

EMIS WEB ELECTRONIC PATIENT RECORD (EPR) VIEWER TERMS AND CONDITIONS

These terms and conditions govern the Services (as defined in the Quote) provided by Egton Medical Information Systems Limited trading as Optum ("Supplier") to you (the "Customer"). These conditions together with the Quote form the entire agreement between us in respect of the supply of the Services (the "Agreement").

BACKGROUND

- (A) The Supplier has developed and provides a service consisting of remote access to application software at its remote computer location for the purpose of managing healthcare.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has issued the Quote to the Customer and the Customer has decided to purchase the Services described therein.
- (D) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement (save where the context otherwise requires).

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.

Authorised Users: means those persons operating from the Sites who are authorised by the Customer to use the Software through the Hosting Services under this agreement, as further described in clause 3.2(b)

Business Day: means any day which is not a Saturday, Sunday or public holiday in England & Wales.

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

Client: means a single workstation installed with the Software.

Confidential Information: means any information relating to the business of the disclosing party which is not publicly available including, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing party and including specifically the items of information identified as Confidential Information in clause 10.

Configuration Services: means the configuration and related work referred to in clause 2, Schedule 2 and the Quote, to be performed by the Supplier to configure the Software so that the Software materially conforms to the Software Specification.

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

Customer Account Team: the individuals appointed by the Customer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this agreement. The initial members of the Customer Account Team are listed in Schedule 2

Customer Data: means the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by the Supplier on the Customer's behalf, including Authorised User log in details, audit records and tracer information used to locate patient records

Customer's Project Manager: the member of the Customer Account Team appointed in accordance with clause 6.1(c). The Customer's Project Manager at the Effective Date is named in Schedule 2

Data Protection Legislation: means: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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 Project Plan.

Effective Date: means the earlier of signature of the Quote by the Customer or the Service Commencement Date.

Electronic Sharing Agreements: shall mean a data transfer consent agreement created by the Supplier in the Software which once activated by the Customer (as recipient of data) and the relevant third party healthcare provider (as transferor of data) shall enable the Supplier to facilitate the electronic transfer of applicable data from the relevant third party healthcare provider to the Customer.

Fees: means the fees payable to the Supplier, as described in Schedule 1 the Quote.

HSCN: means the Health and Social Care Network, a national broadband network for the National Health Service

Hosting Services: means the services that the Supplier provides to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in Schedule 3.

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 RPId 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 RPId₀ is the value of the Retail Prices Index on the Effective Date

Initial Term: means the period as detailed on the Quote (or otherwise in accordance with clause 13.1).

Maintenance and Support: means any error corrections, updates and upgrades that the Supplier 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 this agreement, all as described in Schedule 5.

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

Quote: means the quote provided by the Supplier to the Customer for signature, detailing the Services and the Fees (for the avoidance of doubt, any standard terms appended to the quote are superseded by the Agreement).

Service Level Agreement: means the service level agreement set out in Schedule 5 and Schedule 6.

Services: means the Configuration Services, Hosting Services, Maintenance and Support and/or any other services specified in the Quote as applicable, given the context in which the term is used as specified within the Quote.

Sites: means the healthcare and other locations which are authorised to use the Software as agreed in writing between the Supplier and the Customer from time to time.

Software: means the Supplier's proprietary software in machine-readable object code form only as described in Schedule 4 and the Quote (including any error corrections, updates, upgrades, modifications and enhancements to the same provided to the Customer under this agreement).

Software Specification: means the functionality and performance specifications for the Software, as set out in Schedule 4.

Supplier Account Team: the individuals appointed by the Supplier (as may be updated from time to time) who shall serve as the Customer's primary contacts under

this agreement. The initial members of the Supplier Account Team are listed in Schedule 2

Support Hours: has the meaning set out in paragraph 4.2 of Schedule 5.

Term: means the period commencing on the Effective Date and ending on the expiry of the later of the Initial Term or any rolling period (or on earlier termination of this Agreement, pursuant to clause 13).

Training: means the training provided by the Supplier to the Customer as part of the Configuration Services, as further detailed at paragraph 5 of Schedule 5 .

