

SOFTWARE AS A SERVICE AGREEMENT (EMIS WEB CLINICAL SERVICES) 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**”).

In respect of the Services (as defined below), if there are (in respect of services the same as (or substantially similar to) the Services) any existing agreements in place between the Supplier and the Customer (including, any agreements which were originally between the Supplier and other customers but which have since been assigned to the Customer (e.g. pursuant to the process whereby a number of CCGs merge to create an ICB), (each an “Existing Agreement”), then the Existing Agreement(s) is/are terminated by mutual agreement effective as at the start of the invoice period specified in the Quote (notwithstanding any terms under the relevant Existing Agreement(s) regarding the provision of termination notices). Such termination shall be without prejudice to each party’s rights that had accrued under such Existing Agreement(s) up to the date of termination.

BACKGROUND

- (A) The Supplier has developed and provides range of services, including the provision of remote access to application software 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 the Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in the 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 employees and independent contractors of the Customer who are entitled to use the Software through the Hosting Services under the Agreement, as further described in clause 3.2(d).

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

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 2.1 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 Data: means data inputted into the information fields of the Software by the Customer, Authorised Users, and/or by the Supplier on the Customer's behalf.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, the privacy of electronic communications);

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 acceptance of the Quote (including, by signature) by the Customer or the Service Commencement Date.

Fees: means the fees payable by the Customer to the Supplier, as described in the Quote.

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:

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

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 RPlo is the value of the Retail Prices Index on the Effective Date.

Initial Term: means the period as detailed in 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 the Agreement, all as described in Schedule 5.

Project Plan: means the plan to be developed during 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 Commencement Date: means the date of commencement of the provision of the ordered IT solutions, provided by the Supplier.

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

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 authorised to use the Software as agreed in writing between the Supplier and the Customer from time to time.

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

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

Support Hours: has the meaning set out in paragraph 4.2 of Schedule 6.

Supported Environment: means an environment under which the Software is tested and supported as set out in the document entitled 'IF2255 EMIS Web Client Requirements' as provided by the Supplier to the Customer (and as may be amended by the Supplier from time to time to reflect changes in third party systems (including, upgrades to Microsoft Windows) or other technologies).

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 the Agreement, pursuant to clause 13).

Training Services: means any training services to be provided by the Supplier in connection with the Software and other Services.

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 the Agreement.

- 1.3 A **person** includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees.
- 1.4 A reference to: (i) a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established; (ii) words in the singular shall include the plural and vice versa; (iii) one gender shall include a reference to the other genders; (iv) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (v) **writing** or **written** includes e-mail, (provided that, in respect of notices to 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 the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the 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 use its reasonable endeavours to perform the Configuration Services by reference to the timetable established between the parties in the Project Plan . 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 the 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 its 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(s), 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 Deliverable shall be deemed to have been accepted by the Customer and to conform with the Software Specification.

3. HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 3.1 Subject to clauses 3.7, 3.9 and 3.10, 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 Authorised Users able to access the Software at any time (as detailed in the Quote);
- (b) the number of individual 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 Authorised Users on an annual basis and shall notify the Customer should the number of 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 the Agreement resulting from such additional Authorised Users);
- (d) the Customer shall maintain a written list of current Authorised Users of the Software; and shall provide such list to the Supplier as may be reasonably requested by the Supplier from time to time; and
- (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: (i) each Authorised User keeps a secure password for their access to and use of the Software and that such password is changed no less frequently than every ninety (90) days; and (ii) each Authorised User keeps their password confidential.

3.4 Without limiting the Supplier's other rights of audit, the Supplier may audit use of the Software and the Customer will promptly provide any requested information. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and shall be exercised with reasonable prior notice.

