

UNIVERSAL MASTER SERVICE AGREEMENT (MSA)

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

BACKGROUND

- (A) Optum has developed, and provides, a range of services.
- (B) The Customer wishes for Optum to provide certain services, as specified in the Quote and Product Schedule(s).
- (C) Optum has agreed to provide, and the Customer has agreed to take and pay for, the Services subject to the terms and conditions of the Agreement.

AGREED TERMS

1. INTERPRETATION

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

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

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

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

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

Client: means a single workstation installed with the Software.

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

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

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

Contract Year: means: (a) a period of 12 months commencing on the Commencement Date; and (b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date (provided that the final Contract Year shall end on the expiry or termination of the Agreement).

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

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

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

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

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

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

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

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

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

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

$$\text{Value} \times (\text{RPId} / \text{RPId}_0)$$

where RPI is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and RPI₀ is the value of the Retail Prices Index on the Effective Date.

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

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

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

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

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

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

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

terms of any relevant Product Schedule(s) and that the terms of the same will form part of the Agreement.

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

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

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

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

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

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

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

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

Software Specification: has the meaning set out in the relevant Product Schedule.

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

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

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

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

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

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

- 1.2. Clause, annex, attachment and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees.
- 1.4. A reference to: (i) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (ii) words in the singular shall include the plural and vice versa; (iii) one gender shall include a reference to the other genders; (iv) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (v) writing or written shall include communications sent by email (unless expressly excluded); and (vi) clauses and Annexes are to the clauses and Annexes of these General Terms and references to sections are to sections of the relevant Annex.
- 1.5. The term "including" shall be construed without implying limitation (and variants of "including" shall be interpreted accordingly).
- 1.6. Where the terms of the Product Schedule conflict with these General Terms, the terms of the Product Schedule shall prevail. Where the terms of the Quote conflict with these General Terms and/or the terms of the Product Schedule, the terms of the Product Schedule and General Terms shall prevail (in that order).

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

2. APPLICATION OF TERMS

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

3. COMMENCEMENT AND DURATION

- 3.1. The Agreement shall commence on the Commencement Date and shall continue in force for the Term unless or until it is terminated pursuant to clause 16 or otherwise in accordance with its terms.
- 3.2. Subject to any alternative terms being provided in the Quote and/or Product Schedule, following expiry of the Initial Term, the Agreement shall continue on an annual rolling basis unless or until it is terminated by either party giving not less than three (3) months' notice in writing to expire at the end of the relevant Initial Term or any subsequent anniversary of the Commencement Date.

4. CONFIGURATION SERVICES

- 4.1. Where Optum has agreed to provide any Configuration Services, Optum shall use its reasonable endeavours to perform them by reference to the timetable established between the parties in the Project Plan. Optum shall use its reasonable endeavours to meet any performance dates set out in the Project

Plan, but any such dates are estimates only, and time for performance by Optum shall not be of the essence of the Agreement.

- 4.2. In respect of each Deliverable, the Customer and Optum may agree a “*Deliverable Sign Off*” process. Within ten (10) days of Optum’s delivery to the Customer of any Deliverable, the Customer shall review the relevant Deliverable to confirm that it functions (in all material respects) in accordance with the applicable portion of the Software Specification. If the Deliverable fails in any material respect to conform to the applicable portion of the Software Specification, then the Customer shall give Optum a detailed description of any such non-conformance, in writing, within the ten (10) day review period.
- 4.3. Optum shall use its reasonable endeavours to correct any material error in the Deliverables, made known to Optum pursuant to clause 4.2, within a reasonable time. Upon correction of any such material error(s), Optum shall submit the corrected Deliverable to the Customer, whereupon the terms of clause 4.2 shall apply (in relation to the corrected elements of such Deliverable only).
- 4.4. If Optum does not receive any written comments from the Customer within the ten (10) day period described at clause 4.2, or if any Authorised User(s) or Client uses the Software (other than for the purposes of clause 4.2) then the Deliverable shall be deemed to have been accepted by the Customer and to conform with the Software Specification.

5. HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 5.1. Where the Customer purchases Hosting Services and/or Maintenance and Support Services, subject to clauses 5.7, 5.9 and 5.10 Optum shall perform the Hosting Services and Maintenance and Support services. The Service Level Agreement shall apply as appropriate with effect from the start of the month after any Configuration Services have been satisfactorily completed pursuant to clause 4 (to allow for a ‘bedding in’ period).
- 5.2. In relation to Authorised Users:
 - 5.2.1. the Customer’s access to the Hosting Services shall be limited to the agreed number of Authorised Users able to access the Software at any time (as detailed in the Quote and/or Product Schedule);
 - 5.2.2. the number of individual Authorised Users will be subject to a quarterly review;
 - 5.2.3. Optum may monitor the number of Authorised Users on an annual basis and shall notify the Customer should the number of Authorised Users at any time exceed the agreed limit (such notification shall also set out any additional Fees payable by Customer resulting from such additional Authorised Users);
 - 5.2.4. the Customer shall maintain a written list of current Authorised Users of the Software; and shall provide such list to Optum as may be reasonably requested by Optum from time to time; and
 - 5.2.5. if the Customer exceeds the agreed number of Authorised Users, then Optum shall not be deemed to be in breach of any failure to meet any of its obligations in relation to Maintenance and Support (including those set out in the Quote and/or Product Schedule) or under the Service Level Agreement as a result of the increased demand.
- 5.3. The Customer shall ensure that: (i) each Authorised User keeps a secure password for their access to and use of the Software and that such password is changed no less frequently than every ninety (90) days; and (ii) each Authorised User keeps their password confidential.
- 5.4. Without limiting Optum’s other rights of audit, Optum may audit use of the Software and the Customer will promptly provide any requested information. Such audit may be conducted no more than once per quarter, at Optum’s expense.
- 5.5. Should an audit reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to Optum’s other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals (unless or until the appropriate charges due in respect of any additional users have been paid).
- 5.6. In relation to the Software:
 - 5.6.1. Optum hereby grants to the Customer, on and subject to the terms and conditions of the Agreement, a non-exclusive, non-transferable licence to:
 - 5.6.2. install the Software on Clients at the Sites; and