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

Virus: means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; improperly access, prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, time-bombs, protect codes, data destruct keys, Trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this 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** includes e-mail, (provided that, in respect of the Supplier the same is sent to uk.contracts@optum.com) but not faxes; and (vi) clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 The Supplier has issued the Quote to the Customer. The parties hereby agree that any default terms and conditions contained and referred to by reference in the Quote are replaced by the terms and conditions in the Agreement. For the avoidance of doubt, the Services, Fees and any Sites set out in the Quote are incorporated into the Agreement.

2. CONFIGURATION SERVICES

- 2.1 The Supplier shall perform the Configuration Services by reference to the timetable established between the parties in the Project Plan, pursuant to Schedule 2. The Supplier 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 the Supplier shall not be of the essence of this agreement.
- 2.2 In respect of each Deliverable, the Customer and the Supplier may agree a “*Deliverable Sign Off*” process. Within ten (10) days of the Supplier’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 the Supplier a detailed description of any such non-conformance, in writing, within the ten (10) day review period.
- 2.3 The Supplier shall use reasonable endeavours to correct any material error in the Deliverables, made known to the Supplier pursuant to clause 2.2, within a reasonable time. Upon correction of any such material error the Supplier shall submit the corrected Deliverable to the Customer, whereupon the terms of clause 2.2 shall apply (in relation to the corrected elements of such Deliverable only).
- 2.4 If the Supplier does not receive any written comments from the Customer within the ten (10) day period described at clause 2.2, or if any Authorised Users or Client uses the Software (other than for the purposes of clause 2.2) then the relevant Deliverable(s) shall be deemed to have been accepted by the Customer and to conform with the Software Specification.
- 2.5 The Supplier shall use reasonable endeavours to ensure continuity of its personnel detailed at Schedule 2, but has the right to replace any of them from time to time where reasonably necessary in the interests of the Supplier’s business.
- 2.6 The Supplier shall configure Electronic Sharing Agreements in the Software that enable healthcare providers to share electronic patient records with the Customer should they choose to activate the Electronic Sharing Agreement. In this context the applicable healthcare provider shall be understood to be acting as a Data Controller (as defined in the Data Protection Legislation) and the Customer shall be understood to be acting as either a Data Processor (as defined in the Data Protection Legislation) or as a Data Controller in its own right (depending upon the manner in which it is processing the relevant data). Each Electronic Sharing Agreement shall:
- (a) be configured by the Supplier in such a way as to only allow the data specified in the Electronic Sharing Agreement to be transferred to the Customer; and
 - (b) only allow the transfer of such data to the Customer once it has been activated by both the Customer and the relevant healthcare provider.
- 2.7 The Supplier shall not be responsible for:
- (a) notifying the relevant healthcare provider(s) that the Electronic Sharing Agreement(s) have been configured;

- (b) ensuring that the relevant healthcare provider(s) activate the Electronic Sharing Agreement(s); and
- (c) ensuring that the relevant healthcare provider(s) do(es) not de-activate the Electronic Sharing Agreement(s).

At all times the relevant healthcare provider who is consenting to the transfer of data to the Customer shall remain the Data Controller, and pursuant to its obligations to the relevant healthcare provider (under its separate direct contract), the Supplier shall comply with the relevant healthcare provider's instructions in relation to the Supplier's processing of such data. For the avoidance of doubt, should the applicable healthcare provider(s) not activate the Electronic Sharing Agreements then the Supplier shall not facilitate the transfer of electronic patient records to the Customer. If the applicable healthcare providers choose not to activate the Electronic Sharing Agreements, then the Customer shall nevertheless still be liable to pay the Supplier the Fees detailed at Schedule1.

- 2.8 The Customer shall defend, indemnify and hold harmless the Supplier (its officers, directors and employees) against any claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of electronic patient records transferred to it by the Supplier pursuant to this agreement.
- 2.9 For the avoidance of doubt, it is the responsibility of the Customer and the relevant healthcare provider to ensure that the necessary contractual arrangements are in effect as between them so as to govern the Customer's processing of the relevant personal data.

3. HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 3.1 The Supplier shall perform the Hosting Services and Maintenance and Support services. The Service Level Agreement shall apply with effect from the start of the month after the Configuration Services have been satisfactorily completed pursuant to clause 2.
- 3.2 In relation to Authorised Users:
 - (a) the Customer's access to the Hosting Services shall be limited to the agreed number of concurrent Authorised Users able to access the Software at any time (as detailed in the Quote);
 - (b) the number of individual concurrent Authorised Users shall be jointly agreed between the Supplier and the Customer and will be subject to a quarterly review;
 - (c) the Supplier will monitor the number of concurrent Authorised Users on a monthly basis and shall notify the Customer should the number of concurrent Authorised Users at any time exceed the limit agreed between the parties (such notification shall also set out any additional Fees payable by Customer under this agreement resulting from such additional concurrent Authorised Users); and
 - (d) the Customer shall maintain a written list of current Authorised Users of the Software.

- (e) if the Customer exceeds the agreed number of Authorised Users then the Supplier 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) as a result of the increased demand.
- 3.3 The Customer shall ensure that each Authorised User keeps a secure password for his access to, and use of, the Software, that such password is changed no less frequently than monthly and that each Authorised User keeps his password confidential.
- 3.4 Without limiting the Supplier's other rights of audit, the Supplier may audit the Customer's use of the Software and request from the Customer the name and password for each Authorised User, which information shall duly be provided by the Customer. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with the Customer's normal conduct of business.
- 3.5 Should an audit conducted pursuant to clause 3.4 reveal that passwords have been provided to individuals who are not Authorised Users then, without prejudice to the Supplier'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 concurrent users have been paid).
- 3.6 In relation to the Software:
 - (a) the Supplier hereby grants to the Customer, on and subject to the terms and conditions of this agreement, a non-exclusive, non-transferable licence to:
 - (i) install the Software on Clients at the Sites;
 - (ii) allow Authorised Users to access and use the Software solely for the Customer's internal business purposes; and
 - (iii) when applicable, to access any third party software in accordance with the licence terms applicable to that third party software through the Hosting Services;
 - (b) the Customer shall
 - (i) configure, connect and design its network and IT infrastructure (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
 - (ii) not store, distribute or transmit any Viruses, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

- (c) the rights provided under this clause 3.6 are granted to the Customer only, and shall not be considered granted to any Customer Affiliate (or any other third party);
- (d) the Customer shall not:
 - (i) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
 - (iii) 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;
 - (iv) use the Software or Hosting Services to provide services to third parties, or use the Software anywhere but at the Sites unless otherwise authorised in writing by the Supplier to do so;
 - (v) subject to clause 18.1, transfer, temporarily or permanently, any of its rights or obligations under this agreement;
 - (vi) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3.6; or
 - (vii) permit more than the agreed number of concurrent Authorised Users to access and use the Software at any time; and
- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

4. CUSTOMER DATA

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 The Supplier shall follow its backup procedures for Customer Data as described in Schedule 3. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except any third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

- 4.3 For the avoidance of doubt, any processing undertaken by the Supplier on behalf of the relevant healthcare provider(s) shall be subject to the terms of the separate contract(s) in effect as between the relevant parties.
- 4.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.5 The parties acknowledge that for the purposes of the Data Protection Legislation, in relation to the Customer Data, to the extent that this is processed by the Supplier then the Customer is the data controller and the Supplier is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).
- 4.6 Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, 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 Schedule 8 to reflect any changes to the scope of the processing.
- 4.7 Without prejudice to the generality of clause 4.4, the Customer will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the relevant Personal Data to the Supplier for the duration and purposes of this agreement.
- 4.8 The Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data on the written instructions of the Customer (unless otherwise required by law);
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this agreement unless required by law to store the Personal Data; and
 - (h) allow for audits by the Customer or the Customer's designated auditor in respect of the Supplier's data processing activities under this agreement.
- 4.9 The Supplier is given general authorisation to engage third-parties to process the Personal Data ("**Sub-Processors**") without obtaining any further written, specific authorisation from the Customer. The Supplier shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under this agreement. The Supplier is accountable to the Customer for any Sub-Processor in the same way as for its own actions and omissions. A list of the Supplier's material sub-processors as at the later date of 25th May 2018 or the date of this agreement is set out on the Supplier'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 the Supplier informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate this agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, the Supplier will refund any unused prepaid fees).
- 4.10 The parties may, acting reasonably, agree to amend this agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.
- 4.11 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and shall assist and co-operate with the Customer to enable the Customer to comply with its disclosure obligations under the FOIA. Accordingly the Supplier agrees:
 - (a) that this agreement is subject to the obligations and commitments of the Customer under the FOIA;
 - (b) that where the Supplier receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Customer) and will promptly (and in any event within two (2) Business Days) transfer the request to the Customer;
 - (c) that the Customer, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16