3.5 Should an audit 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 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 the Agreement, a non-exclusive, non-transferable licence to:
 - (i) install the Software on Clients at the Sites; and
 - (ii) allow Authorised Users to access and use the Software solely for the Customer's internal business purposes;
- (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 offensive;;

- (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 (save to the extent expressly set out in the Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, (save as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties);
 - (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 on Clients other than 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 the Agreement;
 - (vi) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3.6(d); or
 - (vii) permit more than the agreed number of Authorised Users to access and use the Software at any time;
- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and it shall notify the Supplier promptly of any such unauthorised access or use; and
- (f) the Supplier grants to the Customer a licence of the third party software embodied in the Software allowing the Customer to use the Software as contemplated by the Agreement without breaching the rights of the relevant third parties.

3.7 If the Customer wishes to use the Software in an environment which is not a Supported Environment, then it shall notify the Supplier in writing. The Customer acknowledges that the Software has not been designed to function within an unsupported environment and that any such use is at its own risk and that the Software may not function correctly (or at all). The Customer further acknowledges that any timescales or representations made by the Supplier in terms of the Services relate only to the use of the Software within a Supported Environment and that the delivery of the Services may be adversely affected. The Supplier shall have no liability to the Customer as a result of any delays, clinical risks or failure to support the Software to the extent that such issues are caused by the Customer's system not being a Supported Environment.

3.8 The Customer may access certain third party applications stored on the Supplier's hosted environment, such access and use will be subject to the licencing terms in effect as between the relevant third party and the customer in respect of the same. The Customer acknowledges that such access is provided on an "as is" basis and the Supplier gives no warranties or undertakings in respect of any such third party applications or the Customer's access to, or use of, the same.

3.9 The Customer agrees to contact the Supplier to agree the schedule for all Training Services so that all are delivered no later than 12 months after the Business Go Live date. To the extent that

the Training Services have not been delivered by that date, the parties agree that they shall be deemed to have been fully delivered and the Customer agrees that it shall be liable to pay the full Fees for the Training Services.

- 3.10 If the Customer needs to reschedule any of the Training Services, it shall give the Supplier at least 10 days' notice before the scheduled date and, to the extent the Customer gives less notice, it agrees that it shall be liable to pay additional Fees at the Supplier's current daily rate.

4. CUSTOMER DATA

- 4.1 The Customer shall own all rights, title and interest in and to the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 The Supplier shall follow its own backup procedures in respect of the Customer Data. In the event of any loss of, or damage to, any Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use its reasonable endeavours to seek to restore the lost or damaged Customer Data from the latest back-up of such Customer Data as may be maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except for any third party sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 4.3 The Supplier shall use reasonable endeavours to achieve an "all standards met" performance level against all requirements in the NHS data security and protection toolkit. If the Supplier has not achieved an "all standards met" performance level by the Service Commencement Date, the Customer may, in its sole discretion, agree a plan with the Supplier to enable the Supplier to achieve an "all standards met" performance level within a reasonable time thereafter.
- 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, 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 6 (as may, from time to time, be updated to reflect any changes to the processing) sets out the scope, nature and purpose of any 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).
- 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 Personal Data to the Supplier for the duration and purposes of the Agreement.
- 4.8 The Supplier shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Agreement:
- (a) process that Personal Data in accordance with any 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 UK and/or 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) there is 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 (as defined in the Data Protection Legislation);
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the 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 the 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 that will include protections substantially similar to those under the 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 date of the 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 Customer's objections 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 the Agreement upon written notice to be given 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 the 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 where the Customer is subject to the requirements of the FOIA, it shall use its reasonable endeavours to assist and co-operate with the Customer in respect of

the Customer's disclosure obligations under the FOIA. Accordingly the Supplier agrees where applicable:

- (a) to use its reasonable endeavours to provide such assistance and cooperation as reasonably requested by the Customer in relation to its obligations under the FOIA and the EIRs;
- (b) transfer to the Customer all requests for information relating to the Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) provide the Customer with a copy of all relevant information belonging to the Customer requested in the request for information which is in the Supplier's possession or control in the form that the Customer reasonably requires within 5 Business Days (or such other longer period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the Customer.