- 5.6.3. allow Authorised Users to access and use the Software solely for the Customer's internal business purposes;
- 5.6.4. the Customer shall:
- 5.6.5. configure, connect and design its network and IT infrastructures (including the security and integrity thereof) in accordance with recognised best practice to mitigate the risk of it being a target or a source of disruptions or network defects or attacks, including having in place at all times industry standard encryption software and adequate and appropriate protections against any Virus; and
- 5.6.6. not store, store, distribute or transmit any Viruses, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive;
- 5.6.7. the rights provided under this clause 5.6 are granted to the Customer only, and shall not be considered granted to any Customer Affiliate (or any other third party);
- 5.6.8. the Customer shall not:
- 5.6.9. attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software (save to the extent expressly set out in the Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
- 5.6.10. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, (save as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
- 5.6.11. access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services;
- 5.6.12. use the Software or Hosting Services to provide services to third parties or use the Software on Clients other than at the Sites unless otherwise authorised in writing by Optum to do so;
- 5.6.13. subject to clause 27.1, transfer temporarily or permanently any of its rights or obligations under the Agreement;
- 5.6.14. attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided in this clause 5.6.8; or
- 5.6.15. permit more than the agreed number of Authorised Users to access and use the Software at any time.
- 5.7. If the Customer wishes to use the Software in an environment which is not a Supported Environment, then it shall notify Optum in writing. The Customer acknowledges that the Software has not been designed to function within an unsupported environment and that any such use is at its own risk and that the Software may not function correctly (or at all). The Customer further acknowledges that any timescales, warranties or representations made by Optum in terms of the Services relate only to the use of the Software within a Supported Environment and that the delivery of the Services may be adversely affected. Optum shall have no liability to the Customer for any delays, clinical risks or failure to support the Software to the extent that such issues are caused by the Customer's system not being a Supported Environment.
- 5.8. The Customer may access certain third party applications stored on Optum's hosted environment. Any such access and use will be subject to the licencing terms in effect as between the relevant third party and the Customer in respect of the same. The Customer acknowledges that such access is provided on an "as is" basis and Optum gives no warranties or undertakings in respect of any such third party applications or the Customer's access to, or use of, the same.
- 5.9. The Customer agrees to contact Optum to agree a schedule for any Training Services so that all such services are delivered no later than 6 months after the Business Go Live date. To the extent that any Training Services have not been delivered by that date, the parties agree that they shall be deemed to have been fully delivered and the Customer agrees that it shall be liable to pay the full Fees for the Training Services.
- 5.10. If the Customer needs to reschedule any of the Training Services, it shall give Optum at least ten (10) days' notice before the scheduled delivery date and, to the extent the Customer gives less notice, it agrees that it shall be liable to pay additional Fees at Optum's current daily rate.

6. OPTUM'S OBLIGATIONS

- 6.1. Optum shall use its reasonable endeavours to:
 - 6.1.1. provide the Services in accordance in all material respects with the relevant Quote and Product Schedule;
 - 6.1.2. provide the Services to meet any relevant key dates stated in the applicable Quote and/or Product Schedule or as otherwise agreed in writing with Optum, but any such dates shall be estimates only and shall not be of the essence in relation to the performance of the Services; and
 - 6.1.3. observe all applicable health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's relevant premises (and that have been reasonably communicated to it pursuant to clause 7.1.11), provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under the Agreement (including the Product Schedule).
- 6.2. Optum warrants that the Services will be performed with reasonable skill and care.
- 6.3. The warranty at clause 6.2 shall not apply to the extent of any non-conformance which is caused by use of the Services (including, any Software) contrary to the terms of the Agreement, Optum's instructions or modification to (or alteration of) the Services by any party other than Optum or Optum's duly authorised contractors or agents, or the use of the Software in any environment which is not a Supported Environment.
- 6.4. If the Services do not conform with the terms set out in clause 6.1 or the warranty in clause 6.2, Optum will, at its expense, use its reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with agreed alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the same. Notwithstanding the foregoing, Optum does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.
- 6.5. For the avoidance of doubt, the Agreement shall not prevent Optum from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Agreement.