of the Environmental Information Regulations 2004, may disclose information concerning the Supplier and this agreement following consultation with the Supplier and having taken its views into account; and

- (d) to assist the Customer in responding to a request for information, by processing 'information' or 'environmental information' (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by the Customer within five (5) Business Days of any such request.

5. SUPPLIER'S OBLIGATIONS

- 5.1 Subject to clause 5.2, the Supplier warrants that the Services will be performed with reasonable skill and care.
- 5.2 The warranty at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the terms of this agreement, the Supplier's instructions or modification to (or alteration of) the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing warranty, the Supplier will, at its expense, use its reasonable commercial 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 warranty set out in clause 5.1. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.
- 5.3 This agreement shall not prevent the Supplier 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 this agreement.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
 - (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;

in order to render the Services, including Customer Data, security access information and software interfaces to the Customer's other business applications;
 - (b) provide such personnel assistance, including the Customer Account Team and other Customer personnel, as the Supplier may reasonably require from time to time;

- (c) appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement, and it shall use reasonable endeavours to ensure continuity of the Customer's Project Manager;
- (d) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (e) carry out, and procure that all Authorised Users carry out, all other Customer responsibilities set out in this agreement or in any of the Schedules or in any agreed Project Plan in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this agreement or otherwise agreed as reasonably necessary; and
- (f) comply with any instructions issued by the Supplier pursuant to the maintenance provisions in Schedule 5

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Fees in accordance with the terms of this agreement.
- 7.2 All amounts and Fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 7.3 Where, in the relevant year, Indexation would increase then the Fees shall be subject to Indexation on 1st April immediately following the Effective Date and annually on the 1st April thereafter.
- 7.4 Commencing on whichever is the later of the Effective Date or the Business Go Live date, the Supplier shall invoice the Customer, in advance for all Fees set out in the Quote for all Services performed by the Supplier during the appropriate period. Each invoice is due and payable no later than thirty (30) days after the invoice date.
- 7.5 The Configuration and Deployment Fees, as described in Schedule 1, are payable on the Business Go Live date or no later than the expiry of sixty (60) days following commencement of the Configuration Services, whichever is the earlier, with the exception of Fees in relation to Training which will be payable as agreed with the Customer based on delivery of the relevant Training (provided always that: (i) the Supplier will not be obliged to deliver Training unless and until the parties agree payment terms; and (ii) if Training takes place in the absence of any agreement then payment will be due immediately following delivery of the Training).
- 7.6 If the Supplier has not received payment of the Fee(s) by the due date then (without prejudice to any other rights and remedies of the Supplier):
 - (a) the Supplier shall be under no obligation to provide any or all of the Services while the Fee(s) or invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on such due 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.

8. CHANGE CONTROL

- 8.1 The Customer Account Team and the Supplier's Project Manager shall meet at least once every quarter to discuss matters relating to this agreement. If either party wishes to materially change the scope of the Services (including Customer requests for additional hosting services), it shall submit details of the requested change to the other in writing.
- 8.2 If either party requests a change to the scope or performance of the Services (or otherwise in relation to this agreement), the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Fees arising from the change;
 - (c) the likely effect of the change (if any) on the Project Plan; and
 - (d) any other impact of the change on the terms of this agreement.
- 8.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it (provided always that the Supplier may change the scope of the Services at any time (without obtaining the Customer's agreement), to the extent necessary to reflect any change in applicable law (or if it identifies that a change is required to address concerns relating to patient safety or data privacy)).
- 8.4 If the Customer requests a change to the scope of the Services, the Supplier shall have no obligation to implement such change unless and until the parties have agreed in writing the necessary variations to the Fees, the Project Plan and any other relevant terms of this agreement to take account of any such change.

9. PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that the Supplier (and/or its licensors) owns all intellectual property rights subsisting in the Software and the Services. Save as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.
- 9.2 The Supplier warrants that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY

- 10.1 Each party may be given access to Confidential Information belonging to the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the receiving party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation and performance of this agreement.
- 10.3 Each party may disclose the other party's Confidential Information (for the purposes set out in clause 10.2):
 - (a) to its employees, officers, Affiliates, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, Affiliates, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 10; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (save where that third party is an Affiliate, representative, subcontractor or adviser of the relevant party).
- 10.6 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11. INDEMNITY

- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services, provided that:
 - (a) the Customer is given prompt notice of any such claim;

- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of any such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, 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 Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in final judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of any such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of a claim pursuant to clause 11.2, the Supplier 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 this agreement without liability to the Customer.
- 11.4 The Supplier shall have no liability pursuant to clause 11.2 if the alleged infringement is based on:
 - (a) a modification of the Software by anyone other than the Supplier;
 - (b) the Customer's use of the Software in a manner contrary to any instructions given to the Customer by the Supplier;
 - (c) the Customer's use of the Software contrary to the terms of this agreement;
 - (d) the Customer's maintenance of the Software (or any part thereof) other than in accordance with the terms of this agreement;
 - (e) use of a non-current version of the Software; or
 - (f) the Customer's use of the Software after notice of the relevant (alleged or actual) infringement from the Supplier or any appropriate authority.
- 11.5 Nothing in this clause 11 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.
- 11.6 Clauses 11.2, 11.3 and 11.4 state the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, in respect of any claim of patent, copyright, database or right of confidentiality infringement.

12. LIMITATION OF LIABILITY

12.1 This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this agreement;
- (b) any use made by the Customer of the Services, the Software, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

12.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.

12.3 Nothing in this agreement excludes the liability of the Supplier for:

- (a) death or personal injury caused by the Supplier's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

12.4 Subject to clause 12.3, the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, 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;
- (e) loss (whether direct or indirect) of, or corruption to, any data or information; or
- (f) indirect, consequential or special loss or damage,

in each case arising out of or in connection with this agreement.

- 12.5 Subject to clauses 12.3 to 12.4 (inclusive), the Supplier'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 this agreement in respect of all claims (including, under any indemnities) 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 this agreement in that Contract Year (or in respect of any and all claims arising after this 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 this agreement).

13. TERM AND TERMINATION

- 13.1 The Agreement shall commence on the Effective Date and shall continue for an initial period (in the absence of any term being specified in the Quote then this will be for one (1) year from the Service Commencement Date), unless otherwise terminated as provided in the Agreement. After the Initial Term, the Agreement shall automatically renew on an annual rolling basis, unless or until either party gives notice terminating the Agreement, in writing, at least ninety (90) days before the next anniversary of the Service Commencement Date, save that where the Supplier issues a new quote to the Customer in respect of the Services before the end of the Initial Term (or any time thereafter) which is accepted by the Customer then a new agreement will be created which supersedes the Agreement (and the applicable terms will be as referenced in that Quote).
- 13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:
- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach;
 - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
 - (c) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (d) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
 - (f) 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 clause 13.2(b) to 13.2(e) (inclusive);
 - (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (h) there is a change of control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988.

13.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination (including, clause 9, clause 10 and clause 12), shall not be affected or prejudiced.

14. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this 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 the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, 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 sub-contractors. The Supplier shall promptly notify the Customer in writing of any such event and its expected duration.

