



PILOT TERMS AND CONDITIONS

This Agreement is a legal agreement between you, the organisation, acting on behalf of itself and all its users, using the relevant Pilot Services (as defined) (“**You**”, “**Your**” or “**Customer**”), and Egton Medical Information Systems Limited, trading as Optum, a company incorporated in England and Wales (company number 2117205) whose registered office is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA (“**Optum**”, “**us**” or “**we**”). The Agreement relates to Your use of the relevant Pilot Services (as defined) for the relevant Pilot (as defined).

IMPORTANT NOTICE TO ALL CUSTOMERS:

- AS APPROPRIATE, THE CUSTOMER SHALL BE DEEMED TO HAVE ACCEPTED THE AGREEMENT ON BEHALF OF ITSELF AND ALL OF ITS USERS UPON (AS RELEVANT) (A) CLICKING ON THE "ACCEPT" BUTTON, (B) AGREEING IN WRITING (INCLUDING EMAIL) TO PARTICIPATE IN THE RELEVANT PILOT AND/OR (C) USING THE RELEVANT PILOT SERVICES. THE USER ACCEPTING THE AGREEMENT IN ACCORDANCE WITH THE ABOVE, REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THE CUSTOMER AND ITS OTHER USERS, AND THE CUSTOMER AGREES THE AGREEMENT WILL BIND THE CUSTOMER AND ALL OF ITS USERS.
- IF YOU DO NOT AGREE TO THE TERMS OF THE AGREEMENT, YOU SHOULD NOT USE THE RELEVANT PILOT SERVICES.
- You acknowledge on behalf of yourself and the Users (as defined below) that the Pilot Services: (1) are not designed, intended or made available as a medical device(s), and (2) are not designed or intended to be a substitute for professional medical advice, diagnosis, treatment, or judgment and should not be used to replace or as a substitute for professional medical advice, diagnosis, treatment, or judgment.
- Where the Pilot Services and/or Optum Materials are used by any of Your Affiliates under or in connection with the Agreement (as may be indicated in the Pilot Terms) (“**Relevant Affiliates**”), You represent and warrant that You (and the user accepting the Agreement) have the authority to bind each such Affiliate, and You agree that the Agreement will bind all such Affiliates and their Users.

RECITALS:

- (A) Optum is engaged in the business of creating, developing and supplying healthcare IT systems. The Customer may already use one or more of Optum’s Systems (as defined), the use of which is governed by a Customer Contract (as defined).
- (B) Optum develops, from time to time, new product(s), software solution(s) and/or services that it wishes to pilot ahead of any potential general release.
- (C) Optum has agreed to deliver the Pilot Services (as defined) to You (each a “**Pilot**”) and You have agreed to participate in the Pilot under the terms and conditions set out in the Agreement.
- (D) The Customer acknowledges, on behalf of itself and the Users, that the Pilot Services are in ‘beta’ phase and as such may well be incomplete, interrupted, contain a number of ‘bugs’ or issues and may not always be available throughout the Pilot Period (as defined).



NOW IT IS HEREBY AGREED as follows:

1 Definitions

1.1 In the Agreement, the following words shall have the following meanings:

Affiliate means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

Agreement means, in respect of each relevant Pilot (and associated Pilot Services), the relevant Pilot Terms together with the clauses of these Terms and Conditions (as may be varied or amended from time to time in accordance with these terms), including any Schedules attached hereto and any Annexes to such Schedules.

AI Solution means any AI system, model, or algorithm or any product or service that incorporates an AI system, model, or algorithm as a material component of the Pilot Services.

Artificial Intelligence or **AI** is a field of computer science that focuses on creating machines that can perform tasks that typically require human intelligence, such as visual perception, speech recognition, decision-making, and language translation. Sub-fields of AI within this definition include, but are not limited to, machine learning, natural language processing, neural networks and Generative AI.

Applicable Law means the laws of England and Wales.

Confidential Information means information (in any format) that falls within any of the following categories: (a) it relates to, includes or comprises terms and conditions of the Agreement; (b) it is marked as "confidential" (or similar); (c) it is of a nature that a reasonable person would (in all the circumstances) consider confidential, including: (i) information concerning a party's business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, products, processes, techniques, equipment, marketing, market opportunities, plans, intentions, relationships with customers and suppliers, finances, personnel, computer software, and algorithms; and (ii) similar information of third parties that a party maintains in confidence; or (d) any combination of the foregoing.

Control means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of a party, and "**Controls**", "**Controlled**".