7. CUSTOMER'S OBLIGATIONS

- 7.1. The Customer shall:
 - 7.1.1. co-operate with Optum in all matters relating to the provision of the Services, including providing it with:
 - 7.1.2. all necessary co-operation in relation to the Agreement; and
 - 7.1.3. access to such information as it may reasonably require in order to perform the Services, including access to the Customer Data, security access information and software interfaces to the Customer's other business applications;
 - 7.1.4. contact Optum at the earliest available opportunity to schedule delivery of the Services. Where the contract term is 12 months (or less), the Customer will ensure it has contacted Optum in sufficient time to ensure that all services will be delivered during the relevant contract term and to the extent that the Services have not been fully delivered by that date and unless agreed in writing that an extension is warranted, the Services will be deemed to have been fully delivered and the Customer shall be liable to pay the full Fees for the Services;
 - 7.1.5. give notice to Optum of any adjustments or cancellations at least ten (10) Working Days before the scheduled delivery date and, to the extent the Customer gives less notice, it agrees that the adjusted days may become liable or payment at Optum's then current daily rate;
 - 7.1.6. where relevant, provide a copy of the Agreement to any Service Recipients and ensure that each is aware of the same;
 - 7.1.7. provide Optum (including, its agents, subcontractors, consultants and employees), in a timely manner and at no charge, with access to such Sites, information, data and other facilities as Optum may require from time to time;

- 7.1.8. provide Optum with such remote access to the Customer's systems as it may reasonably require for the purposes of providing the Services and complying with its obligations under the Agreement;
- 7.1.9. provide Optum, in a timely manner, with such In-put Materials and other information as it may require (and shall ensure that the same is accurate in all material respects);
- 7.1.10. be responsible (at the Customer's own cost) for preparing and maintaining the relevant premises for the supply of the Services (including identifying, monitoring, removing and disposing of any hazardous materials from any relevant premises in accordance with all applicable laws, before and during the supply of the Services);
- 7.1.11. inform Optum of any relevant health and safety rules and regulations and any other reasonable security requirements that apply in respect of the Customer's and/or any Service Recipient's premises or systems;
- 7.1.12. ensure that the Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards and requirements;
- 7.1.13. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its receipt of the Services, the use of In-put Material and the use of the Customer's equipment, in all cases before the Commencement Date;
- 7.1.14. keep, maintain and insure the Equipment whilst it is on any Site in good condition, and it shall not dispose of, or use, the Equipment other than in accordance with Optum's written instructions or authorisation;
- 7.1.15. provide such personnel assistance as Optum may reasonably require from time to time in order for Optum to be able to provide the Services;
- 7.1.16. where applicable, appoint a project manager (as may be updated from time to time), who shall have the authority to contractually bind the Customer on all matters relating to the Agreement, and the Customer shall inform Optum of the name and relevant credentials of the project manager;
- 7.1.17. use its reasonable endeavours to maintain consistency in respect of any project manager referred to in clause 7.1.14, but should the Customer need to replace the project manager, then it shall notify Optum as to their replacement;
- 7.1.18. promptly install any updates, patches or upgrades to the Software made available by Optum, ensuring at all times that the Customer's version of the Software remains within two minor versions of the latest version of the Software made available by Optum;
- 7.1.19. without prejudice to clause 7.1.16, accept promptly and take all reasonable commercial steps to facilitate the installation of any urgent clinical safety releases in respect of any Software on the basis that a risk assessment has been conducted by Optum (through accredited clinicians) and it has determined that the functionality used by the Customer poses (or is likely to pose) a risk to patients;
- 7.1.20. where applicable, accept monthly static data updates including terminology, medication and data dictionary files (these updates being a prerequisite for interoperability, safe prescribing and clinical decision support by those customers who use this functionality, but also is key in clinical coding and data dictionary management);
- 7.1.21. comply with all laws and regulations with respect to its activities under the Agreement;
- 7.1.22. carry out, and procure that all Authorised Users carry out, all other Customer responsibilities set out in the Agreement (including in any relevant Product Schedules or in any agreed Project Plan) in a timely and efficient manner. In the event of any delays in the Customer's compliance with its obligations under the Agreement, Optum may adjust any timetable or delivery schedule set out in the Agreement or otherwise agreed as reasonably necessary; and
- 7.1.23. comply with any instructions issued by Optum pursuant to the maintenance provisions contained within the relevant Product Schedule.

- 7.2. If Optum's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (and/or any Service Recipient), its agents, subcontractors, consultants or employees, then:
- 7.2.1. Optum shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly); and
- 7.2.2. the Customer shall (and/or where appropriate shall procure the Service Recipient shall) agree with Optum a reasonable extension of time corresponding to the delay.
- 7.3. Optum shall not be liable for any delays, faults or interruptions in the Services caused by a failure or inadequacy in any Customer (and/or where appropriate any Service Recipient) or other third party equipment or processes or any incompatibility between any Customer (and/or where appropriate any Service Recipient) and third party equipment or processes.
- 7.4. The Customer shall be liable to pay Optum, on demand, all reasonable Losses sustained or incurred by Optum arising from the Customer's (and/or any Service Recipient's) fraud, negligence or failure to perform, or delay in the performance of, any of its obligations under the Agreement. Optum shall confirm all such Losses to the Customer in writing.