15. WAIVER

- 15.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. ENTIRE AGREEMENT

- 17.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.2 Each party acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

18. ASSIGNMENT

- 18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 18.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

- 22.1 Any notice required to be given under this 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 address set out at page 4 of this agreement, or such other address as may have been notified by that party for such purposes, or by email (to, in respect of the Supplier) uk.contracts@optum.com and for the Customer, to such email address as it may nominate).
- 22.2 A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not between 9.00am to 5.00pm on a Business Day, at 9:00am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

23. CONFLICT

If there is an inconsistency between any of these terms and conditions and the Quote or Schedules, the provisions of these terms and conditions shall prevail.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.
- 24.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

25. CORRUPT GIFTS AND PAYMENTS

- 25.1 For the purposes of this agreement the term “Prohibited Act” means:
- (a) committing an offence under any applicable law creating offences in respect of bribery or fraudulent acts;
 - (b) defrauding or attempting to defraud; or
 - (c) offering, giving or agreeing to give to any person employed by or otherwise associated with the Supplier any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the creation or performance of this agreement;
 - (ii) showing or not showing favour or disfavour to any person in relation to this agreement; or
 - (iii) entering into this agreement where commission has been paid or has been agreed to be paid by the Supplier 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 the Supplier.

- 25.2 The Customer shall ensure that any person associated with the Customer in connection with this agreement 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 this agreement.

Schedule 1 Fees

1. SOFTWARE AS A SERVICE & SUPPORT FEES

- 1.1 The Fees shall comprise, where specified in the Quote, all, some, or any of the Software As A Service & Support Fee(s) and the Configuration and Deployment Fee(s).
- 1.2 All Fees are non-refundable.
- 1.3 All additional Clients/Authorised Users identified between invoicing periods will be added to the next annual invoice.
- 1.4 The Fees detailed in the Quote are based on the agreed support model detailed at Schedule5.

Schedule 2 Configuration Services

1. PROJECT PLAN & IMPLEMENTATION TIMESCALES

The Supplier shall agree the Project Plan and Implementation Timescales in co-operation with the Customer during this stage of the Configuration Services.

The Supplier and the Customer shall agree a date for commencement of deployment. If the parties cannot agree on a date for commencement of deployment, then the date shall be 3 months from the Effective Date.

2. DESIGN

The Supplier shall develop a configuration of hosting servers designed to provide access to the Software.

3. IMPLEMENTATION

The Supplier and the Customer shall co-operate in implementing the Services in accordance with the deployment, implementation and training timescales.

4. TRAINING

In accordance with the implementation and roll out provisions, training will be provided by the Supplier using a variety of learning methods as agreed with the Customer in Schedule1. The Supplier shall provide electronic learning materials to the Customer to support training delivery allowing proper use, operation and management of the system.

5. ROLLOUT

The Supplier and the Customer shall co-operate in rolling out the Services to the Customer's Authorised Users in accordance with the roll-out provisions of the Implementation Timescales.

6. ELECTRONIC SHARING AGREEMENTS

The Supplier shall configure Electronic Sharing Agreements in the Service that shall allow healthcare providers to share electronic patient records with the Customer should they choose to activate the Electronic Sharing Agreement.

The Electronic Sharing Agreements shall be configured in such a way as to allow the data required by the Customer (which the relevant healthcare provider has agreed to provide) to be transferred to the Customer.

The Electronic Sharing Agreements shall only work if (once configured) they are activated by both the Customer (acting as a Data Processor or a Data Controller (as appropriate)) and the relevant healthcare provider (acting as a Data Controller).

The Supplier shall notify the Customer once the configuration has been completed, but shall in no way be responsible for:

- (i) notifying the relevant healthcare provider(s) that the Electronic Sharing Agreements have been configured;
- (ii) ensuring that the relevant healthcare provider(s) activate the Electronic Sharing Agreements; or
- (iii) ensuring that the relevant healthcare provider(s) do(es) not de-activate the Electronic Sharing Agreements.

For the avoidance of doubt, should the applicable healthcare providers not activate the Electronic Sharing Agreements then the Supplier shall not facilitate the transfer of electronic patient records to the Customer. Nonetheless should the applicable healthcare providers not activate the Electronic Sharing Agreements then the Customer shall still be liable to pay the Supplier the Fees detailed at Schedule1.

Schedule 3 Hosting Services

1. HOSTING SET-UP

The set-up phase of the Hosting Services includes those services provided by the Supplier (or its sub-contractors) to support EMIS Web.

2. INSTALLATION AND CONFIGURATION

The Supplier shall install and configure the hosting equipment to provide access to the Software.

3. FACILITY

The dual data centre solution operates across two data centres that are over ten (10) miles apart and operate on independent electrical and fibre services. In the event of a primary site failure advice would be given to access the secondary site via the support desk.