Controller has the meaning given under the Data Protection Laws.

Customer Contract means the contract entered into between the Customer (or by a third party on the Customer's behalf) and Optum for the provision of an Optum System(s) and related services (if any).

Customer Data means any Personal Data controlled by the Customer.

Data Protection Laws means: (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 (the "**UK GDPR**"); (ii) the Privacy and Electronic Communications Regulations 2003; and (iii) any binding guidance or codes of conduct issued by the Information Commissioners Office from time to time.

Data Subject has the meaning given under the Data Protection Laws.

Disclosing Party has the meaning set out in clause 15.1.

Effective Date means, in relation to the relevant Pilot, the date upon which the Agreement is accepted by the Customer.



Fees means any fees payable by either Optum to the Customer or the Customer to Optum under the terms of the Agreement.

Generative AI or **GenAI** is a subset of AI that can be used to create new content, or information, including audio, code, images, texts, simulations and videos.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

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

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

Optum Materials means any materials provided by Optum pursuant to the Agreement, including the Pilot Software, or otherwise generated by Optum under the Agreement.

Optum System(s) means Optum's proprietary software, solutions, websites, services or other systems owned and/or operated by Optum, including (where applicable): EMIS Web, EMIS-X, EMIS-X Pharmacy, EMIS X-Analytics, ProScript Connect, Patient Access, Patient Access for Professionals, Recruit, Pathway, Explorer, Symphony, Apex, PharmOutcomes, Outcomes4Health and FourteenFish, and (in each case) all associated services and systems.

Personal Data has the meaning set out under Data Protection Laws.

Personal Data Breach has the meaning set out under Data Protection Laws.

Pilot Period means the term of the relevant Pilot, as notified by Optum to You in the Pilot Terms, unless terminated in accordance with the terms of the Agreement.

Pilot Services means the provision of (and licence to) the relevant Pilot Software along with any other services to be delivered by Optum to You and/or the Users pursuant to the Agreement and any relevant Pilot Terms.

Pilot Software means any of Optum's proprietary software (whether provided as part of a hosted service, on an on-premise basis, or otherwise), solutions, applications or systems made available to You in respect of any Pilot under the terms of the Agreement which may include an AI Solution.

Pilot Terms means details of, and additional terms regarding, a particular Pilot and/or relevant Pilot Services as notified to You by Optum from time to time incorporating these Terms and Conditions.

Processor has the meaning given under the Data Protection Laws.

Recipient Party has the meaning set out in clause 15.1.

Staff means in respect of either party any staff engaged by such party or (where applicable) its Affiliates (including employees as well as any agents, workers, and sub-contractors) in connection with the Agreement.



Third Party Analytics Software means the third-party analytics software provided by an Optum supplier, used in relevant Pilot Service provided under the Agreement, that collects anonymised product usage and analytical data relating to the end users of the relevant Pilot Service (as applicable) and their interactions within the Pilot Services.

User means any employees, agents, workers and subcontractors of the Customer or a Relevant Affiliate (and any other end user or person permitted by the Customer or a Relevant Affiliate) that use the Optum Materials and/or Pilot Services.

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

2 Interpretation

- 2.1 Clause, attachment, schedule, appendix and paragraph headings shall not affect the interpretation of the Agreement.
- 2.2 A reference to: (i) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; and (v) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and (vi) writing or written includes e-mail, (provided that, in respect of correspondence sent from the Customer to Optum, that the same is sent to contracts@emishealth.com) but not faxes; and (vii) clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 2.3 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3 Pilot Services

- 3.1 Specific details of the relevant Pilot and Pilot Services to which these Terms and Conditions apply shall be confirmed to the Customer in the relevant Pilot Terms.
- 3.2 Subject to the Customer's compliance with the Agreement (including any terms incorporated by reference), Optum shall use its reasonable endeavours to provide the Pilot Services:
 - (a) to the Customer in accordance with the terms of the Agreement; and
 - (b) with reasonable care and skill.
- 3.3 The parties agree and acknowledge that should the Customer or any Users wish to use the relevant Pilot Services after the end of the relevant Pilot Period then this shall be subject to availability and an appropriate contract being agreed between the parties. If, however, the Customer or any User continues to use the Pilot Services after the end of the relevant Pilot Period in absence of such a contract, any such use shall be in accordance with the Agreement. In such circumstances, Optum reserves to charge the Customer any Fees (or any other fees notified to the Customer by Optum) for use of the Pilot Services.
- 3.4 Optum shall have no obligation to provide any training or to support the Pilot Services except where expressly stated otherwise in the Pilot Terms. In respect of any training or support obligations expressly provided for in the Pilot Terms, Optum's obligation shall be limited to an obligation to use reasonable endeavours to provide such training or support.