8. PRODUCT SCHEDULES

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

9. SALE OF HARDWARE

- 9.1. Where applicable, Optum shall sell and supply the Hardware to the Customer on the terms of the Agreement, including as set out in this clause 9.
- 9.2. The Hardware is described in the Quote and/or Product Schedule (or as otherwise agreed in writing). Optum may amend any specification in respect of the Hardware, as detailed in the Quote and/or Product Schedule or as otherwise agreed in writing with Optum, to reflect any changes made by the relevant manufacturer(s) or if required by any applicable statutory or regulatory requirements.
- 9.3. Optum shall deliver the Hardware to the agreed delivery location as detailed in the Quote and/or Product Schedule (or as otherwise agreed in writing) (the "**Delivery Location**") at any time after Optum notifies the Customer that the Hardware is ready. Delivery of the Hardware shall be completed on its arrival at the Delivery Location.
- 9.4. Any dates quoted for delivery of the Hardware are approximate only, and the time of delivery is not of the essence. Optum shall not be liable for any delay (or failure) in delivery of the Hardware that is caused by the Customer's failure to provide Optum with adequate delivery instructions or any other instructions that are relevant to the supply of the Hardware.
- 9.5. If the Customer fails to accept or take delivery of the Hardware, then (except where such failure or delay is caused by Optum's failure to comply with its obligations under the Agreement):
- 9.5.1. delivery of the Hardware shall be deemed to have been completed at 9.00 am on the first Working Day following the day on which Optum notified the Customer that the Hardware was ready; and
- 9.5.2. Optum may store the Hardware until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 9.6. If ten (10) Working Days after Optum notified the Customer that the Hardware was ready for delivery the Customer has not accepted delivery, Optum may (without prejudice to any other rights or remedies) resell or otherwise dispose of part or all of the Hardware without any liability to the Customer.
- 9.7. The Customer shall not be entitled to reject the Hardware if Optum delivers up to and including five (5) per cent more or less than the quantity of Hardware ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice that the wrong quantity of Hardware was delivered.

- 9.8. Optum may deliver the Hardware by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 9.9. Optum shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer's warranty regarding the relevant Hardware.
- 9.10. Optum warrants that on delivery, the Hardware shall:
- 9.10.1. subject to clause 9.2, conform in all material respects with the relevant specification (if any) set out in the Quote and/or Product Schedule (or as otherwise agreed in writing); and
 - 9.10.2. be free from material defects in design, material and workmanship.
- 9.11. Subject to clause 9.12, if:
- 9.11.1. the Customer gives notice in writing within a reasonable time of discovery that some or all of the Hardware items do not comply with the warranty set out in clause 9.10;
 - 9.11.2. Optum is given a reasonable opportunity of examining such Hardware; and
 - 9.11.3. the Customer (if asked to do so by Optum) returns such Hardware to Optum's place of business at the Customer's cost,
- then Optum shall, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full.
- 9.12. Optum shall not be liable for the Hardware's failure to comply with the warranty in clause 9.10 if:
- 9.12.1. the Customer makes any further use of such Hardware after giving a notice in accordance with clause 9.11;
 - 9.12.2. the defect arises because the Customer failed to follow Optum's instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;
 - 9.12.3. the Customer alters or repairs such Hardware without the written consent of Optum;
 - 9.12.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
 - 9.12.5. the Hardware differs from the relevant Hardware specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 9.13. Except as provided in this clause 9, Optum shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 9.10.
- 9.14. The terms of the Agreement shall apply to any repaired or replacement Hardware items supplied by Optum under clause 9.11.
- 9.15. Risk in the Hardware shall pass to the Customer on completion of delivery.
- 9.16. Title to the Hardware shall not pass to the Customer until Optum receives payment in full (in cash or cleared funds) for the Hardware and any other goods that Optum has supplied to the Customer in respect of which payment has become due, in which case title to the Hardware shall pass at the time of payment of all such sums. For the avoidance of doubt, title relates only to the physical Hardware and not to any software (and/or any software as may be embedded within the Hardware) provided by Optum, or any third party licensor, as it is only ever licensed to the Customer in accordance with the terms of the Agreement.
- 9.17. Until title to the Hardware has passed to the Customer, the Customer shall:
- 9.17.1. store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Optum's property;
 - 9.17.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - 9.17.3. maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on Optum's behalf from the date of delivery;
 - 9.17.4. notify Optum immediately if it becomes subject to any of the events listed in clauses 17.1.3 to 17.1.6; and