The underlying infrastructure on which the software operates is built using a combination of virtual and physical servers across both sites.

4. HSCN CONNECTIVITY

Access to the Hosting Services is via HSCN connectivity. The Customer shall make its own arrangements at its own cost for HSCN access in order to access the Hosting Service.

5. MONITORING SERVICES

The Supplier shall provide, twenty four (24) hours a day and seven (7) days a week, monitoring of the Service from either data centre.

6. BACK-UP AND RECOVERY SERVICES

The Supplier shall perform scheduled back-ups. If the Customer requests a data restore, the supplier will restore the most recent available back-up to the data centre. These requests cannot be made more than once in every three (3) months.

Schedule 4 Software Specification

1. The Software is EMIS Web used via HSCN. The Software consists of the following components:

Core Module	Sub Module	Functions
Care Record	Care Record Summary*	• A one page summary of the full patient record
	Consultations*	• View all consultation history and search/filter on various parameters
	Medication*	• View acute/repeat medication. • Review patient medication compliance.
	Problems*	• View all active, significant and minor problems
	Investigations*	• View all values and laboratory reports for a patient • Filter and search on results • Tabular and graphical trend
	Care History*	• Display all clinical events in chronological order including Non Value Data, Allergies, Health Status, Family History and Immunisations. • A clinical event includes an entry made to a patient's care record from anywhere in the care record, i.e. not only consultations.
	Diary*	• Display all of the active diary entries and tasks in a patient's care record, including future and overdue dates. • Split by Planned Items, Appointments and Tasks.
	Documents*	• View, search and filter all attached documents
	Referrals*	• Displays all the referrals recorded in a patient's care record with a detailed view showing you associated information.

Core Module	Sub Module	Functions
Registration	Patient Registration	Register new patients 'traced' from the sharing organisation
Configuration	Organisation Configuration	Manages set up and configuration of the local EMIS Web organisation, its users and role based access control (RBAC),
	Data Sharing Manager	- This module allows the organisation to view data with other external organisations. - Electronic sharing agreements can be activated and deactivated locally form within this module
System Tools	Audit Trails	- User activity on patient records in EMIS Web is auditable. - Users cannot edit or delete audit trail entries and so provide useful information for data integrity, governance and training.

Schedule 5 Service Level Agreement - Maintenance and Support

1. TRAINING

The Supplier shall provide Training to such number of the Authorised Users as are specified in, and are otherwise in accordance with, the Project Plan and Implementation Timescales.

2. MAINTENANCE EVENTS

Save in the case of emergency, maintenance of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services (“**Maintenance Events**”) shall not be performed during Support Hours, except in the scenario where 24hr Support Hours have been selected by the Customer and this is therefore unavoidable. The Supplier may interrupt the Services to perform scheduled maintenance outside Support Hours, or otherwise as necessary should the Customer have selected 24hr Support Hours. The Supplier may also interrupt the Hosting Services at any time for emergency maintenance. Any Maintenance Events which occur during Support Hours shall be considered downtime for the purpose of service availability measurement. The Supplier shall at all times endeavour to keep any service interruptions to a minimum.

- 2.1 The Supplier will notify the Customer as to one hour monthly maintenance windows for the maintenance of the Hosted Service (including firmware, service packs and WSUS updates). This excludes patching of EMIS Web Software and its peripheral services. Patching of EMIS Web updates will be carried out as necessary and this will be agreed in advance with the Customer via agreed operational change processes.

3. MAINTENANCE

- 3.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification or otherwise deemed by the Supplier to be necessary or advantageous.
- 3.2 The Supplier shall maintain and update the Software. Should the Customer, acting reasonably, consider that the Software includes a defect, the Customer may at any time file error reports with the Supplier's helpdesk. During maintenance periods, the Supplier may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. The Supplier shall use reasonable endeavours to avoid unscheduled downtime for Software maintenance.
- 3.3 All changes to the live environment will follow the agreed internal change processes, and the Supplier will communicate to the Customer any changes which require a service outage.
- 3.4 Software Upgrades:
- (a) The Customer acknowledges that it is important that the Software is upgraded with the latest software upgrade or patch where appropriate. The Supplier will make relevant upgrades or patches (e.g service packs, firmware, bug fixes etc.) available to the Customer from time to time.
 - (b) The Supplier will provide the Customer with release notes for the upgrade or patch in advance of the update.

