's knowledge. Optum shall not be responsible for errors in Customer Data or data entry done by Customer or the Data Sources, or for errors in services, programs, hardware, data files, or output Optum provides to or maintains for Customer pursuant to this Agreement, if those Optum errors result from errors in Customer's or the Data Sources' input data, or from Customer's failure to comply with this Agreement. Customer is responsible for obtaining, prior to furnishing any data or information to Optum, any necessary permissions, consents, or releases, including entering into data processing agreements as applicable, which are required by applicable laws and/or regulations for the delivery of Customer Data to Optum and for Optum to use and disclose such Customer Data as set forth under this Agreement or required by law.
- 3.3. During and after the term of this Agreement and, insofar as it concerns Personal Data contained in the Customer Data, subject to any applicable data processing agreements by and between the parties, Optum may use, reproduce, transfer and combine Customer Data and information derived from that data for Optum and its Affiliates' internal operations, including (without limitation) for the purposes of preparing benchmark data and databases, for reporting, and for the testing, development and improvement of its software and services. Optum shall not use, distribute or disclose Customer Data in a manner that would reveal to any third party any Personal Data in a form that allows individual data subjects to be identified from such data (except to enable the Customer and its representatives to access and use Customer Data as part of the Services or in using the Software or otherwise as may be permitted under the applicable data processing agreement between Optum and the Customer).
- 3.4. In the event that Customer uses or accesses any Optum information or communication systems ("**Optum Systems**"), which includes the systems owned and/or operated by Optum and/or Optum's Affiliates, in the course of the parties performing under this Agreement, Customer agrees that it will use such access only as authorised in this Agreement and the applicable Schedule, and for no other purposes, and will comply with all security controls, policies, standards, and guidelines applicable to Optum Systems which are disclosed to Customer as part of a log-in procedure. Customer agrees it will not (i) knowingly introduce any virus or disabling code into the Optum Systems; (ii) allow third parties to have access to

the Optum Systems; (iii) attempt to access any portions of the Optum Systems that are not required for Customer's performance under this Agreement; (iv) use the Optum Systems in any manner that may damage or impair the Optum Systems, Optum, or its Affiliates, or (v) attempt to circumvent or bypass Optum's security procedures for the Optum Systems.

- 3.5. Customer acknowledges that any interpretation, implementation or use of the Professional Services, or decisions based on Optum's recommendations, are solely and exclusively at Customer's discretion. Customer will be responsible for the decisions it makes and actions it takes using the recommendations and best practices provided as part of the Professional Services, and Optum is not responsible for any action of, or failure to act by, Customer in reliance upon the Professional Services or information provided as part of the Professional Services. Moreover, in no event will the Professional Services be construed as the provision of legal, financial, regulatory or compliance advice by Optum, and Customer shall consult with its own attorneys and advisors for any legal, financial, regulatory, or compliance advice. In addition to the above, Optum may rely, without further diligence, inquiry or investigation, on the business or medical records and other written information, any data, or other material provided to Optum by Customer or a third party (collectively, for purposes of this Section, the "Information"). Optum will not be liable or responsible for any errors, omissions, illegible text or false or misleading statements contained in any Information.

4. Customer Resources.

- 4.1. Customer shall deliver the Customer Content (collectively or individually, "Customer Resources") to Optum. The Parties will agree in each Schedule on the delivery methods.
- 4.2. Customer is solely responsible for determining the scope of configuration of the Customer Resources for use of the Services. Customer will keep Optum timely informed Customer shall ensure all End Users' compliance with the terms and conditions of this Agreement and any Schedule (whether or not End Users' compliance is expressly noted as being required or not in any particular section of this Agreement or any Schedule) and shall assume all responsibility and liability with respect to use of the Software and/or Services by End Users other than liability arising from a breach by Optum or its licensors of this Agreement or the applicable Schedule. Any breach of this Agreement or the applicable Schedule(s) by End Users shall be deemed a breach by Customer.
- 4.3. In order to access the Software, Customer shall provide all equipment and software (including the latest version of any updates or supplemental information one of which Customer becomes aware and that are material to Optum's performance of the Services).
- 4.4. Except as specified as a Service in a Schedule, Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Resources.
- 4.5. Customer shall be responsible for data back-up and virus protection for computer operations at Customer or third party facilities and on Customer or third party devices.
- 4.6. Customer hereby grants Optum and the Optum Personnel all necessary rights and licenses to use Customer Resources made available by Customer to Optum. Customer represents and warrants that it has the right to grant such rights and licenses for the use as contemplated herein.
- 4.7. Customer and the Data Sources shall be responsible for their data entry activities, and for the accuracy of any Customer Content delivered to Optum. Customer agrees that the Customer Content it provides to Optum under this Agreement (if any) contains true and accurate data and information, to the best of Customer's knowledge. Optum shall not be responsible for errors in Customer Content or data entry performed by Customer or the Data Sources, or for errors in services, programs, hardware, data files, or output Optum provides to or maintains for Customer pursuant to this Agreement, if those Optum errors result from errors in Customer's or the Data Sources' input data, or from Customer's failure to comply with this Agreement.
- 4.8. At Customer's expense, Customer is responsible for obtaining all consents and governmental approvals that are necessary for Customer to receive the Services and perform its obligations under this Agreement, and, prior to furnishing any Customer Resources to Optum, all consents and governmental approvals that are necessary for Optum and the Optum Personnel to access, use, host, store, transmit, disclose and otherwise interact with the Customer Resources ("Required Consents").
- 4.9. Ownership of Customer Resources. Optum acknowledges and agrees that the Customer Resources remain the sole property of Customer and its licensors. Customer and its licensors reserve all rights not granted herein.

5. Prices and Payment.

- 5.1. Customer shall pay Optum for the use of the Software and for the Services in the amounts set forth on each Schedule. Customer shall pay all applicable sales, use, and any other taxes (other than Optum's income taxes), however designated, which are collected or levied on account of this Agreement, unless Customer is exempt from such taxes and provides Optum with appropriate documentation of the exemption. Where value added tax is chargeable, Optum shall add the amount of tax to the invoice issued to the Customer and the Customer shall pay such tax amounts against the issuing of a VAT receipt.
- 5.2. Customer shall pay Optum for any additional billable services, which Customer requests and Optum performs and which are not specified in any Schedules, at Optum's then-current time and materials rates. In the event Optum provides such additional billable services, Customer will reimburse Optum for all reasonable out of pocket expenses incurred in performing such additional billable services, with prior authorization from Customer, including transportation, hotel accommodations, meals, telephone calls, and overnight couriers. Optum will provide copies of receipts for any expenses over £25 at Customer's request. Expenses reimbursed under this Clause are not refundable by Optum to Customer for any reason. All invoices will be stated in and all payments made in UK pounds sterling.
- 5.3. Customer agrees to pay all fees and expenses invoiced by Optum within thirty (30) days after the date of each invoice. Undisputed payments not received by the due date shall bear interest at a rate equal to the lesser of one and one-half percent (1½ %) per month, or the maximum rate allowed by law. Upon reasonable notice to Customer, Optum shall have the right to inspect and audit Customer's records relating to this Agreement, to confirm the calculation of fees due under this Agreement and Customer's compliance with this Agreement. Optum agrees to hold such records in confidence. Such audits shall occur no more often than once per year, and shall be conducted with the least interruption to Customer's normal business operations as feasible.

6. Warranties and Limitation of Warranties.

6.1. Optum warrants to Customer that:

- 6.1.1. Optum has the right to grant access to and license the Software to Customer and to provide access to the Cloud Services to Customer. All rights in patents, copyrights, trademarks and trade secrets encompassed in the Software, Services and Data Products will remain in Optum or its licensors, as applicable. Customer does not obtain any rights in the Software, Cloud Services except the limited right to use the Software and/or access the Cloud Services as provided herein and in the Schedules.
- 6.1.2. Software Warranty. The Software will perform substantially in accordance with the applicable Documentation for the licensed release. If the Software fails to perform in accordance with the Documentation within ninety (90) days after the initial delivery of the first licensed release of the Software to Customer, Customer shall notify Optum in writing prior to the expiration of such ninety- (90) day period, and Optum shall repair or replace the Software. If Optum is unable to repair or replace the Software after receipt of such notification from Customer, upon Customer's request Optum will refund the license fees Customer paid for such Software (if any), and the license to use such Software shall be deemed to be terminated.
- a) Neither Optum nor its licensors warrant that the Software will be error-free or be provided (or be available) without interruption or meet Customer's business or operations purposes. Access to the Software is provided to Customer for informational purposes only.
- 6.1.3. Service Warranties.
- a) Cloud Services will perform substantially in accordance with the applicable Documentation for ninety (90) days or for the duration set forth in the applicable Schedule.
- b) Professional Services will be performed in a professional and workmanlike manner. If the Professional Services provided are not performed as warranted, Customer must promptly provide written notice to Optum that describes the deficiency in the Services.
- c) Each Optum employee, agent and/or subcontractor assigned to perform any Professional Services shall have appropriate skill, training, and experience to perform the Professional Services. The Professional Services will be performed in a competent and professional manner, and Optum's employee, agent and/or subcontractor will observe any working rules of Customer, while on Customer's premises to the extent conveyed to Optum by Customer. Optum agrees to reperform any Professional Services not in compliance with this warranty

that are brought to its attention in writing within thirty (30) days after those Professional Services are delivered to Customer.

- d) For any breach of any Services warranty, Customer's exclusive remedy and Optum's entire liability shall be the correction of the deficient Services that caused the breach of the warranty.

6.1.4. The Software, Cloud Services and any medium by which they are delivered to Customer do not contain any virus or any other contaminant or disabling devices. This sub-clause does not apply to disabling code used to terminate an evaluation or trial period for Software, or to deactivate the Software or Cloud Service on the expiry of a licence or subscription term or any code, protocol or devices designed to protect the Software or Cloud Service against unlawful use or access or against abuse or to protect privacy and confidentiality of data or to regulate access rights;

6.1.5. The warranties as detailed in 6.1.1 thru 6.1.5 above are void if Customer modifies the Software, Cloud Services, if Customer uses the Software or Services in any manner that is not allowed under this Agreement, or if Customer allows unauthorised persons to use the Software or Services.

6.2. Except as expressly provided in this Agreement, Optum and its licensors make no warranties, covenants or representations relating to the Software or the Services, express or implied, and specifically disclaim any that may be implied by this Agreement, by custom or by law or otherwise including any implied warranties or representations which is not expressly set out herein, including in regard to title, quality, merchantability and fitness for a particular purpose or non-infringement of third party patent, trademark, copyright or other intellectual property rights.

6.3. Except as expressly provided in this Agreement, OPTUM AND ITS LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS UNDER OR RELATING TO THIS AGREEMENT, AND DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. OPTUM DOES NOT WARRANT THAT ANY SERVICES ARE OR WILL BE ERROR-FREE, THAT THEY WILL OPERATE WITHOUT INTERRUPTION, THAT DEFECTS WILL BE CORRECTED, THAT THE SERVICES WILL CORRECTLY PROCESS DATA AND INFORMATION, OR THAT THEY WILL FUNCTION CORRECTLY WITH ANY OTHER SOFTWARE OR HARDWARE. CUSTOMER ACKNOWLEDGES AND AGREES THAT OPTUM IS NOT RESPONSIBLE FOR AND WILL HAVE NO LIABILITY FOR ANY HARDWARE, SOFTWARE OR OTHER ITEMS OR ANY SERVICES PROVIDED BY ANY PERSONS OTHER THAN OPTUM. Optum shall not be responsible for the accuracy of any advice given to Customer in performing the Services where such advice was based on information supplied by the Customer or third parties. Responsibility for decisions taken by Customer on the basis of the advice given by Optum remains with Customer.

6.4. Customer Warranties and Acknowledgments.

6.4.1. Customer represents and warrants to Optum that Customer has (i) the rights to license the Customer Resources to Optum and to deliver all Customer Resources delivered to Optum and (ii) it has full power and authority to enter into this Agreement.

6.4.2. Customer acknowledges and agrees that any interpretation, implementation or use of the Software and/or Services, or decisions based on Optum's recommendations, are solely and exclusively at Customer's and End Users' discretion. Customer is ultimately and solely responsible for the decisions it and the End Users make and actions it and the End Users take using the Software and/or Services, and Optum is not responsible for any action of, or failure to act by, Customer or any End User in reliance upon the Software and/or Services.

6.4.3. Company represents and warrants that (i) it has the authority to enter into this Agreement on behalf of itself and its Practices, and (ii) it has reported all potential conflicts of interest to Optum, if applicable, and that there are no other relevant facts or circumstances which would give rise to a conflict of interest in Company's execution of or participation under this Agreement, including, but not limited to, financial interests, or conflicting arrangements or affiliations. Customer acknowledges and agrees that it will avoid any situation that causes or appears to cause a conflict of interest with respect to its participation under this Agreement. Customer further agrees that it shall make an immediate and full disclosure, in writing, to Optum of any new potential or actual

conflict of interest or the existence of any facts that may impact the Customer's ability to participate under this Agreement.

7. Data Protection.

7.1. Each party shall comply with their obligations under Data Protection Laws.

7.2. Insofar as Optum processes any Personal Data on behalf of the Customer in connection with the provision of the Software or Services under this Agreement, the Customer shall be deemed the data controller and Optum shall be deemed a data processor (or, as the case may be, sub-processor) for the purpose of Data Protection Laws. For the purposes of carrying out the processing activities required under this Agreement (the "**Processing Activities**"), such Processing Activities shall be governed by the data processing agreement between the parties.

7.3. Insofar as the Customer makes available to Optum (including by uploading onto the Software or Service) any Personal Data, the Customer warrants and represents to Optum that: (i) all necessary data subject consents have been obtained for the provision of such Personal Data to Optum and the Customer retains full records of such consents, (ii) the Customer's use of the Personal Data through the Service is for lawful purposes which have been disclosed to data subjects in accordance with the Data Protection Laws, (iii) the Customer shall ensure that all Personal Data processed through the Service and/or the Software are kept accurate and up-to-date and that its shall only be kept on the Service or the Software for as long as it is required for the lawful purposes for which it is so held, (iv) any patient data or medical records included in such Personal Data will be pseudonymised before being made available to Optum or uploaded to the Software or Service such as to prevent the identification of patients, (v) insofar as any Personal Data made available to Optum is processed by the Customer as a processor on behalf of a third party data controller (or third party processor), the data controller has authorised the processing of the data by Optum in accordance with this Agreement and the applicable Schedule.

7.4. Subject to such additional or other provisions set out in any data processing agreement between the parties, in processing Personal Data on behalf of the Customer, Optum shall: (i) process such Personal Data on the instructions of the Customer and for that purpose the Customer instructs Optum to use such Personal Data as required for the performance of Optum's obligations and delivery of the Services and insofar as required to exercise Optum's rights under this Agreement; (ii) not transfer such personal data to any location outside the European Economic Area except in accordance with adequate safeguards as required by the Data Protection Laws; and (iii) implement appropriate technical and organisational measures to protect such Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access.