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 the 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, or the use of the Software in any environment which is not a Supported Environment.
- 5.3 If the Services do not conform with the warranty set out in clause 5.1, the Supplier will, at its expense, use its reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with agreed alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty. 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.
- 5.4 For the avoidance of doubt, the 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 the Agreement.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
 - (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Agreement; and
 - (ii) access to such information as it may reasonably require;in order to provide the Services, including access to the Customer Data, security access information and software interfaces to the Customer's other business applications;
 - (b) provide such personnel assistance as the Supplier may reasonably require from time to time;

- (c) appoint a project manager (as may be updated from time to time), who shall have the authority to contractually bind the Customer on all matters relating to the Agreement, and the Customer shall inform the Supplier of the name and relevant credentials of the project manager;
- (d) use its reasonable endeavours to maintain consistency in respect of the project manager referred to in clause 6.1(c), but should the Customer need to replace the project manager, then it shall notify the Supplier as to their replacement;
- (e) accept emergency and urgent clinical safety releases in respect of the Software on the basis that a risk assessment has been conducted by the Supplier's (through accredited clinicians) and it has determined that the functionality used by the Customer poses (or is likely to pose) a risk to patients;
- (f) accept monthly static data updates including terminology, medication and data dictionary files (these updates being a prerequisite for interoperability, safe prescribing and clinical decision support by those customers who use this functionality, but also is key in clinical coding and data dictionary management);
- (g) comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (h) carry out, and procure that all Authorised Users carry out, all other Customer responsibilities set out in the Agreement (including in any Schedules or in any agreed Project Plan) in a timely and efficient manner. In the event of any delays in the Customer's compliance with its obligations under the Agreement, the Supplier may adjust any timetable or delivery schedule set out in the Agreement or otherwise agreed as reasonably necessary; and
- (i) comply with any instructions issued by the Supplier pursuant to the maintenance provisions set out in Schedule 5.

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Fees in accordance with the terms of the Agreement.
- 7.2 All amounts and Fees stated or referred to in the 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 result in an increase to the Fees then they shall be subject to Indexation on the 1st April immediately following the Effective Date and annually on each 1st April thereafter.
- 7.4 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 by the Customer within thirty (30) days from the invoice date.
- 7.5 If the Supplier has not received payment of the relevant Fee(s) in cleared funds 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 parties shall meet at least annually to discuss matters relating to the Agreement. If either party wishes to materially change the scope of the Services (including any request 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 the Agreement), then it shall notify the other party in writing and 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 the 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, security 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 the Agreement to take account of any such change.

9. PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that the Supplier (and/or its third party licensors) owns all intellectual property rights subsisting in the Software and the Services. Save as expressly stated herein, the 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 the Agreement.

10. CONFIDENTIALITY

- 10.1 Each party receiving Confidential Information belonging to the other party shall:
- (a) hold such Confidential Information in strict confidence and keep it secure, applying to such Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (and in any case not less than a reasonable standard of care);
 - (b) seek to access Confidential Information, and use Confidential Information, in each case only:
 - (i) for the purpose of performing its obligations under the Agreement; and

- (ii) in accordance with the Agreement;