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

10. CHARGES AND PAYMENT

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

- 10.6.2. VAT, which Optum shall add to its invoices at the appropriate rate.
- 10.7. The Customer shall pay each invoice submitted by Optum, in full and in cleared funds (without deduction or set-off) to a bank account nominated in writing by Optum, within thirty (30) days of the date of such invoice.
- 10.8. Without prejudice to any other right or remedy that it may have available to it, if the Customer fails to pay Optum on the due date, Optum may:
- 10.8.1. charge interest on such sum from the due date for payment at the rate of four percentage points a year above the Bank of England's base rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, and the Customer shall pay the interest immediately on demand (or, at its option, Optum may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or
- 10.8.2. suspend the performance of any and all Services (without any liability to the Customer or any Service Recipient) until payment has been made in full.
- 10.9. Time for payment shall be of the essence of the Agreement.
- 10.10. Notwithstanding any provision in the Agreement to the contrary, all sums payable to Optum under the Agreement shall become due immediately on its termination. This clause 10.10 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 10.11. Optum may, without prejudice to any other rights it may have, set off any liability of the Customer to Optum against any liability of Optum to the Customer.
- 10.12. Where the Customer is purchasing Hardware, software licences, Services and/or the supply and use of Equipment for the benefit of a number of Service Recipients the date of actual receipt of Services, software licences and/or delivery and installation of Equipment and/or Hardware may not be uniform across all Service Recipients, and accordingly Service Recipients will likely receive the benefit of the same at various points following the Commencement Date.
- 10.13. For the purposes of clause 10.14, Service Recipients who have received the benefit of the Services, software licences, Equipment and/or Hardware are referred to as "**Actual Service Recipients**", and those who have not yet received the benefit of the same are referred to as "**Pending Service Recipients**".
- 10.14. Notwithstanding clause 10.12, Optum shall be entitled to invoice the Customer in respect of Fees as follows:
- 10.14.1. for the first Contract Year, Optum shall be entitled to invoice the Customer in advance, immediately following the Commencement Date, for all Fees due in respect of all Service Recipients in the first Contract Year, on the basis that all Service Recipients are deemed to be Actual Service Recipients on or immediately following the Commencement Date;
- 10.14.2. where the Term exceeds 12 months:
- 10.14.3. for the second Contract Year, Optum shall adjust the Fees, on a pro rata basis, to reflect any period in the first Contract Year during which any Service Recipients were Pending Service Recipients; and
- 10.14.4. for the third and subsequent Contract Years, Optum shall be entitled to invoice the Fees in full, in respect of all Service Recipients; and/or
- 10.14.5. where the Term is only 12 months (or less), then at the expiry of the Term, Optum shall issue the Customer with a credit note in respect of the Fees a pro rata basis, equivalent to the period during the Term that any Service Recipients were Pending Service Recipients.

11. INTELLECTUAL PROPERTY RIGHTS

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

- 11.2. The Customer acknowledges that, where Optum does not own the Intellectual Property Rights in any Pre-existing Materials, then the Customer's use of the same is conditional on Optum obtaining the necessary licence(s) from the relevant licensor(s) of such Pre-existing Materials on such terms as will entitle Optum to license such rights to the Customer under clause 11.1.
- 11.3. The Customer acknowledges that, save as expressly agreed herein, the Agreement does not grant the Customer any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Software, Services or any related Documents.
- 11.4. Optum warrants that it has all rights in relation to the Services, including any Software, that are necessary to grant all the rights that it purports to grant under, and in accordance with, the terms of the Agreement.

12. CONFIDENTIALITY

- 12.1. A party receiving Confidential Information under this Agreement (the "**Recipient**") shall keep the Confidential Information in strict confidence.
- 12.2. The Recipient (and/or where appropriate a Service Recipient) may disclose the relevant Confidential Information:
- 12.2.1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such Confidential Information for the purposes of carrying out the Recipient's obligations under the Agreement and/or of providing or receiving the Services, provided those individuals are subject to nondisclosure obligations substantially similar to those of the Agreement; and
 - 12.2.2. as may be required by law, court order or any governmental or regulatory authority.
- 12.3. The Recipient shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any Confidential Information comply with this clause 12.
- 12.4. The Recipient shall not use any Confidential Information for any purpose other than to provide or receive the Services, or to perform its obligations, under the Agreement.
- 12.5. All materials, Equipment and tools, drawings, specifications and data supplied to the Recipient (including, any Pre-existing Materials and Equipment) shall, at all times, be and remain the exclusive property of party sharing the Confidential Information (the "**Discloser**"), but shall be held by the Recipient in safe custody at its own risk and maintained and kept in good condition by the Recipient until returned to the Discloser, and shall not be disposed of or used other than in accordance with the Discloser's written instructions or authorisation.
- 12.6. On termination of the Agreement, the Recipient may return to the Discloser (or at the Discloser's request, destroy in such a manner as not to allow its re-creation and confirm to the disclosing party the receiving party's compliance with this obligation) within fourteen (14) days of the expiry or termination of the Agreement all materials (in writing or otherwise, including copies) containing any Confidential Information.
- 12.7. The Recipient shall promptly notify the Discloser where permitted to do so by law) if the receiving party is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing party may if it chooses to do so seek an appropriate protective order.
- 12.8. The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of five (5) years following the termination or expiry of the Agreement.
- 12.9. The parties acknowledge that breach of this clause 12 may cause the Discloser irreparable injury for which damages may not be an adequate remedy. Therefore, in the event of such breach, the non-breaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.
- 12.10. The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services form part of Optum's Confidential Information.
- 12.11. Optum acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.12. The obligations in this clause 12 shall not apply to any information which is already in the public domain or which enters the public domain during the term of the Agreement other than through the fault of the recipient.