7.5. Each party, at the other party's reasonable request, shall, so far as reasonably possible given the purpose of the processing, assist the requesting party in ensuring compliance with the requesting party's obligations under the Data Protection Laws.

7.6. The Customer authorizes Optum to appoint sub-processors for the purpose of delivering the Software or Services including for the purpose of hosting the Software or Services and storing any Personal Data included in the Customer Data.

8. Limitation of Remedies and Indemnification.

8.1. This clause 8.1 limits the parties' liability to each other in actions between the parties brought under or in connection with this Agreement or any Schedules, either for breach of contract, misrepresentation, tort or under any other cause of action including for negligence (except under an express indemnity). Accordingly:

8.1.1. Subject to sub-clauses (8.1.3) and (8.1.4) below, each party's maximum liability to the other party arising out of or in connection with this Agreement or the provision of the Services or use of the Software, arising from a single event or a series or related events, shall not exceed an amount equal to the amount Customer has paid or that is payable to Optum under the Schedule at issue for the 12-month period immediately prior to the event giving rise to the cause of action.

8.1.2. Subject to clause (8.1.4) below, neither party nor the third party vendors of products embedded in the Software shall be responsible under or in connection with this Agreement or the provision of the Services or use of the Software for any indirect, incidental, special or consequential damages, including, without limitation, the use of or inability to use the Software or Services, any damage or loss of use of any property and any cost of recovering lost or corrupted data or of reprogramming, or the cost of procuring substitute Services or, Software. loss of data, loss of revenue, loss of customers or clients, loss of goodwill or reputation, loss of profits, any interruption

or loss of service, or any loss of business, howsoever caused, or arising in any manner from this Agreement or any Schedule and the performance or non-performance of obligations hereunder.

8.1.3. Notwithstanding the above, clause 8.1 does not limit (a) the parties' obligations to each other under the indemnity obligations as set forth in Clauses 8.2 or 8.3 of this Agreement, (b) the liability either party may have to the other party for breach of clauses 7 (Data Protection) or 9 (Confidentiality) of this Agreement, (c) Customer's liability to Optum for failure to pay amounts due under this Agreement or any Schedule, or (d) any claims with respect to use of the Customer Resources or Customer's other Confidential Information.

8.1.4. Notwithstanding the above or anything to the contrary in this Agreement, nothing in this Agreement or any Schedule shall operate to exclude or restrict a party's liability for: (i) death or personal injury resulting from that party's negligence, or (ii) fraud or fraudulent misrepresentation, or (iii) for any other liability that cannot be limited or excluded by law.

8.2. When a third party sues Customer or a governmental agency assesses a fine or penalty against Customer, Optum agrees to indemnify Customer and keep it indemnified against all third-party claims, damages and liabilities (including reasonable legal costs) resulting from a claim that any Software (insofar as it is owned by Optum) infringes a patent or copyright valid in the United Kingdom; provided that Customer gives Optum prompt, written notice of any such claim, sole control of the defense and settlement of such claim, and all reasonable assistance to defend such claim. Customer shall not agree to settle the claim without Optum's written consent, provided that such consent is not unreasonably withheld, conditioned or delayed. Optum shall have no obligations under this clause if such claims, damages and liabilities result from Customer's breach of this Agreement or Customer's unauthorised or inappropriate use of or modifications to the Software or Services. This indemnification provision shall not be deemed to waive or limit any other rights.

9. Confidentiality.

9.1. Each party acknowledges that in the course of performing under this Agreement, or in the course of discussing or negotiating Schedules or future agreements between the parties, each party may learn confidential, trade secret, or proprietary information concerning the other party or third parties to whom the other party has an obligation of confidentiality ("Confidential Information"). Without limiting the foregoing, Optum's Confidential Information shall include, without limitation, the terms of this Agreement, financial information and employee information; information regarding Optum products, marketing plans, business plans, customer names and lists, the Software, Services and Documentation; reports generated by or for Optum; Optum's methods of database creation; Optum's translation, standardization, enhancement, and health data analysis techniques, health data reporting and profiling methods and formats; software tools for report creation, distribution and retrieval; and associated algorithms, developments, improvements, know-how, code (object and source), programs, software architecture, technology and trade secrets. Without limiting the foregoing, Customer's Confidential Information shall include information regarding Customer's business, Customer Data and any Personal Data included in the Customer Data.

9.2. Each party agrees (and Customer shall procure that the End Users agree) that (a) it will use the other party's Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) it will treat such information as confidential and proprietary; (c) it will not disclose such information orally or in writing to any third party without the prior written consent of the other party; (d) it will take all reasonable precautions to protect the other party's Confidential Information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Without limiting the foregoing, each party agrees to (and, specifically, Customer will require End Users to) take at least such precautions to protect the other party's Confidential Information as it takes to protect its own Confidential Information. Each party is solely responsible for all use of the other party's Confidential Information by anyone who gains access to the Confidential Information under such party's authorization (including, but not limited to, End Users). Upon termination or expiration (without renewal) of this Agreement, each party will return to the other party or certify as destroyed all tangible items containing any of the other party's Confidential Information that are held by that party or its employees, agents or contractors, other than information required to be retained for archival purposes or which a party is entitled to continue using after termination of this Agreement under this Agreement or any other agreement between the parties. Each party agrees to notify the other party if it becomes aware of any unauthorised use or disclosure of the other party's Confidential Information.

- 9.3. Nothing in this Agreement shall prohibit any party from disclosing, or permitting the disclosure of, the other party's Confidential Information if such party is compelled to disclose such Confidential Information by judicial or administrative process or, in the opinion of such party's legal counsel, by other requirements of applicable law or regulation.
- 9.4. Nothing in this Agreement shall be construed to restrict disclosure or use of information that (a) was in the possession of or rightfully known by the recipient, without an obligation to maintain its confidentiality, prior to receipt from the other party; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the receiving party without reference to the other party's Confidential Information.
10. Term and Termination.
- 10.1. **Term.** Subject to termination provisions of this Agreement and unless agreed otherwise within the Call-Off Contract, this Agreement continues until the later of (a) five (5) years after the Effective Date or (b) the expiration of all Schedules to this Agreement and all clauses of this Agreement (including the Schedules) relating to confidentiality, Personal Data, ownership of intellectual property, indemnification, non-solicitation, and limitations of liability shall survive termination or expiration of this Agreement. Upon termination or expiration of this Agreement, Customer shall, within thirty (30) days, return all copies of all Software, Documentation and related user materials (if any) to Optum. With Optum's consent, Customer may certify that it has ceased using and has destroyed the Software and Documentation, rather than return them.
- 10.2. Failure by either party (the "**Breaching Party**") to comply with any material provision of this Agreement shall entitle the other party (the "**Non-breaching Party**") to give notice of breach to the Breaching Party specifying the nature of the breach and requiring the Breaching Party to cure such breach within thirty (30) days of such notice. If the Breaching Party disagrees with the existence, extent, or nature of the breach, the parties shall use reasonable, good faith efforts to resolve the dispute within thirty (30) days, and each party shall proceed diligently with the performance of this Agreement pending the resolution of any dispute. If (i) such breach is not cured within such thirty (30) day period after the receipt of such notice or (ii) the parties have not otherwise resolved the breach during such thirty (30) day period, the Non-breaching Party may terminate the Schedule that was breached or the Agreement (if the breach related to all Schedules then in effect), by delivering a second notice to the Breaching Party, specifying a termination date. The termination date may be immediate upon delivery of the second notice or up to ninety (90) days after the second notice as determined by the Non-breaching Party and indicated in the notice of termination.
- 10.3. Notwithstanding any provision contained in this Agreement to the contrary, a party to this Agreement may terminate this Agreement, upon written notice to the other party:
- 10.3.1. An order, judgment or decree is entered, without the application, approval or consent of the other party, by any court of competent jurisdiction, approving a petition seeking reorganization or appointing a receiver of such company or substantially all of the assets of such company, and such order, judgment or decrees continues unstayed and in effect for any period of sixty (60) consecutive days; or
- 10.3.2. If the other party (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or (ii) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction; or (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction; or (iv) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or (v) a person becomes entitled to appoint or has appointed a receiver or administrative receiver over any of the assets of the other party; or (vi) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or (vii) 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 (i) to (vi)

above; or (viii) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- 10.3.3. If any license or other registration permitting a party to operate is revoked or suspended by order of the appropriate agency and such order continues unstayed and in effect for a period of ninety (90) days provided such loss is not the result of the terminating party's performance or failure to perform under this Agreement.

11. General.

- 11.1. This Agreement constitutes the entire understanding between the parties and supersedes all prior proposals, communications and agreements between the parties relating to its subject matter. No amendment, change, or waiver of any provision of this Agreement or terms on any purchase order or other document will be binding unless in writing and signed by both parties. Terms of a purchase order or other ordering or shipping document do not modify, amend, or add to the terms of this Agreement, and shall have no effect.
- 11.2. The rights and remedies herein provided are cumulative with and not exclusive of any right or remedies provided by law.
- 11.3. In the event one or more of the provisions of this Agreement are found to be invalid, illegal or unenforceable by a court with jurisdiction, the remaining provisions shall continue in full force and effect.
- 11.4. A person who is not a Party to this Agreement shall have no rights to enforce the provisions of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 11.5. Optum may use subcontractors to perform under this Agreement, but Optum shall remain responsible for its obligations under this Agreement.
- 11.6. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties. Except as expressly provided herein, this Agreement shall not be construed as giving rise to the relationship of principal and agent or to any authority by a party to represent or act on behalf of the other. Nothing in this Agreement shall be deemed to grant a party a right to use the other party's name or trade marks and no such right shall be inferred.
- 11.7. Neither party may assign or transfer this Agreement or any of the rights or licenses granted under it without the other party's express, prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the forgoing, either party may assign this Agreement in connection with any merger, consolidation or sale of all or substantially all of its stock or assets.
- 11.8. Any notices permitted or required under this Agreement shall be in writing and will be sent by certified post, postage prepaid, return receipt requested, or by facsimile transmission or overnight courier service, addressed to the party as set forth below, or at a different address as a party has notified the other party in writing.
- | | | | |
|--------|---|-----------|-----------------|
| Optum: | General Counsel | Customer: | General Counsel |
| | Egton Medical Information Systems Limited | | [Address 1] |
| | Fulford Grange Micklefield Lane, Rawdon, | | |
| | Leeds, England, LS19 6BA, England | | |
- 11.9. Neither Customer nor Optum will disclose the financial terms of this Agreement to any other party, except to a party's accountants, attorneys, consultants and agents, or as agreed by the parties or as compelled by court order.
- 11.10. The obligations of the parties under this Agreement shall be suspended, to the extent a party is hindered or prevented from complying therewith because of labor disturbances (including strikes or lockouts), acts of war, acts of terrorism, vandalism or other aggression, acts of God, fires, storms, accidents, governmental regulations, change of law, failure of Internet access or service or other telecommunications disruptions, or any other cause whatsoever beyond a party's reasonable control. In addition, Optum's failure to perform under this Agreement shall be excused, and shall not be cause for liability or termination, if such failure to perform is due to Customer undertaking actions or failing to undertake actions required by this Agreement or so that Optum is or would be prohibited by law from performing any covenant, condition or agreement contained in this Agreement.

- 11.11. Each party agrees that in performing under this Agreement it shall (a) conduct business in conformance with sound ethical standards of integrity and honesty and in compliance with all applicable laws; (b) conduct business in such a way as to not give the appearance of impropriety, even when the behavior or activity is in compliance with the law; and (c) not achieve business results by illegal act or unethical conduct.
- 11.12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. Additionally, electronic or digital signatures shall be accepted as a valid and legally binding, equivalent to a handwritten signature by a person with the intent to sign this Agreement.
- 11.13. This 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) or any Schedule, shall be governed and construed in accordance with the laws of England and Wales and the parties agree that any dispute or claim arising out of or in connection with this Agreement and any Schedule shall be subject to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

EGTON MEDICAL INFORMATION SYSTEMS LTD **PRIMARY COUNTERPARTY**

Signature: _____ Signature: _____

Print name: _____ Print name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Optum Contract No:

SCRIPTSWITCH PRESCRIBING - CLINICAL DECISION SUPPORT SYSTEM

SCHEDULE

This Schedule ("Schedule") is entered into pursuant to the Cloud Subscription Services and License Agreement (the "Agreement") of even date as the Call Off Contract, between Optum Health Solutions (UK) Limited (referred to as "Optum") and Buyer (referred to as "Client"). All capitalised terms not otherwise defined in this Schedule shall have the meanings assigned to them in the Agreement. Unless modified herein, all terms in the Agreement shall remain unchanged and in full force and effect. This Schedule is entered into on the Start Date.

- (1) WHEREAS Client wishes to engage Optum to provide access to the ScriptSwitch System and, as applicable, related services on the terms and conditions set out in this Agreement.

Number of Registered Patients for which the ScriptSwitch System can be utilised	nnnnn
Start Date	DD/MM/YYYY
Initial Term duration (months)	nn
Renewal Term duration (months)	nn
End Date	DD/MM/YYYY
Annual Base Fees Due (includes subscription fees, client software fees, Client Managed Profile and technical support services),	£nnnnn
Goodwill Allowance (2021)	£nnnnn
Total Agreement Base Fees Payable (exclusion of fees for optional Services)	£nnnnn
Site Installation of ScriptSwitch Client Software (applicable for new Clients only)	☐ Optum ☐ Distribution to Client local IT team ☐ Not applicable
Base Optum Content Service (Schedule 7 (Optum Content Services))	☐ Client Managed Profile (base profile, included with subscription)
Optional Optum Content Services	
Optum Content Service Offering (Schedule 7 (Optum Content Services))	☐ National Profile with Client localisation (additional fee) ☐ Managed Profile Service (additional fee)
Optum Content Service Pricing	£

Commented [PS2]: Schedule to be retained for both cloud and hybrid services

SCRIPTSWITCH SYSTEM

The ScriptSwitch Client Software is bespoke software designed specifically for NHS commissioning Clients and regulated and UKCA marked under Applicable Medical Devices Laws.

The ScriptSwitch Client Software facilitates the Client's access to the ScriptSwitch Subscription Service.

DELIVERY

Optum delivers the ScriptSwitch Service through the cloud. The ScriptSwitch Client Software must be installed at the Site(s) listed in Schedule 8 (Site Details) and activated through the cloud in order to configure the ScriptSwitch System for Client's access. In addition, the local formulary Recommendation Profile developed and built with/by the Client must be delivered to the clinical user's device before the ScriptSwitch System will function.