- 3.5 Optum may monitor (and/or use third party tools to monitor) the Pilot Services to detect and address threats to the functionality, security, integrity, and performance of the Pilot Services and to monitor the Customer's and its Users' compliance with the terms of this Agreement.
- 3.6 If, in delivering any Pilot Service, Optum becomes aware of what it reasonably deems to constitute medical negligence and/or safeguarding concerns regarding You and/or Your users, Optum reserves the right to disclose this information to appropriate persons (which may include the police, other NHS bodies, regulatory bodies and/or other authorities). Clause 15 shall not apply in these circumstances.

4 Customer Responsibilities

- 4.1 During the relevant Pilot Period, the Customer shall use its reasonable endeavours to (and to ensure the same of its Users), in respect of the relevant Pilot:
- (a) evaluate the Pilot Services and provide Optum with written and verbal feedback (including as may be specified in the Pilot Terms);
 - (b) report promptly to Optum any faults and/or problems with the Pilot Services which it discovers (including any clinical risks the Customer identifies);
 - (c) co-operate with Optum in diagnosing and correcting faults and problems;
 - (d) attend feedback sessions with Optum (and such other parties as Optum deems appropriate), at times and dates to be agreed by the parties (acting reasonably);
 - (e) provide such information and assistance as Optum may reasonably require to provide the Pilot Services;
 - (f) ensure that any data or information Customer or its users input into the Practice Services is complete and accurate;
 - (g) ensure that only authorised Users use the Pilot Services and Optum Materials (as such authorised Users and other User restrictions or limitations may be specified in the Pilot Terms, the rest of the Agreement, or otherwise notified by Optum in writing);
 - (h) ensure that the Users use the Pilot Services in accordance with the Agreement, and that they are correctly set up and log into the Pilot Services in accordance with the Pilot Terms, and that each User has sufficient internet connectivity at all times whilst using the Pilot Services; and
 - (i) ensure that its and the Users' software, networks and other systems are secure and meet any minimum specifications specified in the Pilot Terms or otherwise notified by Optum, and only use the Pilot Services through supported browsers, devices and operating systems. The Customer shall ensure it has and maintains up-to-date anti-virus technology and suitable security measures on its systems,

and the Customer acknowledges that Optum shall not be responsible for any delays, failures or losses caused by Customer's or any User's failure to comply with these obligations.

- 4.2 The Customer shall not (and shall ensure that the Users do not):
- (a) use the Optum Materials for anything other than for the purpose of participating in the Pilot and evaluating the same, performing its obligations and exercising its rights under the Agreement;
 - (b) use the Optum Materials in a manner which (in Optum's reasonable opinion) is excessive, puts any undue strain on the Optum Materials or any Optum Systems or which is in excess of any agreed usage allowance (however that has been quantified);



- (c) rent, lease, sub-license, assign, sell, transfer, loan, charge or otherwise deal in or encumber any element of the Optum Materials or use the Optum Materials on behalf of any third party or make available the same to any third party;
- (d) translate, merge, adapt or otherwise make alterations to, or modifications of, the whole or any part of the Optum Materials, nor permit the Optum Materials or any part thereof to be combined with, or become incorporated in, any other programs;
- (e) disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Optum Materials nor attempt to do any such things;
- (f) provide, or otherwise make available, the Optum Materials in any form, in whole or in part (including, program listings, object and source program listings, object code and source code) to any person (except to its Users who are authorised users in accordance with the Pilot Terms and rest of the Agreement); and/or
- (g) use the Optum Materials in relation to any immoral, fraudulent or illegal purpose or for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to Optum's reputation.