13. IPR INDEMNITY

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

14. LIMITATIONS OF LIABILITY

- 14.1. THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 14, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.
- 14.2. This clause 14 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors), including in respect of:
- 14.2.1. any breach of the Agreement;
 - 14.2.2. the delivery of the Services and any use made of the Services or any part of them; and
 - 14.2.3. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 14.3. Nothing in the Agreement limits or excludes the liability of either party for:
- 14.3.1. death or personal injury resulting from its negligence;
 - 14.3.2. any Losses incurred as a result of fraud or fraudulent misrepresentation; and/or
 - 14.3.3. any Losses which cannot be limited or excluded pursuant to applicable law.
- 14.4. Subject to clause 14.3, Optum shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:
- 14.4.1. loss (whether direct or indirect) of revenue or profits;
 - 14.4.2. loss (whether direct or indirect) of business opportunity;
 - 14.4.3. loss (whether direct or indirect) of goodwill or injury to reputation;

- 14.4.4. loss (whether direct or indirect) of anticipated savings;
 - 14.4.5. loss (whether direct or indirect) of use;
 - 14.4.6. loss (whether direct or indirect) of, or corruption to, data or information; and/or
 - 14.4.7. indirect, consequential or special loss or damage,
- in each case arising out of or in connection with the Agreement.
- 14.5. Subject to clause 14.3, Optum's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including, negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise arising out of or in connection with the Agreement in respect of all Losses (including under any indemnities and including in respect of any Service Recipient Losses) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Fees paid and/or due to be paid by the Customer under the Agreement in that Contract Year (or in respect of any and all Losses arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Fees paid and/or due to be paid in the final Contract Year of the Agreement).
- 14.6. Any Losses suffered by a Service Recipient under or in connection with the Agreement ("**Service Recipient Losses**") shall be deemed for the purposes of the Agreement to be Losses suffered by the Customer under the Agreement, and that the Customer shall be entitled to seek to recover from Optum any such Service Recipient Losses, subject always to the provisions of this clause 14, as though the relevant Losses had been suffered by the Customer (provided always that under no circumstances shall any Service Recipient have any right to bring any claim or action against Optum other than via the Customer and subject to the terms of the Agreement and if any such claim should be brought then the Customer will indemnify Optum in respect of the same).

15. DATA PROTECTION

- 15.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.2. The parties acknowledge that (save as may be expressly agreed to the contrary) for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is a controller and Optum is a processor (where controller and processor have the meanings as defined in the Data Protection Legislation).
- 15.3. Annex 1 (as may, from time to time, be updated to reflect any changes to the scope of the processing) sets out the scope, nature and purpose of processing by Optum, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update Annex 1 to reflect any changes to the scope of the processing. Product Schedules may also include service specific processing details where this differs from Annex 1.
- 15.4. Without prejudice to the generality of clause 15.1, the Customer (and/or where appropriate the relevant Service Recipient) will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Optum for the duration and purposes of the Agreement.
- 15.5. Optum shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Agreement:
- 15.5.1. process that Personal Data on the written instructions of the Customer or where appropriate the relevant Service Recipient (unless otherwise required by law);
 - 15.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer (and/or where appropriate the relevant Service Recipient), designed to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 15.5.3. take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;

- 15.5.4. not transfer any Personal Data outside of the UK and/or the European Economic Area unless the prior written consent of the Customer (and/or where appropriate the relevant Service Recipient) has been obtained and the following conditions are fulfilled:
- a) the Customer (and/or where appropriate the relevant Service Recipient) or Optum has provided appropriate safeguards in relation to the transfer;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) Optum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d) Optum complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;
- 15.5.5. assist the Customer (and/or where appropriate the relevant Service Recipient), at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.5.6. notify the Customer (and/or where appropriate the relevant Service Recipient) without undue delay on becoming aware of a Personal Data breach (as defined in the Data Protection Legislation);
- 15.5.7. at the written direction of the Customer (and/or where appropriate the relevant Service Recipient), delete or return Personal Data and copies thereof to the Customer (and/or where appropriate the relevant Service Recipient) on termination of the Agreement unless required by law to store the Personal Data; and
- 15.5.8. allow for audits by the Customer (and/or where appropriate the relevant Service Recipient) or its designated auditor in respect of Optum's data processing activities under the Agreement.
- 15.6. Optum is given general authorisation to engage third parties to process the Personal Data (each a "**Sub-Processor**") without obtaining any further written, specific authorisation from the Customer (or where appropriate the relevant Service Recipient). Optum will notify the Customer in writing about the identity of a potential Sub-Processor and the Customer will have the right to object to the same by giving notice in writing within one month from receiving the notification from Optum. If the Customer objects to the change, then Optum may either accept the objection and not appoint the relevant Sub-Processor or it may terminate the Agreement without any liability to the Customer. Optum shall complete a written agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. Optum is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of Optum's material sub-processors as at the date of the Agreement is set out on Optum's website (or will otherwise be notified to the Customer). Any objection to an amendment to the list of Sub-Processors may be escalated for discussion within 10 days after receipt of a notification of any change. If the parties are (acting reasonably) unable to resolve the objection and Optum informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate the Agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, Optum will refund any unused prepaid fees).
- 15.7. The parties may, acting reasonably, agree to amend the Agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.
- 15.8. Optum acknowledges that the Customer may have (and the relevant Service Recipients may have) duties and obligations under the Freedom of Information Act 2000 (FOIA) and Optum will upon request give reasonable assistance where appropriate or necessary in relation to their compliance with any such duties.