FEES

Fees will be payable as set out in the Call-Off Contract.

SET UP PERIOD (*APPLICABLE FOR NEW CLIENTS ONLY*)

- ☐ The period from <Date> to <Date> is defined as the “**Setup Period**”. During the Setup Period, the ScriptSwitch Client Software will be installed at the Site(s) listed in Schedule 8 (Site Details). Subject to the Client performing any relevant obligations as set out in Clause 6 (Client Obligations), the Optum will use reasonable endeavours to ensure that the ScriptSwitch Client Software is pulling down the local formulary Recommendation Profile correctly.
- ☐ Not applicable (ScriptSwitch is already accessible and/or installed)

SIGNED BY the duly authorised representatives of the parties as of the Commencement Date.

For and on behalf of Optum Health Solutions (UK) Limited	For and on behalf of <XX>
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

Agreement No.:

TERMS AND CONDITIONS

Commented [PS3]: Drafting Note: Applicable for hybrid services. Should be deleted for Cloud services

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:

- 1.1 **“Applicable Medical Device Laws”** the UK Medical Devices Regulations 2002/618 and/or (if and to the extent applicable), the Medical Device Regulation (EU) 2017/745.
- 1.2 **“Client Managed Profile”** means the base Recommendation Profile created by Customer using Content Manager as set forth on Schedule 7 (Optum Content Services).
- 1.3 **“Clinical System”** means End User’s own core clinical system which is interoperable with the ScriptSwitch System, the current agreed clinical systems falling within such list being as set out in Schedule 5 (Clinical Systems).
- 1.4 **“Commencement Date”** means the date that this Agreement commences as set out on the Cover Pages.
- 1.5 **“Commercially Sensitive Information”** means the Recommendations, Recommendation Profile, or log data provided by Optum or generated by or on behalf of Client under or in connection with the ScriptSwitch System or this Agreement, and Optum’s working practices and information pertaining thereto.
- 1.6 **“Content Manager”** means the module within the ScriptSwitch System that allows Client to build, develop and maintain its Recommendation Profile.
- 1.7 **“Data Protection Legislation”** means the applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including, the Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("GDPR"), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities.
- 1.8 **“Documentation”** means the documentation provided by Optum to Client, or the End Users (as applicable) in relation to the Software and Services provided hereunder, as updated from time to time.
- 1.9 **“Drug Updates”** means the updates to the Underlying Drug Data. Such updates include but are not limited to changes to pricing, drug names, and status.
- 1.10 **“End Date”** means the date on which the licence for the ScriptSwitch Client Software and the subscription for the ScriptSwitch Subscription Service ends.
- 1.11 **“End Users”** means the individual users of the ScriptSwitch System at Client’s primary care organisation and/or at a general practice falling under Client’s primary care organisation each of which constitute an individual user of the ScriptSwitch System.
- 1.12 **“Fees”** means the fees due to Optum pursuant to this Agreement inclusive of the subscription, maintenance and support, and the profile service selected by Client.
- 1.13 **“Force Majeure Event”** means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the party so prevented including, without limitation, strikes, lockouts or other industrial disputes (in each case whether involving the workforce of the party so prevented or any other party), protests, act of God, war or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery or telecommunications, fire, explosion, flood, storm, epidemic or default or delays of suppliers or sub-contractors.
- 1.14 **“Freedom of Information Act”** means the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, as may be replaced, amended or re-enacted from time to time.
- 1.15 **“Implementation Plan”** the plan for activating the ScriptSwitch Client Software and configuring Client’s access to the ScriptSwitch Subscription Service as agreed between Optum and the Client.
- 1.16 **“Initial Term”** the period specified on the Cover Pages.

- 1.17 **“Intellectual Property Rights”** all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and together with all renewals and extensions.
- 1.18 **“Managed Profile”** means the Recommendation Profile approved by Client that results from the Optum Content Service as further described on Schedule 7 (Optum Content Services).
- 1.19 **“National Profile”** means the Recommendation Profile approved by Client that results from the Optum Content Service as further described on Schedule 7 (Optum Content Services).
- 1.20 **“Optum Confidential Information”** means the Underlying Drug Data, the Drug Updates, the Recommendation Profile, the Commercially Sensitive Data and all information regarding the ScriptSwitch System and the Documentation, and any other products or services provided by Optum under this Agreement, including but not limited to all Intellectual Property Rights and know-how in such ScriptSwitch System and Documentation, data and databases, products and services. Optum Confidential Information is, with respect to Optum, included in the definition of Confidential Information in the Agreement.
- 1.21 **“Optum Service”** means the Services as described on Schedule 7 (Optum Content Services) that result in the creation of the National Profile or the Managed Profile.
- 1.22 **“Profile Updates”** means amendments to a Recommendation Profile initiated by, defined and authorised by the Client and processed by Optum from time to time in accordance with this Agreement.
- 1.23 **“Recommendations”** means recommendations for substitutions from one drug to one or more others or recommendations as a message associated with one drug. Each drug is defined by the Underlying Drug Data and each recommendation can be configured by dose and other relevant information allowed by the ScriptSwitch System as defined and authorised by the Client in accordance with this Agreement.
- 1.24 **“Recommendation Profile”** means the distributed database built and designed, or approved, by Client containing advice list of locally authored switch Recommendations and then compiled into electronically accessible Recommendations using the ScriptSwitch System and based on the Underlying Drug Data and Drug Updates, the Recommendations and Profile Updates. Once finalised and approved by Client, the Recommendation Profile is delivered through the ScriptSwitch Subscription Service to the End User devices. Recommendation Profiles include the Client Profile, the National Profile and the Managed Profile.
- 1.25 **“ScriptSwitch Client Software”** means the bespoke software application designed specifically for NHS commissioning and installed on the Client’s system, that Optum makes available to the Client for the purpose of facilitating the Client’s and its End Users’ access to and use of the ScriptSwitch Subscription Service.
- 1.26 **“ScriptSwitch Prescribing Analytics”** module allowing various reporting to be produced in relation to use of the ScriptSwitch System, as further set out in Schedule 2 (ScriptSwitch System Description).
- 1.27 **“ScriptSwitch Subscription Service”** means the ScriptSwitch prescribing decision support cloud service, including the modules listed in Schedule 1 (ScriptSwitch Subscription Service Modules”) that is provided by Optum. For the avoidance of doubt, the ScriptSwitch Subscription Service does not include the content used to create the Recommendation Profile which is designed and built by the Client.
- 1.28 **“ScriptSwitch System”** means, collectively, the ScriptSwitch Subscription Service and the ScriptSwitch Client Software.
- 1.29 **“ScriptSwitch System Description”** means the description of the ScriptSwitch System, as set out in Schedule 2 (ScriptSwitch System Description).
- 1.30 **“Services”** means the ScriptSwitch Subscription Service, the Support Services, and Profile Services provided hereunder.
- 1.31 **“Setup Period”** means the period specified on the Cover Pages.

- 1.32 “**Sites**” means the primary care organisation mentioned on the Cover Pages, and the general practices and branch surgeries under the care of such primary care organisation where the ScriptSwitch Client Software is installed as identified in Schedule 8 (Site Details).
 - 1.33 “**Software**” means the ScriptSwitch Client Software licensed hereunder.
 - 1.34 “**Start Date**” means the date on which the licence for the ScriptSwitch System commences as set out on the Cover Pages.
 - 1.35 “**Support Services**” means the support services, as set out in Schedule 3 (ScriptSwitch System Support Services).
 - 1.36 “**Term**” means the Initial Term together with any Renewal Term(s).
 - 1.37 “**Third Party Material**” means the third party data, content or material either publicly available or licensed or obtained by Optum pursuant to a separate agreement with a third party that is made available to Client and its End Users through the ScriptSwitch System as identified in Schedule 6 (Third Party Material).
 - 1.38 “**Underlying Drug Data**” means the base data about a drug used in / by the ScriptSwitch System which includes but is not limited to name, strength, formulation, unit cost, status and class.
 - 1.39 “**Working Day**” means a day other than Saturday, Sunday or public or bank holidays in England.
2. **COMMENCEMENT AND DURATION**
 - 2.1 This Agreement shall commence on the Commencement Date. The licence to the ScriptSwitch Client Software and access to the ScriptSwitch Subscription Service shall commence on the Start Date and shall continue to the End Date unless terminated in accordance with the provisions of this Agreement.
 - 2.2 The parties may extend this Agreement to continue after the Term by mutual agreement in writing.
3. **GRANT OF LICENCE OR ACCESS**
 - 3.1 **Grant of Licence.** Subject always to Client’s and End Users’ compliance with the terms of this Agreement and in consideration of full payment of the Fees by Client, Optum grants a term-based, non-exclusive, non-transferable, revocable licence, for the Client and End Users to access and use the ScriptSwitch Client Software from the Start Date and within the United Kingdom provided that the ScriptSwitch Client Software may only be used by Client and the End Users solely for processing its own data for its own internal business purposes and in accordance with this Agreement.
 - 3.1.1 Subject to the terms and conditions of this Agreement, Client may use a third party as its agent to access the ScriptSwitch System, provided, however, that Client obtains the prior written consent of Optum and such third party enters into a joinder agreement by and among Optum, Client and the third party in form and substance previously approved by Optum prior such third party accessing the ScriptSwitch System.
 - 3.2 **Right to Access and Use of the ScriptSwitch Subscription Service.** Subject always to Client’s and End Users’ compliance with the terms of this Agreement and in consideration of full payment of the Fees by Client, Optum grants Client and its End Users the non-exclusive, non-transferable right, for the term of this Agreement, a subscription to access and use the ScriptSwitch Subscription Service for Client’s internal business purposes only.
 - 3.2.1 The ScriptSwitch Subscription Service may only be accessed by End Users who have been properly issued a valid password and in accordance with the terms of this Agreement.
 - 3.2.2 Client and End Users may use the ScriptSwitch Subscription Service only for the processing of their own internal data. Neither Client, nor its End Users, shall use the ScriptSwitch Subscription Service for the purpose of processing the data of, or performing any services for, any third party.
 - 3.2.3 Client does not obtain any rights in the ScriptSwitch Subscription Service except the limited right to use the ScriptSwitch Subscription Service as provided herein.
 - 3.2.4 **Availability.** Optum will use commercially reasonable efforts, as further described on Schedule 3 (ScriptSwitch System Support Services), to provide End Users with access to the ScriptSwitch Subscription Service twenty-four (24) hours a day, seven days a week, excluding scheduled and emergency maintenance periods, and will continuously and

proactively monitor the ScriptSwitch Subscription Service. The ScriptSwitch Subscription Service will be available ninety-eight-and one-half percent (98.5%) of the total available time, as measured quarterly, excluding the scheduled and emergency maintenance periods.

- 3.3 By signing this Agreement and/or by accessing or using the Third Party Material, and in order to have a right to access or use such Third Party Material as part of this Agreement, the Client is accepting on its own behalf and on behalf of its End Users, that it is bound by the terms and conditions of for the applicable Third Party Materials as set out in Schedule 6 (Third Party Materials), including without limit the disclaimers, limitations of liability and termination provisions below. Client is responsible for reviewing the terms and conditions set forth in Schedule 6 (Third Party Materials) and ensuring that its End Users are aware of and remain compliant with such terms and conditions. Any breach of this Agreement by an End User shall be deemed a breach by Client. Once this Agreement is signed by both parties, Client and End Users are granted the right to use the Third Party Material, as part of their rights under this Agreement, to the extent of and in accordance with the terms and conditions set out in Schedule 6 (Third Party Materials).

4. RESTRICTIONS ON USE

- 4.1 Client shall and shall ensure that the End Users shall:

- 4.1.1 not modify or remove any copyright or proprietary notices on the ScriptSwitch System or Documentation and shall reproduce such notices on any copies of the Documentation made by or on behalf of Client;
- 4.1.2 not decompile, reverse engineer, or disassemble the ScriptSwitch System or otherwise attempt to derive the source code of the foregoing; circumvent, bypass, disable or otherwise tamper with any security measures associated with the ScriptSwitch System; or vary, translate, copy or otherwise modify or adapt the ScriptSwitch System nor create derivative works based upon the foregoing or permit any third party to do so without Optum's prior written consent or except to the extent permitted by law;
- 4.1.3 effect and maintain adequate security measures to safeguard the ScriptSwitch System against access to or use by unauthorised persons and ensure that all copies of the Documentation and ScriptSwitch System are kept under its control. Client shall notify Optum immediately on becoming aware of any unauthorised use of the ScriptSwitch System or Documentation by any person;
- 4.1.4 only access or use the ScriptSwitch System and the Documentation within the United Kingdom;
- 4.1.5 only access or use the ScriptSwitch System in respect of the agreed number of registered patients licensed under this Agreement (as set out on the Cover Pages and as may have been increased by mutual agreement from time to time);
- 4.1.6 permit Optum or its authorised representative to inspect and have access to any premises and equipment where or upon which the ScriptSwitch System or Documentation is located to verify that Client and the End Users are complying with its obligations under this Agreement. Such access to equipment may be, where Optum requires, by remote means;
- 4.1.7 acknowledge and agree that Optum may monitor the ScriptSwitch System to detect and address threats to the functionality, security, integrity, and availability of the ScriptSwitch System and to monitor Client's and its End Users' compliance with the terms of this Agreement.
- 4.1.8 indemnify Optum from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by Optum caused by, or in any way connected with, Client's and End Users' access to or use of the ScriptSwitch System or the unauthorised access to or use of the ScriptSwitch System by any third party whether through breach of this Agreement or breach of the agreement between Client and End User or any other negligent, intentional or wrongful act of Client and/or End Users; and
- 4.1.9 only make so many copies of the ScriptSwitch Client Software as are reasonably necessary for backup, operational security or archival purposes and its lawful use of the ScriptSwitch Client Software provided that all such copies of the ScriptSwitch Client Software or the Documentation are subject to the terms and conditions contained in this Agreement, and

Client and End User shall make and retain full and accurate records of such copying and the location of all copies and make these available to Optum on request from time to time.