5 Intellectual Property Rights

- 5.1 In relation to the Optum Materials, Pilot Services and Optum Systems, the parties acknowledge that Optum owns all Intellectual Property Rights in the same and the Customer shall have no rights in or to the same other than the right to use the Optum Materials in accordance with the terms of the Agreement. Any comments, criticisms, ideas, suggested improvements, changes or modifications, feedback and similar contributions related to the Optum Materials, including any provided pursuant to clause 4.1 (collectively "**Feedback**") provided by the Customer (including the Users) shall be the sole property of Optum and you agree to assign (and that you have all rights necessary to assign), and hereby assign, all right, title and interest in the Feedback and the related Intellectual Property Rights to Optum. Optum shall be free to use the Feedback in its business for any purposes.
- 5.2 Optum hereby grants the Customer a non-exclusive, royalty-free, revocable licence for the duration of the relevant Pilot Period, to allow its authorised Users to use the relevant Optum Materials for such Pilot for the purposes of the Customer performing its obligations and exercising its rights under the Agreement.
- 5.3 The Customer shall not do, or authorise any party to do (and the Customer shall ensure that the Users do not do), any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Optum and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 5.4 The Customer shall, for the duration of the Agreement, at Optum's expense, take all such steps as Optum may reasonably require to assist Optum in ensuring and maintaining: (a) Optum's ownership of, and the validity and enforceability of, any Intellectual Property Rights licensed and/or created by Optum under the Agreement; and (b) Optum's ownership of all rights in the Feedback.

6 Medical Devices

- 6.1 Where a Pilot Service, or elements thereof, constitutes a Medical Device (as confirmed in the Pilot Terms or otherwise notified to the Customer, including within the relevant Pilot Solution), the terms of this clause 6 will apply.
- 6.2 The Medical Device will be displayed with appropriate CE marking. The Customer must not modify or amend any such Medical Devices (or remove or amend any relevant marking).
- 6.3 Optum may remove (or suspend the use of) any of its Medical Devices from availability, or modify any its Medical Devices, from time to time and at its sole discretion (where relevant, in accordance with



applicable laws). The same applies in respect of any third party's Medical Device provided as part of the Pilot Services.

- 6.4 The Customer shall ensure that only appropriate Users access and/or use the relevant Medical Device(s).
- 6.5 The Customer shall only use a Medical Device in line with its intended purpose and applicable instructions for use of the Medical Device. The Customer agrees and acknowledges that a Pilot Solution qualifying as a Medical Device does not absolve the Customer from its obligations (or impact the exclusions in favour of Optum) under clause 8.6 and that Optum shall have no liability to the Customer whatsoever in the event that the Customer uses a Medical Device in breach of the terms of the Agreement and/or otherwise in contravention of applicable law and/or clause 8.6.

7 AI Solutions

- 7.1 Where a Pilot Service utilise or includes an AI Solution (as confirmed in the Pilot Terms or otherwise notified to the Customer, including within the relevant Pilot Solution), then the provisions of this clause 7 will apply.
- 7.2 In delivering an AI Solution, but noting that the solution is in a pilot phase, Optum shall use its reasonable endeavours to ensure that:
 - (a) all data and content used to train and improve the AI Solution is sufficient, relevant, accurate and unbiased;
 - (b) privacy by design and by default is incorporated into the development and operation of the AI Solution;
 - (c) it has completed an ethical risk assessment in relation to the AI Solution;
 - (d) it has conducted and will continue to conduct sufficient testing to establish and monitor the level of accuracy, privacy and security of the AI Solution;
 - (e) the AI Solution is capable of transparency (meaning that it can evidence the logic it used to arrive at a particular outcome);
 - (f) there is an appropriate responsible use of AI governance programme in place;
 - (g) staff supporting the AI Solution are appropriately trained and qualified on industry best practice, applicable laws and regulations regarding responsible use of AI;
 - (h) there are appropriate quality control measures in place; and
 - (i) the Customer's use of the AI Solution, including all outputs, will not infringe the confidentiality, intellectual property or privacy rights of any third party or otherwise breach applicable law.
- 7.3 Notwithstanding the terms of clause 7.2, the Customer agrees and acknowledges that, in relation to any AI Pilot Solution:
 - (a) AI generated outputs can contain errors, omissions and hallucinations and the Customer is responsible for reviewing and validating any outputs from the AI Solution;
 - (b) the AI will not, unless specified, provide diagnostic or treatment recommendations (and even if it does, clause 7.3(c) shall still apply); and
 - (c) the presence of AI does not absolve the Customer from its obligations (or impact the exclusions in favour of Optum) under clause 8.6 and that Optum shall have no liability to the Customer whatsoever in the event that the Customer uses an AI Solution in breach of the terms of the Agreement and/or otherwise in contravention of applicable law and/or clause 8.6.