16. CUSTOMER DATA

- 16.1. The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 16.2. Where the relevant Product Schedule expressly provides that Optum will take a backup of Customer Data, Optum shall follow its own backup procedures in respect of the Customer Data. In the event of any loss of, or damage to, any Customer Data, the Customer's sole and exclusive remedy shall be for Optum to use its reasonable endeavours to seek to restore the lost or damaged Customer Data from the latest back-up of such Customer Data as may be maintained by Optum. Optum shall not be

responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except for any third party sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

- 16.3. Optum shall use reasonable endeavours to achieve an “all standards met” performance level against all requirements in the NHS data security and protection toolkit. If Optum has not achieved an “all standards met” performance level by the Service Commencement Date, the Customer may, in its sole discretion, agree a plan with Optum to enable Optum to achieve an “all standards met” performance level within a reasonable time thereafter.

17. TERMINATION

- 17.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement, without liability to the other, immediately on giving notice to the other if:
- 17.1.1. the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than ten (10) days after being notified in writing to make such payment;
 - 17.1.2. the other party commits a material breach of any of the terms of the Agreement provided, if such a breach is remediable, the party in breach fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach;
 - 17.1.3. the other party ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the first party in writing) or is dissolved or struck off;
 - 17.1.4. the other party is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings; and/or
 - 17.1.5. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 17.1.3 or 17.1.4; or
 - 17.1.6. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 17.2. Optum may terminate the Agreement in whole or in part by giving not less than thirty (30) days' notice in writing if:
- 17.2.1. there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001); and/or
 - 17.2.2. Optum decides to withdraw one or more of the Services being provided to the Customer from general sale.
- 17.3. On termination of the Agreement for any reason:
- 17.3.1. the Customer shall immediately pay to Optum all Optum's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Optum may submit an invoice, which shall be payable immediately on receipt; and
 - 17.3.2. the Customer shall (and shall ensure that any Service Recipients shall) return all Optum's Equipment and Pre-existing Materials. If the Customer fails to do so, then Optum may enter the Customer's (and/or where appropriate the relevant Service Recipient's) premises and take possession of them. Optum reserves the right to charge the Customer or Service Recipient (where applicable) for any costs it incurs as a result of taking the actions outlined in this clause 17.3.2. Until they have been returned or repossessed, the Customer (and/or where appropriate the relevant Service Recipient) shall be solely responsible for their safe keeping.
- 17.4. Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will:
- 17.4.1. be without prejudice to any obligation or right of either party which has accrued prior to such expiry or termination (or will thereafter accrue in respect of the period before such expiry or termination); and
 - 17.4.2. not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

- 17.5. Without prejudice to the generality of clause 17.4, the provisions of clauses 10, 11, 12, 13, 14, 26, and 32 will survive expiry or termination of the Agreement for any reason.
- 17.6. No element of the Fees shall be refundable by Optum on termination of the Agreement or any of the Services by the Customer.

18. CORRUPT GIFTS AND PAYMENTS

- 18.1. The term “**prohibited act**” means offering, giving or agreeing to give to any person employed by or otherwise associated with Optum any gift or consideration of any kind as an inducement or reward for:
- 18.1.1. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Agreement;
 - 18.1.2. showing or not showing favour or disfavour to any person in relation to the Agreement;
 - 18.1.3. entering into the Agreement where commission has been paid or has been agreed to be paid by Optum or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to Optum; and includes committing any offence under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010; or
 - 18.1.4. committing any offence under any act creating offences in respect of bribery or fraudulent acts; or at common law, in respect of fraudulent acts in relation to the Agreement or any other related agreement; or defrauding or attempting to defraud Optum.
- 18.2. The Customer shall ensure that it (and any person associated with the Customer in connection with the Agreement, including, where applicable, a Service Recipient) shall refrain from committing, facilitating, encouraging or allowing a prohibited act. The Customer shall be responsible and directly liable for any such prohibited act carried out by any person associated with the Customer in connection with the Agreement (including any Service Recipient).

19. INDEMNIFICATION

- 19.1. The Customer shall defend, indemnify and hold harmless Optum (its directors, officers, agents and employees) at all times from and against any Losses suffered, sustained or incurred in relation to any claim relating to or arising from:
- 19.1.1. any injury or harm suffered by any Optum employee involved in the provision of the Services, arising out of any act or omission by the Customer and/or any Service Recipient, the Customer's and/or any Service Recipient's employees, the Customer's and/or any Service Recipient's agents and/or the Sites; or
 - 19.1.2. the Customer's and/or any Service Recipient's (or any of its or their directors, officers, agents and employees) use of the Services or any licensed software other than in accordance with the terms of the Agreement.
- 19.2. In the event Optum is able to claim under the indemnity in clause 19.1 (or such a claim seems likely to arise), then Optum may suspend delivery of the Services unless or until such time as Optum is certain, in its reasonable opinion, that there is not likely to be a claim or the claim has been resolved.