5. IMPLEMENTATION AND ACCEPTANCE

- 5.1 Optum will arrange a product initiation meeting within ten (10) working days of Agreement signature. The Client will ensure all stakeholders are available for this meeting, including local IT support representatives.
- 5.2 Optum shall produce and Client shall agree to the Implementation Plan within fifteen (15) working days of the Agreement signature.
- 5.3 Optum shall deliver a training day for Recommendation Profile and schedule the report analysis training within 14 days of the start of the Setup Period or Start Date if no Setup Period exists. The Client shall ensure all personnel involved in developing the Recommendation Profile and report analysis attend the training day.
- 5.4 Clauses 5.1, 5.2 and 5.3 are not applicable to Agreements being renewed
- 5.5 Agreement on Clauses 5.1, 5.2 and 5.3 shall not to be unreasonably withheld or delayed.
- 5.6 On the dates agreed in the Implementation Plan, Optum shall use its reasonable endeavours to:
 - 5.6.1 subject to Client's and End Users' (as applicable) performance of its obligations under Clause 5.3, install, or provide reasonable assistance for Client and the End Users to install the ScriptSwitch Client Software at the Site(s),
 - 5.6.2 upon successful implementation and activation of the ScriptSwitch Client Software, make the ScriptSwitch Subscription Service accessible to Client or the agreed End Users; and
 - 5.6.3 but time shall not be of the essence of the agreement in relation to Optum's performance of its obligations under this Agreement.
- 5.7 Client shall ensure and procure that the End Users shall ensure that the equipment on which the ScriptSwitch Client Software is to be installed is in good working order and is ready for installation of the ScriptSwitch Client Software when Optum commences implementation activities. Client shall and shall procure that the End Users co-operate fully with Optum in the installation of the ScriptSwitch Client Software.
- 5.8 The ScriptSwitch System shall be deemed accepted upon the earlier of (i) activation of the ScriptSwitch Client Software at the last Site, or (ii) the date the ScriptSwitch Subscription Service is first made accessible to Client ("**Acceptance**").

6. CLIENT OBLIGATIONS

- 6.1 Client shall:
 - 6.1.1 provide all such assistance and access to the Sites as is reasonably necessary to allow Optum to perform its obligations under this Agreement; including but not limited to assistance in coordinating Site access with its End Users;
 - 6.1.2 enter into an agreement with the End Users such agreement to include the provisions in Schedule 4 (End User Responsibilities) and any other obligations and restrictions of an End User as detailed in this Agreement;
 - 6.1.3 ensure that Optum is able to liaise directly with the End Users, as is reasonably necessary, in order to perform its obligations under this Agreement;
 - 6.1.4 prepare the Site for installation of the ScriptSwitch Client Software in accordance with Optum's instructions prior to delivery (unless Optum has agreed in writing to undertake such preparation);
 - 6.1.5 supply Optum with the local formulary Recommendation Profile and authorise for use within the ScriptSwitch System the Recommendations it wishes to put in place in relation to the Underlying Drug Data and which are to be compiled by Client into the Recommendation Profile and be responsible for checking that the information contained in the Recommendations is correct and accurate and up to date at all times. Client shall ensure that the Recommendations are put together by sufficiently qualified and authorised staff. Client shall indemnify, keep indemnified and hold Optum harmless from and against any

and all damages, costs, losses, and expenses which Optum may incur arising out of Client's breach of this Clause 6.1.5;

- 6.1.6 in relation to the Profile Updates, be responsible for checking and authorising that the Recommendations contained in the Profile Updates are correct and accurate and up to date at all times (including without limit the names of the drugs themselves). Client shall ensure that such checking is performed by and authorised by sufficiently qualified and authorised staff and shall perform such checks as soon as reasonably possible. Client shall indemnify, keep indemnified and hold Optum harmless from and against any and all damages, costs, losses, and expenses which Optum may incur arising out of Client's breach of this Clause 6.1.6;
- 6.1.7 make available a nominated member of staff to attend training sessions in relation to the ScriptSwitch System and feed the output of such training sessions through to the EnFUsers or otherwise arrange for the End Users to attend such training sessions;
- 6.1.8 ensure, in relation to its own use of the ScriptSwitch System (and in particular ScriptSwitch Prescribing Analytics, that it has obtained from its End Users consent for Optum to use information regarding the Sites obtained from such reports (whether aggregated or not)). Client shall indemnify, keep indemnified and hold Optum harmless from and against any and all damages, costs, losses, and expenses which Optum may incur arising out of Client's breach of this Clause 6.1.8; and
- 6.1.9 provide Optum with a list of Sites where the ScriptSwitch Client Software will be installed to facilitate access to the ScriptSwitch Subscription Service.
- 6.2 The Client accepts and agrees that Optum may, at its sole discretion, automatically update the Underlying Drug Data by way of Drug Updates in relation to changes in product cost, status and name. Optum will report such changes to the Client within 2 Working Days after the day the updates are made.
- 6.3 Client acknowledges that, in order to fulfil its obligations, Optum requires the cooperation of the End Users. As such, Client shall procure that the End Users perform their obligations as set out in Schedule 4 (End User Responsibilities), in a correct and timely manner.
- 6.4 Client acknowledges that Optum cannot guarantee the time required to deliver the Recommendation Profile to the ScriptSwitch Client Software.
- 6.5 The Client shall ensure all key personnel, including the Client Agreement signatory, attend the following Agreement meetings during each 12 month licence period:
 - 6.5.1 Agreement Review Meeting 1, held in month 7 after Start Date.
 - 6.5.2 Agreement Review Meeting 2, held in month 10 after Start Date.
- 6.6 Except to the extent that Client's failure to perform its obligations under this Agreement is due to Optum's breach, Optum shall not be in breach of this Agreement to the extent its failure to perform an obligation under this Agreement is as a result of Client's failure to perform its obligations under or in connection with this Agreement or End Users failure to perform its obligations under or in connection with this Agreement and/or the agreement between Client and End User.

7. FEES

- 7.1 Client shall pay the Fees in accordance with Clause 7.6.
- 7.2 Client shall pay supplementary charges, which have been agreed in writing with the Client in advance, in the following circumstances, and where specifically indicated elsewhere in this Agreement:
 - 7.2.1 when Optum responds to a fault report or request for assistance and no problem is found to exist (after proper investigation) or the problem reported is one not covered by the Support Services set forth in Schedule 3 (ScriptSwitch System Support Services);
 - 7.2.2 when work is undertaken by Optum that is not included in the Fees.
 - 7.2.3 when performance of Optum's obligations is made significantly more difficult or made more costly by failure of Client or End User to comply with its obligations (after Client or End User is given reasonable opportunity to rectify such failure).

- 7.3 Any work performed by Optum which is not performed under an agreed fee shall be agreed with the Client in advance of the work being performed and shall be chargeable by Optum at Optum's time and material rates in force from time to time.
- 7.4 All sums due under this Agreement shall be paid in pounds sterling.
- 7.5 All Fees and amounts expressed in this Agreement as being payable by the Client are expressed exclusive of any VAT which may be chargeable and which shall be paid in addition at the rate for the time being prescribed by law.
- 7.6 All amounts due under this Agreement from Optum to Client shall be due and payable in accordance with the terms and conditions of the Contract.
- 7.7 Optum is entitled to increase the Fees (or any part thereof) with effect from each anniversary of the Start Date upon 90 days prior written notice in accordance with this Clause 7.7. Any variation shall take effect on the expiry of the period of notice. Optum may increase its fees in relation to increases attributable to one or more of the following areas:
- 7.7.1 patient list size increases and the corresponding increased annual fee due;
 - 7.7.2 with reference to fees imposed on Optum by suppliers; and
 - 7.7.3 change in UK Retail Price Index ("RPI") during the preceding 12 months may be applied to all fees with effect from the relevant anniversary of the Start Date. Change in RPI will be determined by reference to the RPI as published by the Office for National Statistics.
- 7.8 Upon written request the Client shall provide Optum with accurate practice registered patient list size data verification. Optum reserves the right to increase fees if the original data supplied is found to be inaccurate and at its discretion levy a retrospective fee if deemed applicable. Any retrospective fees shall be calculated on the same basis as the Fee as set forth on the Cover Page.
- 7.9 If any sum payable under this Agreement is not paid when due then, without prejudice to Optum other rights under this Agreement, that sum shall bear interest from the due date until payment is made in full both before and after any judgment, at 3% per annum over Barclays Bank plc base rate from time to time. The parties agree that this Clause 7.9 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 7.10 All payments to be made by Client to Optum under this Agreement shall be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature unless Client is required by law to make any such deduction or withholding.

8. CLIENT'S ACKNOWLEDGEMENTS

- 8.1 Client acknowledges that and shall ensure and obtain End Users acknowledgement that:
- 8.1.1 it is Client's responsibility to ensure that the ScriptSwitch System and Documentation meet its requirements and Optum does not warrant that it shall be suitable for such requirements;
 - 8.1.2 in the event that Optum provide Pharmacist resource to assist in building or maintaining the Recommendation Profile, the profile will be checked by the Client and that Optum is not responsible for the accuracy of such Recommendation Profile data;
 - 8.1.3 the ScriptSwitch System is in general not error free and that the existence of minor errors shall not by themselves constitute a breach of this Agreement;
 - 8.1.4 Optum is not responsible for the extent of the Recommendation Profile, acceptance of the Recommendations by the End Users, or for the content or use of the Recommendations, whether they contain or are based on the Underlying Drug Data, the Drug Updates, the Profile Updates or otherwise. As such, but at all times subject to Clause 13.1, Optum shall not be liable to the Client or End User in relation to Client's or End User's reliance on such Underlying Drug Data, Drug Updates, Profile Updates or Recommendations; and
 - 8.1.5 on the basis of the acknowledgements detailed above, Client shall indemnify and keep indemnified Optum in respect of any loss, damages, costs (including legal costs) expenses, liabilities or injuries suffered or incurred by Optum as a result of any claims, demands, proceedings, judgments or allegations by End Users, patients of End Users or any other

third parties whether in contract, tort, (including negligence) breach of statutory duty, restitution or otherwise in respect of the extent of the Recommendation Profile, acceptance of the Recommendations by End Users or for the content or use of Recommendations, or in respect of any claim by an End User in relation to any such reliance on such underlying Drug Data, Drug Updates, Profile Updates or Recommendations.

8.2 For the avoidance of doubt, Client acknowledges and agrees (and will ensure that End Users acknowledge and agree) that:

8.2.1 the ScriptSwitch System is intended for use by healthcare professionals and is provided on the basis that the healthcare professionals retain full and sole responsibility for deciding what treatment to prescribe or dispense for any particular patient and whether particular recommendations are appropriate for a given patient. Without limiting the generality of the foregoing, it is at the discretion of the healthcare professional as to whether or not to use or accept any Recommendations included in the Recommendations Profile and to confirm that the quantity, dose, instructions, and duration fields within the ScriptSwitch System are completed and appropriate for the applicable patient. Please note that the quantity may have been changed to the closest available pack size;

8.2.2 while all cost savings, medicinal product prices, or other data authored or otherwise generated or imported by Optum (all or some of which may represent estimations) presented in the ScriptSwitch System (collectively, the “**Information**”) are believed to be complete and accurate, Optum does not warrant or guarantee the completeness, correctness, accuracy, or timeliness of any of the Information. Further, Optum does not warrant or guarantee the completeness, correctness, accuracy, or timeliness of the Recommendations/Recommendation Profile. Without limiting the generality of the foregoing, Optum does not warrant or guarantee the completeness, correctness, accuracy, or timeliness of the appearance or lack thereof of the Recommendations/Recommendation Profile for any particular patient;

8.2.3 in no event shall Optum be liable for any damages whatsoever arising out of the content of or use, reliance on, inability to use, or the resulting use of (i) the Information; or (ii) the Recommendations/the Recommendation Profile, whether based on warranty, contract, tort, or any other legal theory. Any and all liability for the content or any omissions from the ScriptSwitch System, including any inaccuracies, errors, or misstatements is expressly disclaimed. All other damages (where direct or indirect, special, incidental, consequential, or punitive) are hereby excluded to the fullest extent allowed by law. Optum may make changes to the Information at any time without notice. The Information may be out of date and Optum makes no commitment to update the Information. The Information is of a general nature and is not intended to address the circumstances of any particular individual or entity.

9. SUPPORT SERVICES

9.1 Optum shall provide the Support Services in accordance with Schedule 3 (ScriptSwitch System Support Services).

10. WARRANTY

10.1 **ScriptSwitch Client Software.** Optum represents and warrants to Client that Optum has the right to license the ScriptSwitch Client Software to Client. All rights in patents, copyrights, trademarks and trade secrets encompassed in the ScriptSwitch Client Software will remain in Optum or its licensors, as applicable. Client does not obtain any rights in the ScriptSwitch Client Software except the limited right to use the ScriptSwitch Client Software as provided herein.

10.1.1 Optum warrants that the ScriptSwitch Client Software will perform substantially in accordance with the applicable Documentation for the licensed release. If the ScriptSwitch Client Software fails to perform in accordance with the Documentation within ninety (90) days after the initial delivery of the first licensed release of the ScriptSwitch Client Software to Client, Client shall notify Optum in writing prior to the expiration of such ninety- (90) day period, and Optum shall repair or replace the ScriptSwitch Client Software. If Optum is unable to repair or replace the ScriptSwitch Client Software after receipt of such notification from Client, upon Client’s request Optum will refund the license fees Client paid for such ScriptSwitch Client Software (if any), and the licence to use such ScriptSwitch Client

Software shall be deemed to be terminated. These warranties are void if Client modifies the ScriptSwitch Client Software, Client uses the ScriptSwitch Client Software in any manner that is not allowed under this Agreement, or Client allows unauthorized persons to use the ScriptSwitch Client Software.

- 10.1.2 The ScriptSwitch Client Software and any medium by which they are delivered to Client do not contain any virus or any other contaminant or disabling devices. This section does not apply to disabling code used to terminate an evaluation or trial period for ScriptSwitch Client Software.
 - 10.1.3 For the duration of any maintenance or support services that Client obtains from Optum pursuant to this Agreement, the ScriptSwitch Client Software that is being maintained or supported by Optum shall perform substantially in accordance with its then-current Documentation.
 - 10.1.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, OPTUM AND ITS LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS RELATING TO THE SCRIPTSWITCH CLIENT SOFTWARE EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 10.2 **ScriptSwitch Subscription Service.** Optum warrants that the ScriptSwitch Subscription Service shall perform substantially in accordance with its then-current Documentation. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, OPTUM AND ITS LICENSORS MAKE NO OTHER WARRANTIES OR REPRESENTATIONS RELATING TO THE SCRIPTSWITCH SUBSCRIPTION SERVICE EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. APPLICABLE MEDICAL DEVICE LAWS

The ScriptSwitch System is, at Acceptance by Client in accordance with Clause 5.8, compliant with the then current Applicable Medical Device Laws.