8 Limitation of Liability

- 8.1 Nothing in the Agreement excludes or limits the liability of either party in respect of:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) infringement or misuse of Optum's (or its licensee's) Intellectual Property Rights by the Customer or any User; and/or
 - (d) any other liability which may not otherwise be limited or excluded under Applicable Law.
- 8.2 Subject to clause 8.1, neither party shall under any circumstances whatsoever be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:
- (a) loss (whether direct or indirect) of revenue or profits;
 - (b) loss (whether direct or indirect) of business opportunity;
 - (c) loss (whether direct or indirect) of goodwill or injury to reputation;
 - (d) loss (whether direct or indirect) of anticipated savings; and/or
 - (e) indirect, consequential or special loss or damage,
- in each case arising out of or in connection with the Agreement.
- 8.3 Subject to clause 8.1 and clause 8.2, the aggregate liability of each party arising out of or in connection with the Agreement whether arising from contract, tort (including negligence or breach of statutory duty) or otherwise shall be limited to £10,000 (ten thousand pounds).
- 8.4 Optum does not guarantee that access to and use of the Optum Materials will always be available or be uninterrupted. Optum will not be liable if for any reason the Optum Materials are unavailable at any time or for any period and no minimum guarantee of availability is made.
- 8.5 Optum will not be responsible and shall have no liability for:
- (a) any loss, damage, claims, expenses or costs incurred by the Customer or any User, arising from the use of the Optum Materials, or from the relevant Pilot, and/or for any results or conclusions drawn from such use; or
 - (b) damage caused by errors or omissions in any Optum Materials, information, instructions or scripts provided to the Customer or any User by Optum in connection with the Pilot or any actions taken by Optum at the Customer's or a User's direction.
- 8.6 The Customer agrees and acknowledges (on behalf of itself and the Users) that:
- (a) the Optum Materials and Pilot Services (which the Customer acknowledges are in a pilot or beta phase) are provided by Optum on an "*as is*" and "*as available*" basis, with any and all faults as may be present;
 - (b) the Customer is responsible for all decisions, acts and omissions of the Relevant Affiliates and all Users and as if they were the Customer's own;
 - (c) the Customer (or any other relevant NHS or private body or organisation) is responsible for all decisions, acts, and omissions of any persons in connection with the delivery of any medical investigations, care or other services to any third party;



- (d) where relevant (depending upon the nature of the Pilot), the Pilot Services may be used to facilitate the delivery of medical/clinical care, however, the Pilot Services are not a substitute for independent professional medical judgment, and the Customer and Users must not use such Pilot Services without the participation of properly trained medical personnel who Customer must ensure use their independent professional medical judgment (and where relevant an alternative, back-up, solution); and
- (e) neither Optum (nor any of its third party licensors) shall have any liability whatsoever to the Customer or any other party in respect of any decision, action taken, or any inaction (including the provision of medical care) by the Customer, Users or any other parties as a consequence of the Pilot Services provided under the Agreement.

- 8.7 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement (including, any terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982).
- 8.8 Optum will not be in breach and will not be liable (and the Customer shall not be entitled to terminate for breach or to exercise any other remedy under the Agreement) to the extent that Optum's performance of its obligations under the Agreement is delayed, prevented, impacted or otherwise affected by the Customer's or any User's actions or omissions.

9 Compliance with Applicable Law and No Warranties

- 9.1 Optum does not warrant that the Pilot Services will be bug or error free, available, uninterrupted, able to meet particular requirements or produce specific results, of satisfactory quality or fit for a particular purpose and the Customer acknowledges that the Pilot Services are in beta phase.
- 9.2 Optum does not guarantee that access to or use of the Pilot Services will always be available, supported or uninterrupted, or that any data or information input into (or used in) the Pilot Services will complete or accurate. No minimum guarantee of availability or support is made by Optum. Optum will not be liable to the Customer or any User if for any reason: (a) the Pilot Services are unavailable or unsupported at any time/s or for any period/s; or (b) any data or information input into or used in the Pilot Services is incomplete or inaccurate.
- 9.3 Both parties shall, in performing their respective obligations under the Agreement, comply with Applicable Law.

10 Data Protection

- 10.1 Where the Pilot is in relation to Optum Materials that are associated to, or form a part of, an Optum System You are already licencing under the terms of a relevant Customer Contract (for example a new module or functionality for EMIS Web), any Processing of Personal Data required for the purposes of delivering the relevant Pilot Services shall (as appropriate) be governed by the terms of such Customer Contract.
- 10.2 Where the Pilot does not fall under the terms of clause 10.1 or the Processing of Personal Data is not covered by the Customer Contract, then Schedule 1 to the Agreement shall apply.
- 10.3 Notwithstanding the rest of this clause, each party shall comply with its relevant obligations under the Data Protection Laws.