- (c) Mandatory MKB (drug and code) updates must be promptly accepted and implemented by the Customer.
- (d) Patching of EMIS Web software will be carried out as necessary. Patching notifications will be sent to the Customer in advance of patching taking place.

4. SUPPORT SERVICES

4.1 The Supplier shall provide the Customer with support services. Authorised Users and Customer personnel (together, the **CSRs**) shall be authorised to contact the Supplier to request support services. The Supplier shall provide support services to that specified set of CSRs. The Supplier shall provide the Supplier support consultants (**SSCs**). The SSCs shall handle support calls from the CSR's and shall maintain continuity of knowledge of the Customer account history.

4.2 The Supplier shall issue customer database numbers to the CSRs, which will allow those CSRs to access Supplier support. Supplier support shall accept web form-based incident submittal from CSRs with valid Customer database numbers twenty four (24) hours a day, seven (7) days a week. The Supplier support call centre shall accept calls for English language telephone support during Support Hours and days as defined below:

Standard Support Hours:

- (a) 8.00am to 6.00pm Local UK time each Monday to Friday

4.3 All incidents reported to the Supplier support will be logged within the Support Hours.

4.4 Supplier support function will use its reasonable efforts to resolve each incident, in accordance with the relevant target resolution time as described in this Schedule related to the severity level for that incident. The target resolution time counter will only run within the Support Hours. Incidents will be closed once resolved, or where a suitable work around has been provided to the end user.

4.5 The target resolution time counter in respect of an incident will be paused when one of the following situations occurs:

- (a) the minimum data set required to diagnose the issue is not available,
- (b) the Customer's end user is unavailable and attempts have been made on more than two (2) occasions to make contact; and/or
- (c) there is no acceptable remote access available in respect of the affected system.

4.6 The Supplier support will determine the severity of any defect, using the following:

Severity	Description	Target Resolution Time
Severity 1	EMIS Web Service is unavailable for all users	Four (4) Support Hours
Severity 2	EMIS Web service is severely degraded for Multiple Users	Eight (8) Support Hours

Severity 3	Core/Clinical module failure or unavailable	Fifty (50) Support Hours
Severity 4	Non-core module failure	One hundred and twenty (120) Support Hours
Severity 5	Faults of a cosmetic nature	Potential future release if the Supplier accepts the fault

- 4.7 In respect of every Severity 1 or Severity 2 incident the Supplier may follow its 'Major Incident Process', which details the internal operating procedures undertaken to bring together the resources necessary to resolve the relevant incident. The Supplier shall provide regular updates and it shall notify the Customer once the relevant incident has been resolved

Schedule 6 Service Level Agreement - Service Availability

1. The Supplier shall provide at least 99.5% or uptime service availability level during Support Hours. This availability refers to client software being able to connect to the software from the Supplier's HSCN data centre access point. It does not include the external HSCN network as the Customer is responsible for its own HSCN access.

Service availability shall be represented as a percentage, calculated as follows:

$$\frac{\text{Number of hours in the month} - \text{Severity 1 failure time in Support Hours}}{\text{Number of hours in the month}} \times 100$$

Availability measurement begins on the first day of each calendar month.

Availability does not include Maintenance Events as described in paragraph 2 of Schedule 5. Availability also excludes Customer caused or third party caused outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 14.

Schedule 7 Data Processing Schedule

Processing by the Supplier

Purpose of Processing:	for the purposes of delivering the services and meeting other obligations specified in this agreement.
Duration of the Processing:	for the term of this agreement (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 the Supplier to provide the services and solutions provided for under this 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 this Agreement includes: names, addresses, dates of birth, NHS numbers, telephone numbers, email addresses and other contact details. In particular it will include special category personal data relating to health as described in the definition of Customer Data.
Categories of Data Subject:	data subjects may include: members of the Customer's staff (including those of its associated entities or third party suppliers), other clinical staff with whom the Customer or the relevant patients are interacting, patients and members of the public.