12. INTELLECTUAL PROPERTY

- 12.1 Client acknowledges that and shall ensure and obtain the End Users acknowledgement that all patents in (whether actual or pending and whether in the United Kingdom or anywhere in the world) and all other Intellectual Property Rights in the ScriptSwitch System, Recommendation Profiles, the Underlying Drug Data, Drug Updates, ScriptSwitch System Description, and the Documentation are and shall remain the property of Optum or its third party licensors.
- 12.2 Optum shall defend or, at its option, settle any claim or proceeding brought against Client that the normal use of the ScriptSwitch System by Client in accordance with this Agreement infringes any Intellectual Property Rights of any third party and shall pay any damages finally awarded against Client in respect of such claim and any reasonable costs and expenses incurred by Client provided that:
 - 12.2.1 Optum is given immediate and complete control of such claim and all information and assistance, at Optum cost, as Optum reasonably requires and that Client does not prejudice the defence of such claim; and
 - 12.2.2 the claim does not arise from use of any release of the ScriptSwitch System other than the most recent release.
 - 12.2.3 In the event that a claim as contemplated by Clause 12.2 is made or in Optum's opinion is likely to be made, Optum may at its option:
 - 12.2.3.1 procure the right for Client to continue to use the ScriptSwitch System affected without materially affecting the functionality;
 - 12.2.3.2 change or replace all or any part of the ScriptSwitch System without materially affecting the functionality; or
 - 12.2.3.3 if the options under Clause 12.3.1 or 12.3.2 are not reasonably commercially available to Optum, terminate this Agreement immediately on written notice in respect of the affected application or service and refund the Fee in respect of the affected application or service less a reasonable charge for use prior to the date of termination.

- 12.3 The provisions in Clauses 12.2 and 12.3 above shall not apply to any claim arising directly or, to the extent applicable, indirectly out of any of the following:
- 12.3.1 Optum's compliance with Client's design or design instructions;
 - 12.3.2 use of the ScriptSwitch System in a manner, or for a purpose, which was not foreseeable or authorised by Optum;
 - 12.3.3 to the extent the infringement results from the assembly, function or use of the ScriptSwitch System in combination with any products or software not supplied by Optum of which combination Optum was not aware;
 - 12.3.4 to the extent the infringement results from the use of the ScriptSwitch System in combination with the Recommendation Profile due to the acts or omissions of Client or the End Users; or
 - 12.3.5 the modification of the ScriptSwitch System by Client or by any third party.
- 12.4 Clauses 12.2 and 12.2.3 state the entire liability of Optum to Client in respect of any claim as contemplated by Clause 12.2 and shall be subject to the liability provisions set out in Clause 14.
- 12.5 The Client grants to Optum an irrevocable, perpetual, royalty-free licence in any and all Intellectual Property Rights in the Recommendation Profiles, Recommendations and the Profile Updates as of the date of their creation and shall do all acts and execute all such deeds and documents as may be necessary to grant such licences.
- 12.6 Client acknowledges that part of the ScriptSwitch System may constitute a trade secret and shall treat such information accordingly.

13. TERMINATION AND CONSEQUENCES OF TERMINATION

- 13.1 Either party may by written notice served on the other terminate this Agreement immediately if the other:
- 13.1.1 is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the party in breach fails to remedy such breach within 30 days after service of a written notice from the party not in breach, specifying the breach and requiring it to be remedied provided any such notice is served within 6 months of the breach occurring or the party not in breach becoming aware of such breach, whichever occurs later; and
 - 13.1.2 summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House.
- 13.2 Notwithstanding anything else contained in this Agreement Optum may terminate this Agreement by giving written notice to Client effective immediately if:
- 13.2.1 Client or End User is in breach of Clauses 3 (Grant of License), 4 (Restrictions on Use), 6.1.5 or 6.1.6;
 - 13.2.2 Client fails to pay any Fees due under it and the Fees remains unpaid for 30 days following its due date; or
 - 13.2.3 A third party licensor terminates the licence for its Third Party Materials and the termination of such licence substantially impacts Optum's ability to provide the ScriptSwitch System as set forth in this Agreement.
- 13.3 Not Used

- 13.4 Client shall have the option to request to terminate this Agreement prior to the expiry of the Term on the expiry of the Initial Term and at the end of each Renewal Term thereafter. If Client intends to exercise this option it must give notice in writing to such effect to Optum no later than 3 months prior to the expiry of the Initial Term or 3 months prior to the end of each Renewal Term thereafter. All termination or non-renewal notices should be sent to adminuk@optum.com.
- 13.5 On termination of this Agreement howsoever arising:
- 13.5.1 all Fees payable to Optum by Client shall become immediately due and payable;
 - 13.5.2 the licences set out in Clause 3 (Grant of License or Access) shall terminate on the date of such termination;
 - 13.5.3 Optum will distribute a blank profile to remove all instances of the Recommendation Profile from all clinical devices at the Site on the termination date; and
 - 13.5.4 Optum will issue an instruction to all End Users to delete the ScriptSwitch Client Software from their local devices to prevent any future potential for clinical risk in the event of a reactivation in error (Client shall be responsible for ensuring that End Users delete the ScriptSwitch Client Software and shall be liable for any clinical incidents resulting from the End Users failure to remove the ScriptSwitch Client Software);
 - 13.5.5 Client will be provided access for fourteen (14) days following the termination date to allow for final reporting activities (the “**Grace Period**”). After the Grace Period, Optum will deactivate Client’s ScriptSwitch Client Software and disable Client’s and its End Users’ access to the ScriptSwitch System.
 - 13.5.6 Client shall promptly return to Optum, or destroy at Optum’s option, all other copies of the ScriptSwitch Client Software, Documentation, Recommendation Profile (in whatever form), and Underlying Drug Data, in its possession or control and shall procure that the End Users do the same and shall confirm the same in writing within 7 days of doing so.
- 13.6 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 13.7 The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination including without limit Clauses 4 (Restrictions on Use), 10 (Warranty), 12 (Intellectual Property), 13 (Termination and Consequences of Termination), and 16 (Data Protection) .

14. LIMITATIONS AND EXCLUSION OF LIABILITY

- 14.1 Optum does not exclude its liability (if any) to Client:
- 14.1.1 for breach of Optum’s obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 14.1.2 for personal injury or death resulting from Optum’s negligence;
 - 14.1.3 under section 2(3) Consumer Protection Act 1987;
 - 14.1.4 for any matter to the extent for which it would be illegal for Optum to exclude or to attempt to exclude its liability; or
 - 14.1.5 for fraud or fraudulent misrepresentation.
- 14.2 Except as set out in Clause 10 (Warranty), Optum makes no express warranties with respect to the ScriptSwitch System and Optum hereby excludes to the fullest extent permissible in law, all conditions, warranties (including without limitation any warranty that the ScriptSwitch System shall meet Client’s requirements or that its operation shall be uninterrupted or error free) and stipulations, express (other than those set out in this Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of Client.
- 14.3 Subject to Clauses 14.1 and 14.4, Optum’s total aggregate liability under or in connection with this Agreement whether in contract, tort (including without limit negligence), breach of statutory duty, restitution or otherwise, shall be limited to 115% of the Fees paid or payable under this Agreement in the applicable contractual year.

14.4 Except as provided in Clause 14.1, Optum will be under no liability whatsoever to the Client (whether in contract (by way of indemnity or otherwise), tort (including negligence), breach of statutory duty, restitution or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):

14.4.1 pure economic loss, loss of profits, loss of business, loss of revenue, loss of turnover, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss;

14.4.2 loss of software, loss of use or value of any data;

14.4.3 wasted management, operational or other time; or

14.4.4 any special, indirect or consequential losses

14.4.5 even if such losses are foreseeable and/or Optum has been advised of or is aware (or reasonably should have been aware) of the possibility of the Client incurring or suffering such losses.

14.5 The Fees are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. Client expressly agrees that these exclusions and limitations of liability are reasonable and reflected in the Fees which would be higher without those provisions. Client will accept such risk and/or insure accordingly.

15. RIGHT OF AUDIT

15.1 At Optum's written request, which shall not be more frequently than bi-annually, Client shall furnish or procure that the End Users furnish Optum with a signed statement verifying the current number of registered patients list for which that ScriptSwitch System is being used. Client agrees to grant Optum access and procure that the End Users grant Optum access, upon reasonable prior notice and during business hours, to Client and End User Sites in order to audit the use and deployment of the ScriptSwitch Client Software and to ensure that the Recommendation Profile is accurate. If Client or End Users are using the ScriptSwitch System or have deployed the ScriptSwitch Client Software in contravention of the provisions of this Agreement or outside of the agreed limits, then without prejudice to its other rights and remedies, Client will be liable to pay Optum such fees as Optum would have received had Optum granted a licence to use the ScriptSwitch System in such a way. Any charges for an increased number of registered patients shall be based upon the fees set out on the first page of this Schedule.

16. DATA PROTECTION

16.1 Each party shall comply with their obligations under Data Protection Legislation.

16.2 Insofar as Optum processes any Personal Data (as defined in the Data Protection Legislation) on behalf of the Client or End Users in connection with the provision of the ScriptSwitch System pursuant to this Agreement, the parties acknowledge and agree that such processing shall be conducted in accordance with the Data Processing Agreement set forth in Schedule 9 (Data Processing Agreement), which, for the avoidance of doubt, is incorporated into this Agreement.

16.3 Client hereby warrants that it has taken reasonable measures, including, but not limited to, providing any required notices and obtaining any required consents and/or authorizations from data subjects or End Users, as necessary for Optum to process Personal Data as set forth in this Agreement, including Schedule 9 (Data Processing Agreement). Client will indemnify Optum from and against all claims, liabilities, proceedings, costs, damages, losses, or expenses incurred by Optum caused by, or in any way connected with, Client's breach of this Clause 16 (Data Protection).

SCHEDULE 1

ScriptSwitch Subscription Service Modules

1. ScriptSwitch Prescribing Analytics
2. ScriptSwitch Content Management (Content Manager)

Commented [PS4]: Drafting Note: Schedules apply for both Cloud and hybrid services

SCHEDULE 2

SCRIPTSWITCH SYSTEM DESCRIPTION

SCRIPTSWITCH SYSTEM

1. The ScriptSwitch System encompasses the following elements:
 - 1.1. The ScriptSwitch Subscription Service as a prescribing decision support service with the objective to inform clinicians at the point of prescribing of the local formulary recommendations, advice and dosage optimisations that are available for the patient.
 - 1.2. The following features comprise the ScriptSwitch System functionality:
 - 1.2.1. Patient Record Integration: the option to present switch recommendations and information messages based on specific information from the patient record, e.g. age, gender, but not limited to these fields.
 - 1.2.2. Withholding: the option to withhold a switch recommendation if a prescriber has rejected the same switch for a patient twice within a 12 month period, and to withhold the recommendation from presenting again within the 12 month period.
 - 1.3. ScriptSwitch Safety alerts: The ScriptSwitch safety alerts, utilise clinical rules/algorithms that will identify patients where a potential action is needed relating to medications or to manage specific conditions, in order to reduce the likelihood of negative health outcomes and reduce healthcare costs.
 - 1.3.1. The ScriptSwitch safety alerts are alerts at the point of opening the patient record and run the clinical rule using data from the GP clinical systems accessed using Application Programming Interfaces (API) provided by the clinical system, to run the clinical rule/algorithms in order to identify if the patient that the user is opening the record of has an alert and provide the alert data presented to the user as a pop-up on the End User's desktop.
 - 1.3.2. The pop-up will identify if a patient has an alert and present recommended actions related to admission avoidance, patient monitoring, or changes to medications to reduce the likelihood of negative health outcomes and to reduce healthcare costs.
 - 1.3.3. Optum will make an API call, via the software integration with the Clinical Systems, to access the data required to run the algorithm/clinical rule each time a patient record is opened. Optum will use reasonable endeavours to ensure that it is able to manage the number of calls required and use reasonable endeavours to ensure that the alert data being provided to Optum is accurate.
 - 1.3.4. Optum will display the alerts to the Authorised End User through the applicable clinical systems to enable patient specific clinical safety alerts to be delivered at the point of consultation within the GP.
 - 1.3.5. Optum has developed a system tray application, known as the "Optum Client Manager", which will be installed onto the desktops of GP machines where the ScriptSwitch Subscription Service is already installed. This allows the ScriptSwitch Subscription Service to retrieve the agreed and relevant information from the patient record to enable the Safety alerts identified to display for that patient.
 - 1.3.6. Presented as a small pop-up initially, prescribers can choose to view full details of the safety alert or close the pop-up to review at a later time.
 - 1.4. Content Manager allowing Clients to build and maintain their local formulary Recommendation Profiles using appropriate, sufficiently qualified, and authorised staff within the ScriptSwitch System.
 - 1.5. Workflow system allowing the Client to submit and then approve local formulary Recommendation Profiles for delivery to End Users' local devices via the ScriptSwitch Client Software.
 - 1.6. Distribution of the approved Recommendation Profiles to all End Users via the installed ScriptSwitch Client Software.
 - 1.7. The ScriptSwitch Client Software for clinicians' local devices to allow:
 - 1.7.1. the Recommendation Profile to be downloaded to local devices and automatically updated from the ScriptSwitch System, when updates are approved by Content Manager users.
 - 1.7.2. provide any switch recommendations and information as configured at the point of prescribing (see clinical system interaction points below) to the clinicians.

1.7.3. transfer data relating to the prescription to the ScriptSwitch System. This will include all scripts, whether a recommendation was presented and the action taken by the clinician, along with any clinician feedback.

1.7.4. The ScriptSwitch Client Software will be either installed by an Optum consultant at the practice or software can be provided to local IT teams for distribution. The ScriptSwitch Client Software has to be activated on the ScriptSwitch System and delivery of the local formulary Recommendation Profile to the device by Client before the ScriptSwitch Client Software will function.

Note: for INPS AEROS users this application is implemented on the AEROS servers managed by INPS.

1.7.5. Monthly maintenance of national product data and pricing information from DM+D and clinical system partners, collation and testing of the data prior to deployment onto Content Manager.

1.7.6. Monthly updates to national product data and pricing to local recommendations within Content Manager.

1.7.7. Monthly automated updates of national product data and pricing to all clinicians' devices.

1.7.8. Remote update of ScriptSwitch Client Software as needed.

1.7.9. ScriptSwitch Prescribing Analytics collates information returned from clinicians' local devices relating to script activity and provides a dashboard of information relating to the performance of the ScriptSwitch Subscription Service.

1.7.10. Monthly Medicines Management bulletin offering advice and information for more effective Recommendation Profile management.

1.7.11. User optional subscription to the KINE service, which provides regular newsletters from our partnership with Keele University relating to important new evidence.

1.7.12. User optional subscription to the KINE recommendation service, where Recommendations will be added to a library of content for addition to the local formulary Recommendation Profile.

1.7.13. For Clients located in Wales, access to content provided by the All Wales Therapeutic and Toxicology Centre.

1.7.14. Access to learning services from Optum's service teams.

1.7.15. Access to the Optum customer services desk for support on issues relating to the ScriptSwitch System as further set forth in Schedule 3 (ScriptSwitch System Support Services).

1.7.16. Medicines Optimisation Support from Optum pharmacists to identify missed savings opportunities on a monthly basis and working with practice pharmacists to generate discussions and drive acceptance rates.