11 Meta Data Usage

As part of the Pilot Service improvement process, Optum may collect information (including via a Third Party Analytics Software enabled on the Pilot Service, such information relating to the Customer's (and its Users') use of the Pilot Services which will help improve performance, usability and support, as further set out here in Our Privacy Policy (<https://www.emishealth.com/privacy-policy>) (as updated from time to time). Optum may use such meta or other anonymised data as it deems appropriate.



12 Fees

- 12.1 Fees (if any) payable in relation to the relevant Pilot, either by the Customer to Optum or by Optum to the Customer, shall be as set out in the relevant Pilot Terms.
- 12.2 Any Fees are exclusive of VAT, which shall be added to the relevant invoice(s) at the appropriate rate.
- 12.3 Invoices shall be raised by the relevant party in accordance with the Pilot Terms and each invoice is due and payable by you within thirty (30) days from the invoice date.
- 12.4 If Optum does not receive payment of any applicable Fees on the relevant due date, Optum may issue demand for such Fees and if payment is not received within 10 Working Days of demand, then (without prejudice to any other rights and remedies available to it):
- (a) it shall be under no obligation to provide any or all of the Pilot Services;
 - (b) it shall be entitled to suspend access to, and use of, the relevant Pilot Services; and
 - (c) it shall have the right to revoke any licences granted to you pursuant to the Agreement.
- 12.5 Interest shall accrue on any overdue amounts at a rate equal to four percentage points a year above the Bank of England's base rate at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment. The relevant party shall pay the interest on demand together with the overdue amount.
- 12.6 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.

13 Termination

- 13.1 The Agreement shall commence on the Effective Date and shall continue for the duration of the relevant Pilot Period, unless terminated earlier by either party in accordance with this clause 13.
- 13.2 The Customer may terminate the Agreement for convenience, at any time, by giving Optum not less than two (2) weeks' written notice.
- 13.3 Optum may, without prejudice to its other rights and remedies, suspend or terminate the Agreement without liability to the Customer at any time. Examples of instances where Optum may choose to exercise this right include where the Pilot has finished, Optum identifies a clinical or data protection issue/risk and/or where Optum, acting reasonably considers it is suffering or at risk of suffering reputational damage and/or where a relevant third party suspends or terminates the licences or rights required by Optum to provide the Pilot Services. Optum will give prompt notice of any suspension or termination to the Customer.
- 13.4 Termination of the Agreement in respect of a particular Pilot shall not terminate the Agreement in respect of any other Pilots unless explicitly stated.

14 Effect of Termination

- 14.1 Termination or expiry of the Agreement shall be without prejudice to any rights of either party which may have accrued up to the date of such termination.
- 14.2 Termination or expiry of the Agreement shall 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 termination or expiry.
- 14.3 Without prejudice to the generality of clause 14.2, the provisions of clauses 5 to 12 (inclusive), 14, 15 and 16 shall survive any termination or expiry of the Agreement, howsoever arising.



14.4 Upon expiry or termination of the Agreement, howsoever caused:

- (a) all licences granted hereunder shall automatically terminate and the Customer and Users will no longer be able to use the Pilot Services; and
- (b) each party shall, at the option of the other party, return or securely destroy all Confidential Information of the other party.

15 Confidentiality

15.1 Subject to clauses 15.2 and 15.3 and save as otherwise expressly provided in the Agreement, neither party shall (and the Customer shall ensure that the Users shall not) during the term of the Agreement or thereafter for a period of five (5) years, disclose to any person or use for any purpose any Confidential Information obtained by it (the "**Recipient Party**") from the other (the "**Disclosing Party**") in connection with the Agreement, save that the Recipient Party may:

- (a) disclose Confidential Information to such of its Staff or professional advisers (which shall include, lawyers, accountants and auditors) who require such disclosure where legitimately necessary for the proper performance of their duties; and/or
- (b) use Confidential Information in the proper exercise of its rights and the performance of its obligations under the Agreement.

15.2 The Recipient Party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use and undertakes to take proper care and all reasonable measures to protect the confidentiality of the Confidential Information using not less than the standard of care as it applies to its own Confidential Information.