20. WARRANTY DISCLAIMER

- 20.1. Except as expressly stated in the Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Optum. Any condition, warranty, representation or other term concerning the sale of Hardware, supply of Equipment, licence of software and/or provision of the Services which might otherwise be implied into, or incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- 20.2. Optum DOES NOT WARRANT THAT ANY SOFTWARE LICENSED UNDER THE AGREEMENT WILL BE ERROR FREE.
- 20.3. The Customer acknowledges that any software licensed under the Agreement has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of any such software meet its requirements.

21. FORCE MAJEURE

Optum shall have no liability under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by any acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of Optum or any other party), failure of a utility service or transport network, act of god, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

22. NON-SOLICITATION

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

23. VARIATION

- 23.1. Optum may, from time to time and without notice, change the Services in order to comply with any applicable safety or legal requirements, provided that such changes do not materially and adversely affect the nature, scope of, or the charges for the Services. If Optum requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 23.2. Without prejudice to clause 23.1, Optum may, from time to time, amend the terms of the Agreement by giving the Customer notice in writing. If any change to the terms would have a material adverse effect on the Customer then Optum shall give no less than thirty (30) days' notice of the relevant amendment and the Customer may, at any time within sixty (60) days of receiving the relevant notice, terminate the Agreement by giving one (1) month's notice to Optum, during which time the original terms shall apply (unless, during that one (1) month period Optum gives notice that it is withdrawing the proposed variation in respect of the Customer in which case the Agreement shall continue as drafted in full force and effect).
- 23.3. Additional Services may be added to the Services provided by Optum to the Customer under the Agreement by the parties entering into new Quotes and/or Product Schedules, each of which shall be subject to and be incorporated into (and form part of) the Agreement.
- 23.4. Subject to clauses 23.1 and 23.2, no variation of the Agreement or of any of the Documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

24. WAIVER

- 24.1. A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 24.2. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

25. SEVERANCE

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

26. ENTIRE AGREEMENT

- 26.1. The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 26.2. Each party represents and agrees that in entering the Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or

innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of the Agreement.

26.3. Nothing in this clause 26 shall limit or exclude any liability for fraud.

27. ASSIGNMENT

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

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

28. THIRD PARTY RIGHTS

28.1. Save as expressly provided for under the Agreement in respect of any Service Recipients each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

28.2. The Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except always that, subject to clause 28.3, each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

28.3. Notwithstanding clause 28.2, the parties may by agreement rescind, vary or terminate the Agreement without the consent of any Service Recipient, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

29. NO PARTNERSHIP OR AGENCY

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

30. CONTRACT MANAGEMENT

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

30.2. The principal point of contact between the parties in relation to any issues arising out of the Agreement or the performance of the Services will be the Service Managers who will meet from time to time or upon request to discuss matters relating to the Agreement. Either Party may change the identity of its Service Manager at any time by written notice to the other.

30.3. If an issue should arise which the parties are unable to resolve via the Service Managers then the Customer may (without prejudice to clause 32) escalate the same by following Optum's formal complaint's procedure (a copy of which will be provided by Optum's Service Manager promptly upon request).

31. NOTICES

31.1. Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office address, or such other address as may have been notified by that party for such purposes, or (in respect of notices sent by the Customer) by email to uk.contracts@optum.com.

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

31.3. All notices sent to Optum shall be marked for the attention of legal counsel.

32. DISPUTE RESOLUTION; GOVERNING LAW AND JURISDICTION

32.1. Any dispute arising out of or in connection with the Agreement (each a **"Dispute"**) shall be referred by either party first to representatives of each of the parties for resolution. If the Dispute cannot be resolved

by the relevant representatives of the parties within ten (10) Working Days after the Dispute has arisen, either party may give notice to the other party in writing (each a “**Notice**”) that a Dispute has arisen. Within ten (10) Working Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Optum and the Customer for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Working Days after the date of the Notice, then each party shall be entitled to pursue such remedies as may be available to it under the Agreement or otherwise at law or in equity. This clause 32 is without prejudice to either party’s right to seek interim relief against the other party (such as injunction) through local courts, as defined herein, to protect its rights and interests, or to enforce the obligations of the other party.

- 32.2. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 32.3. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter or formation (including non-contractual disputes or claims)

ANNEX 1 – Processing, Personal Data and Data Subject

Processing by Optum

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

Purpose of Processing:	for the purposes of delivering the relevant services and meeting other obligations specified in the Agreement.
Duration of the Processing:	for the Term (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the relevant services).
Nature:	such processing as is necessary to enable Optum to provide the services provided for under the Agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).
Types of Personal Data:	data which may be processed under the Agreement includes: names, data of birth, addresses, telephone numbers, email addresses and other contact details together, where relevant dependent on the relevant services being delivered, with data concerning health.
Categories of Data Subject:	data subjects may include: members of the Customer's (and/or where applicable any Service Recipient's) staff (including those of its associated entities or third party suppliers) and, where relevant dependent on the relevant services being delivered, patients (and next of kin/carers).