1.7.17. Support to update the Client local profile, as requested by Client, limited to one hour of Optum resource per calendar month.

1.7.18. Attendance of ScriptSwitch Account Manager at practice meetings/LMC/Local user groups or similar to support ScriptSwitch System use, drive GP engagement activities, understand Client needs and collect national feedback to further drive engagement.

2. The ScriptSwitch System integrates with third party clinical system to provide the following trigger points:

2.1. EMIS WEB

2.1.1. ScriptSwitch triggers for New Acute and New Repeat Scripts from the Add Drug screen.

2.1.2. ScriptSwitch triggers on restarting a Past Medication from the Past View Medication panel.

2.1.3. ScriptSwitch triggers on Medication Review.

2.1.4. Medication Review Manual and Automatic Repeat Re-Authorisation.

2.1.5. Edit a drug action on Update.

2.1.6. Trigger ScriptSwitch when Generic/Trade Switch is made.

2.1.7. ScriptSwitch triggers on Approve & Complete for acute issues requested in the Workflow module.

- 2.1.8. ScriptSwitch triggers on Approve & Complete for repeat issues requested in the Workflow module, for issues over the authorised amount.
- 2.1.9. ScriptSwitch triggers on Re-authorising existing repeat medications from requests in the Workflow module.

2.2. EMIS PCS

- 2.2.1. From the menu options PR (Prescribing) and A (Add), the Add Drugs window - on the following buttons "Next", "Issue & Print" and "Issue".
- 2.2.2. From the menu options PR (Prescribing) and T (Re-authorise).
- 2.2.3. From the menu options PR (Prescribing) and R (Review).

2.3. INPS Vision 3 and AEROS

- 2.3.1. Acute therapy Add Window - on OK.
- 2.3.2. Repeat Master Add Window - on OK.
- 2.3.3. Acute Therapy Update window on OK.
- 2.3.4. Repeat Master Update window - on OK.
- 2.3.5. Reauthorized Repeat Master Add Window - on OK.

2.4. TPP SystmOne

- 2.4.1. New Acute Issues – from Record Acute Issue, on ok.
- 2.4.2. New Repeat Templates – from Create Repeat Template, on ok.
- 2.4.3. Re-Starting / Re-Authorising Repeat Templates – from Repeat Templates in the Clinical Tree view, right click an item, on selecting Re-Start / Re-Authorise.
- 2.4.4. Re-Prescribing Acute Issues – from Issues in the Clinical Tree view, right click on an item, select Re-Prescribe, on activating the Create New Acute button.
- 2.4.5. Prescribing from the Formulary – from Acute Issue from the Formulary button, on Issue.
- 2.4.6. Issuing Drugs from Auto Consultations – from Auto Consultation button, on selecting an item.

ScriptSwitch only presents advice where there is an exact match between the item being prescribed and a record in the Recommendation Profile. This match refers to dosage, where the dosage is defined to be a daily quantity at a daily frequency. ScriptSwitch maintains a cross reference to the most commonly used forms of dosage. ScriptSwitch is not always able to interpret free text forms of specific dosages.

Should a match be found and the ScriptSwitch window is activated, the person prescribing is given the opportunity to act on or acknowledge the Recommendation before finally generating the prescription.

ScriptSwitch logs the process by which it is activated and the response to any activation to an electronic log file. The log files are then transferred to and processed by the data warehouse with ScriptSwitch Prescribing Analytics available to provide insight to the activity. The savings calculated on reports are based on costs derived from drug tariffs and pack data using the most conservative prices applicable.

ScriptSwitch Client Software offers the capability to present and switch alternatives for drugs and present messages relevant to drugs, dressings and appliances.

SCHEDULE 3
SCRIPTSWITCH SYSTEM SUPPORT SERVICES

1. Preamble

- 1.1 Optum shall use its reasonable endeavours to provide ScriptSwitch System Support Services in accordance with the provisions of this Schedule 3 (ScriptSwitch System Support Services) as is necessary to allow the ScriptSwitch System to perform in material accordance with the ScriptSwitch System Documentation.

2. Terms of Service

- 2.1 Optum shall provide Support Services in relation to the ScriptSwitch System within the following hours and parameters:

	Provided for as part of Annual Subscription Fee
Core Service Hours	8.00am – 6.00pm GMT Monday - Friday

- 2.2 Support Services personnel shall be available to work on calls during the Core Service Hours. Optum may provide out of hours or weekend work on an as agreed basis. Such work shall be subject to the terms and conditions of this Agreement and shall be on pricing terms to be agreed separately between the parties.
- 2.3 If deemed necessary, a practice Site visit may be arranged with the practice to provide support in the resolution of issues that cannot be resolved remotely. Visits will only be made to registered practice addresses.
- 2.4 Client understands and accepts that the ScriptSwitch System will provide updates to the ScriptSwitch Client Software and the Recommendation Profile from time to time.

3. New Releases and Versions

- 3.1 Optum may provide updated releases for the ScriptSwitch System applications from time to time.
- 3.2 Updates will be applied automatically to the ScriptSwitch System through the ScriptSwitch System. Client will be notified of updates with no less than five (5) days' notice.
- 3.3 From time to time, Optum may offer Client and End Users new releases, or versions of the ScriptSwitch Client Software containing new functionality, as part of the Fee.
- 3.4 Client shall be obliged to have installed at all times the most current release, update or version of the ScriptSwitch Client Software.

4. Drug Updates

- 4.1 Whenever possible Optum shall provide Drug Updates on a monthly basis and no less than 4 times per annum and in accordance with this Agreement. Optum may, in its sole discretion, provide additional related Drug Updates.

5. Optum Responsibilities

- 5.1 Optum shall use its reasonable endeavours to:
- 5.1.1 provide a customer service desk to take calls during the Core Service Hours;
 - 5.1.2 make service delivery staff available to support all the End User Sites during the Core Service Hours;
 - 5.1.3 allocate calls with an initial priority via discussion between the service desk and Client;
 - 5.1.4 deal with calls raised with the support desk in line with the priorities and response rates indicated below;
 - 5.1.5 ensure that a call remains open until a satisfactory resolution has been reached in agreement with Client. In the event that Client is unavailable and two attempts have

been made to contact the caller, service delivery staff shall close the call. If this is the case a message shall be left with someone at Client's office and an e-mail sent. Should the resolution prove unsatisfactory the original call can be re-opened without the need to raise a new call with the service desk;

- 5.1.6 notify all Clients of any problem or issue that may significantly impact their business and, where applicable, update the affected areas of the ScriptSwitch System;
- 5.1.7 provide follow-up communication providing detail of resolution to the problem/issue identified above;
- 5.1.8 provide communication on call resolutions by telephone, e-mail or post as appropriate;
- 5.1.9 respond to requests for enhancement or amendments to the ScriptSwitch System;
- 5.1.10 provide second-line staff for the resolution and fixing of ScriptSwitch System problems;
- 5.1.11 undertake Site visits for the purpose of providing Support Services when, in Optum's sole discretion, deemed necessary;
- 5.1.12 provide details of any pre-requisite requirements for installation of the ScriptSwitch System work at least 5 Working Days prior to the work being planned;
- 5.1.13 undertake the installation of the ScriptSwitch System on clinical devices by making the ScriptSwitch Client Software installation package available to local IT teams for distribution at an agreed time;

6. Client Responsibilities

6.1 Client and each End User shall:

- 6.1.1 raise all requests for Support Services with the service desk on 024 7621 4700 or at support@scriptswitch.com or such other numbers and addresses as may be notified by Optum from time to time. Requests may only be made by Client or End User's authorised representative or their delegate;
- 6.1.2 complete any pre-requisite work for installation of the ScriptSwitch System within the stated time prior to the installation;
- 6.1.3 not install software or hardware which could adversely affect the ScriptSwitch System, without first seeking authorisation from Optum;
- 6.1.4 be responsible for any loss or corruption of data or malfunction of the ScriptSwitch System, caused by any of Client's own staff, End Users or other contract third parties. The rectification of such loss or corruption falls outside ALL normal support agreements with Optum;
- 6.1.5 ensure that new members of staff receive appropriate and relevant ScriptSwitch System training prior to accessing or using the ScriptSwitch System and are made aware of any available Documentation and help files;
- 6.1.6 allocate the function of prime contact for each Site to a named individual (or their delegate) and ensure Optum is notified of any changes in personnel identified in the role of prime contact;
- 6.1.7 provide and maintain a remote access point to enable the technical support diagnostics and remedial actions to be carried out on a 24 x 7 basis, as agreed or where this is not possible enable technical support diagnostics to be carried out via the telephone with the Client or End User;
- 6.1.8 where necessary carry out Recommendation Profile diagnostic checks, as advised and directed by Optum, to ensure the correct operation of the Recommendation Profile following Drug Update and or Profile Updates;
- 6.1.9 provide any special requirements for Site visits to the designated service desk staff at the time of arranging the appointment; and
- 6.1.10 maintain the most current release of the ScriptSwitch Client Software on its systems.

7. Exclusions

- 7.1 The following are excluded from the scope of the Support Services:
- 7.1.1 meetings requested by Clients relating to projects outside the scope of the core ScriptSwitch System may be chargeable in addition to Support Services (e.g. where general technical advice or consultancy is required but it is unrelated to the ScriptSwitch System or any links with it);
 - 7.1.2 outside Core Service Hours and weekend working is excluded, although may be purchased at the appropriate hourly rates as agreed at that time;
 - 7.1.3 where the Optum service delivery team staff require assistance from a third party to resolve a problem, the fix time targets may no longer be applicable;
 - 7.1.4 Optum is not responsible for contacting third party suppliers in respect of hardware or software, including without limit software relating to the Clinical System. Client should liaise directly with the Clinical System provider in relation to such software (including without limit in relation to any interface between the ScriptSwitch System and the Clinical System). Such advice and guidance may be available subject to additional charges being levied;
 - 7.1.5 Optum does not provide Support Services for printer hardware, printer cables or printer sharing or any other hardware or software that is not included within the definition of the ScriptSwitch System;
 - 7.1.6 Support Services, where:
 - (a) Client or End User has not implemented Optum's recommendations in respect of solutions to faults previously notified to Client;
 - (b) fix times on the ScriptSwitch System where unauthorised software or hardware has been installed against the advice of Optum or where Site visits are required;
 - (c) support, where Optum is subject to a Force Majeure Event;
 - 7.1.7 Support Services, where the ScriptSwitch System:
 - (a) have been altered by any person other than Optum or without Optum's consent or have been subject to misuse or unauthorised repair;
 - (b) have been improperly installed, accessed or connected other than by Optum;
 - (c) are used in combination with any software, hardware or materials not supplied or approved by Optum;
 - (d) are used in a manner for which they were not intended, or where any support requirements or instructions as to storage relating to the ScriptSwitch System have not been complied with in all respects; or
 - (e) Client or any End User is not using the most current released version of the ScriptSwitch Client Software.

8. Service Measurement

Optum shall use its reasonable endeavours to provide that all valid support requests logged via the Optum customer services desk regarding the ScriptSwitch System, shall be addressed within the timescales shown below (but time shall not be of the essence in relation to such timescales):

Priority	Response Target	Resolution Target	Examples
1	1 hour	8 hours	Unavailability of the ScriptSwitch System, or a key module or major function of the ScriptSwitch System, causing significant business impact.
2	2 hours	2 working days	Unavailability of the entire ScriptSwitch System, or a key module or major function of the ScriptSwitch System, causing limited business impact.
3	4 hours	5 working days	Problems causing inconvenience, minor disruption or restricting performance, re-installing of the ScriptSwitch System on clinical devices following local hardware refreshes, problems with the ScriptSwitch System reporting modules.
4	8 hours	To be scheduled as part of a later release	Non urgent problems causing slight irritation, but the ScriptSwitch System is still operating materially in accordance with Schedule 2 (ScriptSwitch System Description) or where workarounds are available; cosmetic issues or general enquiries for information.

9. **Response Target**

- 95% of reported support calls to be responded to within target
- 85% of reported support calls to be resolved within the target

10. **Escalation Procedures**

Issues with support should be escalated as follows:

Priority	Optum	Client or End User	Timescale
1	Service Delivery Manager	Site Prime Contact	2 hours
	Director of Customer Services	Central Contact	8 hours
2	Service Delivery Manager	Site Prime Contact	6 hours
	Director of Customer Services	Central Contact	8 hours
3	Service Delivery Manager	Site Prime Contact	4 days
	Director of Customer Services	Central Contact	5 days

SCHEDULE 4
END USER RESPONSIBILITIES

The End Users shall:

1. provide all such timely assistance and access to its Sites as is reasonably necessary to allow Optum to install the ScriptSwitch System and provide the agreed services (including the Support Services);
2. prepare their Site for installation and Acceptance of the ScriptSwitch System and/or performance of the Services (as applicable) in accordance with Optum's written instructions prior to delivery (unless Optum has agreed in writing to undertake such preparation);
3. promptly sign off Acceptance for the ScriptSwitch System;
4. make available relevant staff to be trained in the use of the ScriptSwitch System and ensure that all of its staff using the ScriptSwitch System are trained in how to use the ScriptSwitch System to a level of reasonable competence;
5. ensure that they have one of the Clinical Systems installed;
6. keep the ScriptSwitch System and Documentation and information provided by Optum confidential and secret including without limit the Commercially Sensitive Data (defined as the Recommendations, Recommendation Profile, or log data provided by Optum or generated by or on behalf of Client under or in connection with the ScriptSwitch System or this Agreement, and Optum's working practices and information pertaining thereto);
7. only use the ScriptSwitch System for its own internal business purposes and within the licence constraints notified to it from time to time and acknowledge that the Intellectual Property Rights in the ScriptSwitch System and Documentation remain the property of Optum or its licensors;
8. not modify or remove any copyright or proprietary notices on the ScriptSwitch System or Documentation and shall reproduce such notices on any back-up copies of the ScriptSwitch System and Documentation;
9. not decompile, reverse engineer, or disassemble the ScriptSwitch System or otherwise attempt derive the source code of the foregoing; circumvent, bypass, disable or otherwise tamper with any security measures associated with the ScriptSwitch System; or vary, translate, copy or otherwise modify or adapt the ScriptSwitch System nor create derivative works based upon the foregoing or permit any third party to do so without Optum's prior written consent;
10. effect and maintain adequate security measures to safeguard the ScriptSwitch System against access to or use by unauthorised persons and ensure that the ScriptSwitch System and the Documentation and all copies are kept under its control and shall notify Optum immediately on becoming aware of any unauthorised use of the ScriptSwitch System or Documentation by any person;
11. only use the ScriptSwitch System and the Documentation within the United Kingdom; and
12. permit Optum or its authorised representative to inspect and have access to any premises and equipment where or upon which the ScriptSwitch System or Documentation is located to verify its use is in accordance with the licence terms agreed with the Client;
13. acknowledge and accept that all legal responsibility for the prescription of any medication to any individual is the responsibility of the person who prescribes the medication;
14. acknowledge and accept that the ScriptSwitch System is intended to aid and supplement, not substitute for, the expertise and judgment of physicians, pharmacists or other healthcare professionals. All information is provided on the basis that the healthcare practitioners responsible for patient care will retain full and sole responsibility for deciding any treatment to prescribe or dispense for all patients and, in particular whether the use of information provided by the ScriptSwitch System is safe, appropriate, or effective for any particular patient or in any particular circumstances;
15. acknowledge and accept that it is the Client's responsibility to ensure the End User's understanding and adherence to End User responsibilities.