15.3 The restrictions on use and disclosure of Confidential Information under clause 15.1 shall not apply to any Confidential Information which:

- (a) was already known to the Recipient Party prior to its receipt thereof from the Disclosing Party;
- (b) was subsequently disclosed to the Recipient Party lawfully by a third party who did not obtain the same (whether directly or indirectly) from the Disclosing Party;
- (c) was in the public domain at the time of receipt by the Recipient Party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause 15 or any obligations of confidence owed by the Recipient Party to the Disclosing Party; and/or
- (d) is required to be disclosed by law, regulation, order or regulators.

15.4 Confidential Information shall be subject to the obligations of confidence in this clause 15, irrespective of whether communicated orally or in writing by the Disclosing Party or its representatives or obtained through observations made by representatives of the Recipient Party at the premises of the Disclosing Party.

15.5 Confidential Information shall not be exempted under clause 15.3 from restriction under the Agreement by reason only that:

- (a) some or all of its features (but not the combination and/or principle thereof) are or become public knowledge or are in the possession of or become available to the Recipient Party as mentioned in clause 15.3; or
- (b) such information could be derived or obtained from information which is or becomes public knowledge or is in the possession of or becomes available to the Recipient Party as mentioned in clause 15.3 if so to obtain or derive it would require substantial skill, labour or expense.



- 15.6 Nothing in this clause 15 shall prevent the Recipient Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of its Intellectual Property Rights.

16 General Terms

16.1 Publicity

- (a) Optum is permitted to publicise its involvement with the Customer in relation to the Agreement. The Customer will have the right to review any proposed statement or release from Optum.
- (b) The Customer will not publicly discuss any aspect of their participation in the Pilot without the prior written consent of Optum.

16.2 Waiver

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16.3 Force Majeure

Neither party shall have any 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 acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, pandemic, epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm.

16.4 Relationship

Nothing in the Agreement creates a joint venture, relationship of partnership or agency between the parties. Accordingly, except as expressly authorised under the Agreement neither party has authority to pledge the credit of or make any representation or give any authority to contract on behalf of another party. No Staff of Optum shall be construed as being an employee of the Customer by virtue only of the Agreement or the performance of Optum's obligations under the Agreement.

16.5 Assignment and Sub-Contracting

- (a) Optum may assign or sub-contract any of its rights and/or obligations under the Agreement to any of its Affiliates or any other third parties. Optum will use reasonable endeavours to give the Customer notice in writing in respect of any assignment.
- (b) Subject to clause 16.5(a), neither party may assign or sub-contract any of its rights or obligations under the Agreement to any other third party without first obtaining the express written consent of the other party (such consent not to be unreasonably withheld or delayed).

16.6 Severability

Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.



16.7 Variations

- (a) Optum may, from time to time, amend the terms of the Agreement by updating them online. If (in Optum's reasonable opinion) any change to the Agreement will have a material adverse effect on the Customer, then Optum will give not less than thirty (30) days' written notice of the relevant amendment and should the Customer not find the amendment acceptable it may choose to cease using the relevant Pilot Services and terminate the Agreement by notifying Optum in writing.
- (b) If the Customer continues to use the Pilot Service(s) following such amendments being made (or, as relevant, expiry of a notification period), then it will be deemed to have accepted the same (and the Agreement is varied accordingly).

16.8 Notices

Any notice required under the Agreement shall be given in writing and in the English language and sent to the email address of the party for which it is intended to be given, (which in the case of Optum shall be sent to contracts@emishealth.com marked for the attention of Legal Counsel).

16.9 Third Party Rights

Save for any rights conferred on any of Optum's Affiliates, 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).

16.10 Entire Agreement

The Agreement constitutes the entire agreement and understanding between the parties relating to the relevant Pilot. Except as may be expressly stated in the Agreement, it supersedes and cancels all prior agreements, statements, representations, understandings, negotiations and discussions, whether oral or written, between the parties in respect of the relevant Pilot. Each party acknowledges and agrees that in entering into the Agreement it has not relied on (or has been induced to enter into the Agreement by) any statement, representation, warranty or understanding made prior to the Agreement. Nothing in this clause shall exclude any liability in respect of any misrepresentations made fraudulently.

16.11 Applicable Law and Jurisdiction

- (a) The Agreement and any matters (whether contractual or non-contractual) arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of England.
- (b) The parties submit and agree to the exclusive jurisdiction of the English Courts.