SCHEDULE 5
CLINICAL SYSTEMS

The ScriptSwitch System may only be used in conjunction with the following Clinical Systems:

- Egton Medical Information Systems Limited (EMIS)
 - EMIS PCS
 - EMIS Web
- In Practice Systems Limited (IPS)
 - Vision 3 – Practice Server Edition
 - Vision AEROS
- TPP
 - SystmOne

SCHEDULE 6

THIRD PARTY MATERIALS

Notwithstanding anything in the Agreement to the contrary, all Third Party Materials are provided on an AS IS basis without warranty of any kind.

1. KINES (Keele University);
2. All Wales Therapeutics and Toxicology Center (AWTTC);
3. Egton Medical Information Systems Limited (EMIS);
4. Dm+d (publicly available information); and
5. National PINCER (pharmacist-led, IT- based intervention) data specifications provided by the University of Nottingham's PRIMIS team.

SCHEDULE 6.1

ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN/BRITISH NATIONAL FORMULARY DATA

This ScriptSwitch System contains information from the “then current” edition of *British National Formulary (BNF)* / *British National Formulary for Children (BNFC)*. For more comprehensive prescribing and drug information, refer to the complete current edition of the *British National Formulary* / *British National Formulary for Children* or www.medicinescomplete.com.

Please read the terms of this Schedule carefully. By signing the Agreement to which this Schedule 6.1 is attached, and/or by accessing or using the BNF Data (as defined below), you agree to be bound by the terms of this Schedule, including the disclaimers, limitations of liability and termination provisions below, and you represent and warrant that you (a) are over the age of eighteen (18) and (b) have the power and authority to enter into and perform this Schedule. Such acceptance is both (a) on your own behalf, and (b) on behalf of the primary care organisation, partnership or other entity which employs you and which you represent, to the extent that the BNF Data is going to be used by you on such entity's behalf (the “Client”). In this Schedule, the term “you” includes any such client.

IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS SCHEDULE DO NOT ACCESS OR OTHERWISE USE THE SCRIPTSWITCH SYSTEM OR RECOMMENDATION PROFILES.

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This Schedule shall be governed by and construed in accordance with the laws of England and Wales. You irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Schedule.

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You may not transfer or assign the BNF Data or any of your rights or obligations under this Schedule without The Publisher's prior written consent.

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In the event any term or provision of this Schedule or any application thereof shall be deemed to be illegal, void or unenforceable, then the same shall not affect the remaining portions of this Schedule or any other application of the same that are not determined to be illegal, void or unenforceable, which remaining provisions and any other such application shall survive and constitute the agreement of the parties.

15. Miscellaneous

No amendment to this Schedule shall be binding unless made in writing and signed by a duly authorised representative of the party against whom enforcement is sought. Whenever the consent of a party is required, such consent may be withheld in that party's sole and absolute discretion. The failure of either party at any time to require performance of any provision of this Schedule or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by either party of any breach of any provision of this Schedule or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Schedule. All remedies provided for in this Schedule shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise. This Schedule contains the entire understanding and agreement between the parties with respect to the

subject matter hereof and supersedes and merges herein all previous communications, negotiations and agreements, whether oral or written, between the parties with respect to such subject matter.

SCHEDULE 7

OPTUM CONTENT SERVICES

Optum provides the Content Manager system to allow for the development of the Recommendation Profile to be delivered to End Users. Content Manager provides a workflow system allowing for authoring of content and final approval of the Recommendation Profile prior to delivery to the End Users. Responsibility for all content delivered to the End Users will reside with Client.

Client has the option of three distinct services for development of the Recommendation Profile.

1. Client Managed Profile. (This service is included in the standard licence fees)

- 1.1. Optum will provide Client with access to Content Manager to allow Client to build the local Recommendation Profile which will be wholly managed by Client.
- 1.2. Optum will provide support with initial build of the recommendation profile as follows:
 - 1.2.1. Copying in of another local authority's profile following approval from both authorities
 - 1.2.2. Addition of all KINES messages
 - 1.2.3. All Wales Therapeutics and Toxicology Centre (AWTTC) messages for Welsh customers
 - 1.2.4. Over the counter messages, where an over the counter options exists, inserted by Optum
- 1.3. This content will be added to the local profile and will require review and approval by the customer prior to delivery to the practices. The Content Manager Workflow system will be used to manage the approval and delivery
- 1.4. Optum will continue to provide support for customers selecting this option with a limit of one hour of Optum resource per calendar month. Additional support will be subject to negotiation and additional charges.

2. Optum National Profile with Client localisation (This service is provided at additional cost highlighted on page 1 of this contract.)

- 2.1. This Service is provided for Client's who want to implement the Optum National Profile Recommendations and who may wish to add on local messages to address local formulary needs, and includes National Profile Services as described in section 2.2 below.

2.2. National Profile Services include:

- 2.2.1. Optum researched cost savings and safety related Optum authored recommendations and messages based on dm+d and BNF data not otherwise already provided in the Client Managed Profile.
- 2.2.2. Optum will load the National Profile into the library tab and assist with initial build of the Recommendation Profile. The Content Manager workflow will be used to adopt, approve and deliver the Recommendation Profile to End Users
- 2.2.3. Optum maintains the National Profile and will add updates into the library tab in Content Manager
- 2.2.4. Client commits to review the updates monthly and adopt, authorise and approve changes to the national content, KINES switches, top 500 cost saving switches and to deal with any recommendations that may have become negative savings.
- 2.2.5. Optum communicate the details of the switches that have been added to the national content monthly ahead of adding to library to help reduce any work being undertaken by Clients at a local level.
- 2.2.6. Client can request items to be added to national profile to be considered by Optum Clinical team. This should be done via a request to the Optum Client service desk support@scriptswitch.com
- 2.2.7. Client can add any products locally to satisfy local formulary requirements

3. Managed Profile Service. (This service is provided at an additional Fee as set forth on page 1 of this contract.)

- 3.1. **Set Up.** Optum provides a National Recommendation Profile for new Clients to allow initial set up of the service. This will be added into the Client Recommendation profile ready for Client approval and

delivery to the End Users. The Client reviews and authorises the switches they require and suspend/reject any that they feel are not appropriate in this set up phase.

- 3.2. **Ongoing.** Optum will work with the local Medicines Optimisation team to determine the requirements for the service and the objectives for the Recommended Profile. The service will consist of the following:
 - 3.2.1. Monthly meeting with the Client Medicines Optimisation team to determine the objectives for from the local formulary and the months profile activity
 - 3.2.2. Optum will adopt messages from the National Profile that support the objectives
 - 3.2.3. Formulary updates: Local messages updated based on guidance from monthly formulary meeting
 - 3.2.4. Optum address local prescribing content, create switches and information messages ready for authorisation and deployment by Client
 - 3.2.5. New products: Review new products added by Dm+d monthly, so the most beneficial and relevant switches / information messages can be added to the profile, based on local formulary and current messages
 - 3.2.6. Review of Savings: Review zero and negative savings, monthly— deleting, suspending, and hiding cost where appropriate to ensure up to date, cost effective, or locally preferred switches are presented to the clinicians
 - 3.2.7. Never Accepted Messages: Review 'never accepted messages' quarterly, via Optum Intelligence and Data Analytics Recommend and delete messages from the profile.
 - 3.2.8. Prescriber Feedback: Optum review the feedback reports weekly and take relevant action on the profile
 - 3.2.9. Switches to most cost effective: Through review of Dm+d price changes on a monthly basis, Optum will review the Recommendation Profile and make additional cost effective Recommendations.
 - 3.2.10. Dormant Recommendations: Review profile and delete messages quarterly, where appropriate for Recommendations that have not triggered in the last 24 months
 - 3.2.11. Stock control: Profile updates to reflect stock issues, as required
 - 3.2.12. Client Approval: Client commits to 2 hours a month to review the updates, authorise and deploy the profile
 - 3.2.13. Optum provide a monthly summary report of activity on the profile for the local Medicines Optimisation team

SCHEDULE 8

SITE DETAILS

Copy and paste the schedule 8 up to the clinical system product. Use Autofit to Window to align correctly

Schedule 8 ScriptSwitch Practice Site List

SCHEDULE 9
DATA PROCESSING AGREEMENT

THIS DATA PROCESSING AGREEMENT ("DPA") is made on the Start Date set out in the Terms of Conditions to which this Schedule is attached to.

BY:

- (1) **EGTON MEDICAL INFORMATION SYSTEMS LIMITED** a company registered in England and Wales under company number (registered No. 02117205), whose registered address is at Fulford Grange Micklefield Lane, Rawdon, Leeds, England, LS19 6BA, England (trading as "**Optum**"), (the "Supplier"); and
- (2) **[NAME OF CONTRACTING AUTHORITY]** acting on behalf of the Beneficiaries (the "Contracting Authority"); and

FOR THE BENEFIT OF:

- (3) General practices (GPs) who are part of the Contracting Authority identified above and who from time to time (i) access or use (or have previously accessed or used) the ScriptSwitch System (collectively, the "Services") from the Supplier; and/or (ii) provide or have previously provided data to Supplier for the purposes of the Services (the "Beneficiaries").

BACKGROUND

- A. The Supplier provides the Services to the Beneficiaries through contract vehicles procured by the Contracting Authority (the "Contracts," as more specifically defined in clause 1.1.5).
- B. For the purposes of carrying out the processing activities required under the Contracts as set out in the Data Processing Schedule attached hereto (the "Permitted Purpose"), the Beneficiaries will transfer to the Supplier certain categories of Personal Data relating to certain individuals all as indicated in the Data Processing Schedule.
- C. The Contracting Authority uses the Contracts to order the Services for the Beneficiaries. A further agreement between the Contracting Authority and the Beneficiaries governs their relationship.
- D. The Contracts reserve appropriate third party rights to enable the Contracting Authority to enforce the contractual obligations directly against the Supplier on behalf of the Beneficiaries.
- E. In order to reinforce the obligations of the Supplier which are contained in the Contracts in relation to data protection, the Supplier is, pursuant to this DPA, giving direct assurances to the Beneficiaries with regards to how personal data is processed and safeguarded.
- F. This document is an undertaking which operates to account for the fluctuation in the total number of GPs receiving Services under the Contracts and/or provided data or receiving services under the Relevant Contracts (as defined in clause 1.1.6).
- G. This document is an undertaking between the Contracting Authority and the Supplier which does not need to be executed by the Beneficiaries but its terms shall be enforceable by any Beneficiary subject to clause 5 (Management of complaints and disputes).
- H. In consideration of the Contracting Authority engaging the Data Processor to provide the Services set forth in the Contract (s) and to process Personal Data on behalf of its Beneficiaries, the Data Processor shall comply with the security, confidentiality and other obligations imposed on it under this DPA.
- I. The Contracting Authority hereby authorises, on behalf of the Beneficiaries, the Supplier to undertake the processing activities under this DPA and the Supplier agrees to do so all under the terms of this DPA.

IT IS HEREBY AGREED as follows:

1. Definitions

- 1.1 In this DPA, (unless the context otherwise requires) the following words and phrases shall have the following meanings:
- 1.1.1 "Data Protection Legislation" means the applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their Personal Data, as amended from time to time, including, the Regulation (EU) 2016/679, 'the General Data Protection Regulation' ("GDPR"), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities.
 - 1.1.2 "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meanings given in the Data Protection Legislation.
 - 1.1.3 "Processed" and "Process" shall be construed in accordance with the definition of "Processing."
 - 1.1.4 References in this DPA to "Personal Data" shall be interpreted as including "Sensitive Personal Data" (as defined in the Data Protection Legislation).
 - 1.1.5 "Contract(s)" means the contracts between the Contracting Authority and the Supplier, pursuant to which the Supplier provides the Services to the Beneficiaries. For purposes of this DPA, the Contract is the ScriptSwitch System Agreement to which this Schedule 8 is attached.
 - 1.1.6 "Relevant Contract(s)" means the Contracts and any other contract pursuant to which Personal Data is currently Processed, has been Processed or will be Processed by the Supplier on behalf of the Beneficiaries in furtherance of the Services. For purposes of this DPA, the details of which are indicated in the Data Processing Schedule.

2. Responsibilities under the Data Protection Legislation

- 2.1 The Beneficiaries are Data Controllers in relation to all Personal Data held in its information technology systems and the Supplier is a Data Processor in connection with that Personal Data.