Schedule 1

Data Processing

1. CUSTOMER DATA

- 1.1 This Schedule shall only apply as specified in clause 10.2 of the Agreement. The parties acknowledge that in the context of processing of any Customer Data which comprises Personal Data under the Agreement, You are a Controller and Optum is a Processor, acting under Your instructions.
- 1.2 The Annex to this Schedule sets out the particulars of Processing by Optum.
- 1.3 You will ensure that:
 - 1.3.1 You collect all of the Customer Data fairly and transparently;
 - 1.3.2 Your Privacy Notice is presented to patients, is fully compliant with Data Protection Laws and has been updated to reflect the use of Personal Data as contemplated under the Agreement; and
 - 1.3.3 You have all necessary rights, permissions, consents and notices in place with Data Subjects to enable the lawful transfer of Customer Data to Optum for the duration of the Agreement and to enable Optum to fully comply with its obligations under the Agreement, including performance of the Services, such that the performance of the Services is compliant with the Data Protection Laws.
- 1.4 Optum shall, in relation to any Customer Data which is processed in connection with the performance by Optum of its obligations under the Agreement:
 - 1.4.1 process that Customer Data on Your written instructions (unless otherwise required by law) and only for the purpose of performing Optum' obligations and exercising its rights under the Agreement;
 - 1.4.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer 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;
 - 1.4.3 take reasonable steps to ensure the reliability and integrity of staff who have access to and/or process Customer Data;
 - 1.4.4 inform You upon becoming aware of any instruction issued by You under the Agreement that breaches the Data Protection Laws;
 - 1.4.5 not transfer any Customer Data outside of the United Kingdom or EEA;
 - 1.4.6 assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with Data Protection Regulators;
 - 1.4.7 notify You without undue delay on becoming aware of a Personal Data Breach;
 - 1.4.8 at Your written direction, delete or return Customer Data and copies thereof to You on termination or expiry of the Agreement unless required by law to retain Customer Data, in which case Optum shall inform You of such legal requirement; and
 - 1.4.9 allow for audits by You or Your designated auditor in respect of Optum's data processing activities under this Schedule 1.



- 1.5 You hereby expressly authorise Optum to appoint third parties as its sub-processors in relation to processing Customer Data which comprises Personal Data from time to time. A list of Optum' material sub-processors (as updated by Optum from time to time) as at the date of the Agreement is set out here: <https://www.emishealth.com/terms-conditions> (in respect of which for the avoidance of doubt, You hereby give Your written authorisation) and You should review this list regularly to see if there are any changes to the sub-processors. Any objection to an amendment to the list of sub-processors may be escalated for discussion within 10 days after receipt of a notification of any change (such notification to include the list of material sub-processors being updated on the webpage provided above). If the parties are (acting reasonably) unable to resolve the objection and Optum informs You that it nevertheless intends to appoint the relevant sub-processor then You may either: (i) accept the change; or (ii) terminate the Agreement immediately upon written notice to Optum.
- 1.6 In the event of any loss of, or damage to, any Customer Data, Optum shall use its reasonable endeavours to restore the lost or damaged Customer Data from the latest backup version of Customer Data available to it. If the loss or damage was caused by Optum then it shall undertake such restoration at its own cost and expense and in any other circumstances it shall be entitled to charge You in respect of any time spent at its then standard rates.



Annex – Particulars of Data Processing

1. Processing by Optum:
 - 1.1. Subject matter of the processing: Provision of the relevant Pilot Services.
 - 1.2. Nature: such processing as is necessary to enable Optum to provide the Pilot and Pilot Services 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).
 - 1.3. Purpose: for the purposes of delivering the Pilot, Pilot Services and meeting other obligations specified in the Agreement. Where an AI Solution is provided as part of the Pilot, Optum may also use Personal Data for monitoring, evaluating, developing, training, tuning, enhancing and/or improving the AI Solution.
 - 1.4. Duration: for the term of the Agreement (together with the delivery of any post-termination obligations including any back-up copies of data created through delivery of the relevant services).
 - 1.5. Types of Personal Data may include, depending upon the nature of the Pilot: Data Subject information including (without limitation) name, address, date of birth, gender, religion, phone numbers, previous family name, next of kin, marital status, children, usual GP, Hospital Number, NHS Number, CHI Number, GHA number, medical records including any scanned images, x-rays, pathology reports or documents. The exact types of Personal Data being processed for a particular Pilot will be confirmed to the Customer in relevant Pilot Terms.
 - 1.6. Categories of Data Subject may include, depending upon the nature of the Pilot: patients, patients' family, system users both clinical and non-clinical staff (including those of associated entities or third party suppliers). The exact types of Categories of Data Subject for a particular Pilot will be confirmed to the Customer in relevant Pilot Terms.