3. Undertaking relating to Data Processing

- 3.1 Where Personal Data is Processed on behalf of each Beneficiary by the Supplier, its agents, sub-contractors or employees, the Supplier undertakes that it shall, and shall procure that its agents, sub-contractors and employees shall:
- 3.1.1 only Process the Personal Data in accordance with this DPA (including the Data Processing Schedule), Applicable Laws, and solely for the Permitted Purpose;
 - 3.1.2 process the Personal Data on behalf of the Beneficiaries and in accordance with the documented written instructions of the Beneficiaries, which may be communicated by the Contracting Authority on the Beneficiaries' behalf unless required otherwise by the Data Protection Legislation;
 - 3.1.3 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of services under the Relevant Contracts;
 - 3.1.4 taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of Processing, as well as the likelihood and severity of any risk, implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Data and to the nature of the Personal Data which is to be protected;

- 3.1.5 take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
- 3.1.6 inform all personnel, who access to the Personal Data of the confidential nature of the Personal Data and ensure that they do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Beneficiary or the Contracting Authority;
- 3.1.7 process the Personal Data in accordance with the Data Protection Legislation;
- 3.1.8 reasonably cooperate as requested by the Beneficiaries to enable the Beneficiaries to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data processed by the Supplier; provide assistance to the Contracting Authority on the Beneficiaries' behalf as necessary to enable Beneficiaries to comply with security of Personal Data taking into account the nature of processing and the information available to Supplier; provide assistance to the Contracting Authority on the Beneficiaries' behalf with any data protection impact assessment or prior consultation with a supervisory authority associated with Supplier's processing of Personal Data; or comply with any assessment, enquiry, notice or investigation under the Data Protection Legislation which shall include the provision of all data requested by the Beneficiaries within the timescale specified by the Beneficiaries in each case;
- 3.1.9 provide a contact point for the relevant Beneficiary or Beneficiaries, directly or via the Contracting Authority, to submit any enquiries relating to the Processing of Personal Data pursuant to the Contract. For purposes of this DPA, such enquiries must be submitted to support@scriptswitch.com; and
- 3.1.10 without undue delay, cease Processing the Personal Data upon the termination or expiry of the service to which it relates under the Relevant Contracts and as soon as possible thereafter, at the relevant Beneficiary or Beneficiaries' option, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains, except insofar as Supplier is required to keep such records under Data Protection Legislation, and the Supplier shall confirm in writing that this obligation has been complied with in full.
- 3.2 The Supplier shall not Process any Personal Data outside of the European Economic Area (EEA) without the prior written consent of the relevant Beneficiaries, which may be communicated by the Contracting Authority on the Beneficiaries' behalf. The Contracting Authority, on behalf of the Beneficiaries, hereby authorises the Supplier to transfer the Beneficiaries' Personal Data to the Supplier Affiliates and authorised Sub-processors for processing in the countries outside of the EEA as specified in the Data Processing Schedule.
- 3.3 The Supplier shall not engage a sub-processor in relation to the processing of the Beneficiaries' Personal Data without prior written consent of the Beneficiary, which may be communicated by the Contracting Authority on the Beneficiaries' behalf. The Contracting Authority, on behalf of the Beneficiaries, hereby authorises the Supplier to appoint the Sub-processors listed in the Data Processing Schedule to process the Personal for the Permitted Purpose. Supplier will impose the same data protection obligations as set out in this DPA.
- 3.4 Any Beneficiary may, on reasonable notice, request a detailed written description of the technical and organisational methods employed by the Supplier and its subcontractors for the Processing of Personal Data. Within ten (10) working days of receipt by the Supplier of each written request from a Beneficiary, the Supplier shall deliver a written report to that Beneficiary, with a copy sent to the Contracting Authority. The Supplier's report shall have sufficient detail to enable the Beneficiary to reasonably determine whether or not Personal Data is being, has been, and will be, processed in compliance with the Data Protection Legislation.
- 3.5 The Supplier shall allow for and contribute to audits, including inspections, conducted by the Beneficiary or an auditor mandated by the Beneficiary. Where an audit requires the Supplier to allocate more than minimal resources, it shall be entitled to charge the Beneficiary for the time spent by its staff and any resources allocated for the audit.

4. Indemnity

- 4.1 Each party (the “Indemnifying Party”) shall indemnify the other party (the “Indemnified Party,” which, with respect to the Contracting Authority, includes the Beneficiaries) and keep the Indemnified Party indemnified on demand against any award or liability under a final judgment or court order and against related costs and/or monetary penalty notices arising from enforcement by the Information Commissioner's Office (or its successor enforcement body) arising from a breach by the Indemnifying Party of this DPA.
- 4.2 The limitations and exclusion on liability set forth in the Contract shall apply to liability arising under this DPA. For the avoidance of doubt, the Supplier’s total liability for all claims from the Contracting Authority and/or the Beneficiaries arising out of or related to the Contract, including this DPA, is subject to the limitations and exclusion of liability set forth in the Contract.

5. Management of complaints and disputes

- 5.1 Where it is reasonably practicable any complaint, dispute or action against the Supplier for breach of the data processing conditions set out in this DPA shall be managed by the Contracting Authority on behalf of the Beneficiaries (or successors) under the processes and provisions set out in the Relevant Contracts. Where it is not reasonably practicable for the Contracting Authority to do so, then the Beneficiaries shall be able to deal directly with the Supplier to, for example, escalate a complaint or dispute or take action against the Supplier.

6. Warranty

- 6.1 The Contracting Authority represents and warrants that it has the authority to enter into this DPA on behalf of and for the benefit of the Beneficiaries.

IN WITNESS WHEREOF, the parties through their duly authorised representatives have agreed to the terms of this DPA through their signatures on the Cover Pages that form part of the Agreement to which this Schedule is attached.

DATA PROCESSING SCHEDULE

Contracting Authority's Name:	<Contracting Authority>
Contracting Authority's commercial address:	<Contracting Authority's Address>
Contracting Authority's contact person and email/fax:	Please list the contact person for the Contracting Authority.
Contracting Authority's data protection officer's name:	Please list the DPO for the Contracting Authority.
Data Controllers (Beneficiaries):	The GPs who are part of the Contracting Authority as identified below. <Contracting Authority's GPs>
Data Processor's name:	Egton Medical Information Systems Ltd
Data Processor's commercial address:	
Data Processor's contact person and email/fax:	<Account Manager>
Data Processor's data protection officer's name:	Jill Schrier Data Protection Officer, VP International Privacy Program and Innovation, UnitedHealth Group Phone: 1.414.443.4290 Email: uhg_privacy_office@uhc.com
Name and date of the Relevant Contract in connection with which the Data Processing Agreement is entered:	<OP ID> Scriptswitch Prescribing – Clinical Decision Support System Agreement dated [REDACTED]. Attachment A sets forth the data flow mapping between the parties with respect to this Schedule.
Commencement Date:	Means the Start Date as set out in the Order Form or any other date as mutually agreed in writing between the parties
Subject-matter of the Processing activity:	
Provide ScriptSwitch system (the "ScriptSwitch System") to the Contracting Authority and the Beneficiaries.	
Nature and purpose of Processing:	
<u>System Recommendation and Patient Record Integration Functionality (including withholding function)</u>	
The ScriptSwitch System is a decision support system that enables Medicines Management Teams (MMT) to create recommendations that are presented to prescribers when a medication is issued within the clinical system.	
When a product is prescribed, if there is a recommendation in the ScriptSwitch System associated with that product the ScriptSwitch System will either present the prescriber with an information message and/or a switch recommendation. A switch recommendation suggests a switch from the medication originally prescribed by the prescriber to an alternate product in line with the Contracting Authority's formulary.	

The ScriptSwitch System utilises Personal Data from the patient record (as further described below) as well as data relating to whether a recommendation has previously been rejected for the purpose of determining whether a recommendation is appropriate to be displayed for a specific patient. <u>ScriptSwitch Safety Alerts</u> (if applicable) In order to provide the Contracting Authority and its Beneficiaries with prescribing decision support alerts for the purposes of direct care and prescribing activities, the Data Processor processes certain Personal Data as defined below. <u>Support & Communication</u> In order to support, maintain and deliver the ScriptSwitch System to the Contracting Authority and the Beneficiaries, the Data Processor processes certain Personal Data provided by the Contracting Authority or the Beneficiaries, relating to the Contracting Authority's or the Beneficiaries' employees (which may include name, business email address and mobile phone number), for the purposes of providing access to the ScriptSwitch System and for ongoing Contracting Authority communication during the term of the Relevant Contract.
Duration of the processing of Personal Data:
<u>System Recommendation and Patient Record Integration Functionality & Withholding feature</u> The Personal Data will be retained by the Data Processor for the periods set forth below plus any additional retention period required by applicable law and in conjunction with the NHS Information Governance Alliance Records Management Code of Practice. Personal Data accessed from the patient record to determine whether a patient matches the demographic guidelines for a recommendation will be held on the prescriber's desktop. Depending on the clinical system, the Personal Data will be held either only for the period that the patient's record is open, or for either the period that the clinical system is open or until five patient records have been opened, whichever comes first. Personal Data processed to determine whether a recommendation has been rejected previously (with withholding feature) will be held for up to one (1) year on Optum secure servers from the date of the original script. <u>Support & Communication</u> Personal Data held for the purposes of application access will be held for 14 days after termination or expiration of the relevant contract. Personal Data held for support and communication purposes will be removed from our systems 30 days after the termination or expiration of the Relevant Contract. <u>ScriptSwitch Decision Safety Alerts</u> Personal Data accessed from the patient record to determine whether a patient matches the ScriptSwitch Safety alert will be processed on the prescriber's desktop. Data transferred to Optum will be information establishing the numerical counts of safety alerts presented and the interaction of the clinician and does not constitute personal, pseudonymised or anonymised data.
Categories of Personal Data to be Processed:
<u>System Recommendation and Patient Record Integration Functionality & withholding feature</u> The Personal Data accessed from the patient record to determine whether a patient matches the demographic guidelines and held on the prescriber's desktop is:

- The clinical systems patient ID (eg EMIS, TPP or INPS ID)
- The patient age
- The patient gender

The Personal Data that leaves the prescribers desktop and is returned to Data Processor for the purposes of identifying whether a recommendation has previously been rejected is

- The clinical system prescriber ID
- The clinical systems patient ID

ScriptSwitch Safety Alerts (if applicable)

The Personal Data Processed for the purposes of providing prescribing decision support alerts:

- The clinical system patient IDs (e.g. EMIS or INPS ID)
- The patient name
- The patient date of birth
- The patient NHS number
- The following categories of data from the clinical system patient records:

Encounter

Represents encounter/consultation record. An encounter represents a meeting between a patient and a clinician in a particular location at a point time. It serves as a context in which events can occur and medications are prescribed. An Encounter can be linked to an Appointment Slot.

e.g. an admission to hospital

Organisation

Organisations associated with resources in the extract e.g. the patient's registered practice, the organisation providing a service that a patient is referred to, the organisations that practitioners work for.

e.g. patient's practice

Observation

Represents record entries covering diagnosis, current condition, past conditions

e.g. asthma, heart failure, fractured pelvis, fall

Allergy

Represents allergy, intolerance and adverse reactions recorded in source systems.

e.g. allergy to penicillin

Immunisation

Represents Immunisations recorded on source systems.

e.g. covid vaccine

Referral

Represents referral of a patient for care by an external party or service or inbound referrals to provide a service related to the patient.

e.g. to mental health services or fertility clinics

Recall

Represents recall/ reminder/ diary record content in source systems

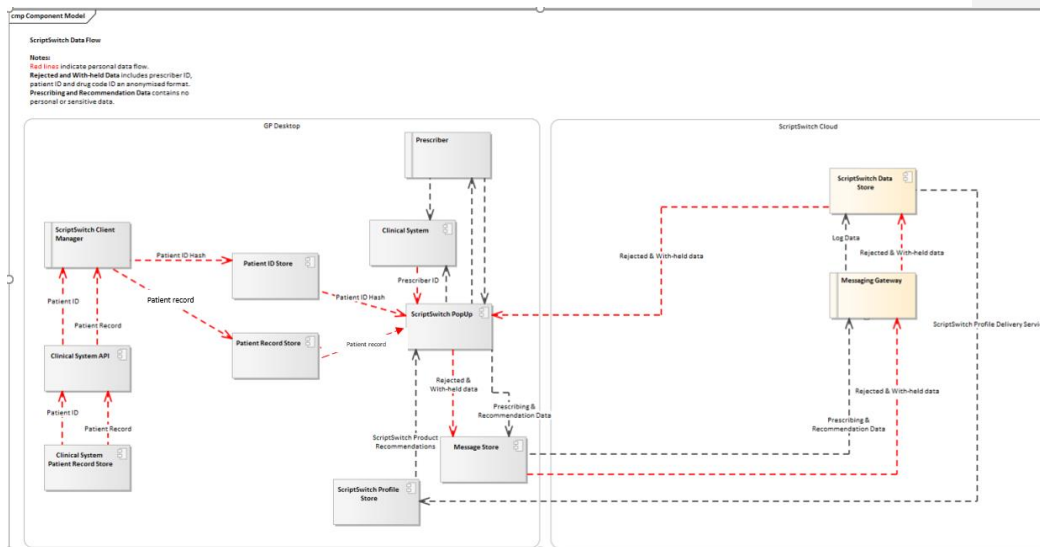
e.g. Future booking/reminder for outreach
<u>Medication</u>
Represents medication records in source systems. This is a combination of both Authorisation and Issue records and current and past drugs as well as acute and repeat prescriptions
e.g. current and past medications (prescriptions)
<u>Report Specimen</u>
This view represents a Pathology Report, lab result, physical test result, scan or similar.
e.g. urine analysis, full blood count, MRI scan, x-ray, HBA1C, blood pressure.
This Personal Data is Processed on the practice desktop
<u>Support & Communication</u>
The Personal Data of the Contracting Authority or End User Processed for the purposes of support and communication include:
• Employee name • Employee business email address • Employee phone numbers including mobile numbers, where provided
Categories of data subjects whose Personal Data is to be Processed:
Contracting Authority's or Beneficiaries' employee data, system data and patient data as described above.
Data sources
Clinical system patient record via clinical system application programming interface (API)
Personal Data to be provided by Data Controller in anonymised/pseudonymised form:
• Clinical system patient ID • Clinical system prescriber ID • Client IP Addresses • Client Machine Names • User Email Address • User Access Roles
Personal Data to be provided in raw form by Data Controller and anonymised/pseudonymised by Data Processor:
<i>Not applicable</i>
Other special IT security requirements
Personal Data will be transferred using the NHS N3/HSCN network. Personal Data will be encrypted in transit and at rest. Hosted (cloud) infrastructure leveraged by the Data Processor to host the ScriptSwitch System will meet the baselines of the NHS Information Governance Toolkit (IG Toolkit).
Third parties to which Personal Data is to be made available
Salesforce – employee name, email and mobile phone numbers (if provided) will be held on a hosted system managed by Salesforce. This data is provided in raw form.
Analytics Software – Third party analytics collects product usage and analytical data relating to the end users of the Product and their interactions with the system. End users include clinicians and administrative staff from

healthcare organisations in the UK and this may include collection of information relating to which customer they are from, their user profile and job role. Qualtrics - employee name, email and mobile phone numbers (if provided) will be held on a hosted system managed by Qualtrics. This data is provided in raw form and used for surveys relating to service. Microsoft Azure (UK) – this platform will be used for data storage. Amazon Web Services (AWS) (London) - this platform will be used for logging and security ops only.
Countries to which Personal Data may be transferred for Processing (including a description of the processing activities to be undertaken in each country):
Except as noted herein, Personal Data will be stored in the EEA.
Permitted Sub-processors (including a description of the purpose of the access to Personal Data given to each sub-processor):
Salesforce is a CRM system used by the Data Processor to manage the support and communication Personal Data as well as the individual access credentials for the ScriptSwitch System. Analytics Software - Third party analytics software collects product usage and analytical data relating to the end users of the Product and their interactions with the system. Qualtrics is a system used by the Data Processor for mailing users' information relating to the ScriptSwitch System and service. The Microsoft Azure platform will be used for data storage. The Amazon Web Services (AWS) platform will be used for logging and security ops.

Attachment A

Data Flow Diagrams

A.1 - Data Flow for Recommendation and Patient Record Integration & withholding function



A.2 - Data Flow for Customer Support and Communications