and specifically refrain from seeking to access Confidential Information, and from using Confidential Information, for its own or any third party's benefit or in any other manner not authorized in writing by the disclosing party;
 - (c) disclose, or permit access to, Confidential Information only to its Affiliates or to persons who are its employees, or its independent contractors, who both:
 - (i) have a need to know the Confidential Information in order to give effect to the Agreement or advise in connection with it (or both); and
 - (ii) are subject to nondisclosure obligations substantially similar to those of the Agreement;
 - (d) accept responsibility for any access to, use, or disclosure of any Confidential Information in violation of the terms of the Agreement and to take such steps as may be required by applicable law to enforce this obligation;
 - (e) return to the disclosing party (or, at the disclosing party's request, destroy in such manner as not to allow its re-creation and confirm to the disclosing party the receiving party's compliance with this obligation) within fourteen (14) days of the expiry (or earlier termination) of the Agreement (or such earlier date as the disclosing party may reasonably request) all materials (in writing or otherwise, including copies) containing any Confidential Information; and
 - (f) promptly notify the disclosing party (where it is permitted to do so by law) if the receiving party is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing party may if it chooses seek an appropriate protective order.
- 10.2 Notwithstanding clause 10.1, a receiving party's obligations of confidentiality contained in the Agreement shall not apply:
- (a) to the extent required by law, by any court of competent jurisdiction, or by an official regulatory body; or
 - (b) to information that:
 - (i) at the time of disclosure was in the public domain or comes into the public domain other than through breach of the Agreement by the receiving party;
 - (ii) was known by the receiving party (as established by its own records or other competent proof) before it received the Confidential Information, or was exposed to it, or had the ability to access it; or
 - (iii) is lawfully disclosed to the receiving party by a third party acting in good faith and not bound by a confidentiality obligation.
- 10.3 The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of seven (7) years following the termination or expiry of the Agreement.
- 10.4 The parties acknowledge that breach of this clause 10 may cause the disclosing party irreparable injury for which damages may not be an adequate remedy. Therefore, in the event of such breach, the non-breaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.

- 10.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services form part of the Supplier's Confidential Information.
- 10.6 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 (and 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 (and its officers, directors and employees) against any claim that the Software (but not any third party software) infringes any United Kingdom patent (effective as at the Service Commencement Date), copyright, database right or right of confidentiality, and it shall indemnify the Customer for any amounts awarded against the Customer in final judgment or settlement of such claims, provided that:
 - (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 the Agreement without further 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 by the Supplier;
 - (c) the Customer's use of the Software contrary to the terms of the Agreement;
 - (d) the Customer's maintenance of the Software (or any part thereof) other than in accordance with the terms of the Agreement;
 - (e) use of a non-current version of the Software; and/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, for the infringement of any patent, copyright, database or any other proprietary rights or any right of confidentiality.

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 directors, officers, employees, agents and sub-contractors) to the Customer, including in respect of any:
- (a) breach of the Agreement;
 - (b) use made by the Customer of the Services, the Software, the Deliverables or any part of them; and/or
 - (c) representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 12.2 Except as expressly and specifically provided in the Agreement:
- (a) the Customer assumes sole responsibility for results obtained from use of the Software and receipt of the Services and for any 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 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 or otherwise are, to the fullest extent permitted by applicable law, excluded from the Agreement.
- 12.3 Nothing in the Agreement limits or excludes the liability of either party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; and/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; and/or
 - (f) indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement

- 12.5 Subject to clause 12.3 and clause 12.4, 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 the 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 the Agreement in that Contract Year (or in respect of any and all claims arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Fees paid and/or due to be paid in the final Contract Year of the Agreement).

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 the Agreement without liability to the other if:
- (a) the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and it remains in default not less than ten (10) business days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any of the terms of the Agreement provided, if such a breach is remediable, the party in breach fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
 - (c) the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).
- 13.3 On termination of the Agreement for any reason:
- (a) all licences granted under the Agreement shall immediately terminate;
 - (b) each party shall return and make no further use of any Confidential Information, equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - (c) within fifteen (15) days of the effective date of termination, the Supplier shall return to the Customer the then most recent back-up of the Customer Data in the Supplier's possession, either in its then current format or in an industry standard format nominated by the Customer (in which event the Customer will reimburse the Supplier's reasonable data conversion expenses), save that the Supplier may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under clause 13.3(d);

- (d) the Customer shall for a period of twelve (12) months following termination of the Agreement be entitled to require access to any Customer Data held by the Supplier (in which event the Customer will reimburse the Supplier's reasonable expenses incurred in providing such access); and
- (e) 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, clause 11 and clause 12), shall not be affected or prejudiced.

14. FORCE MAJEURE

The Supplier shall have no liability to the Customer 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, in relation to any strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. The Supplier shall notify the Customer of any such event and, if known, the expected duration.

15. WAIVER

- 15.1 A waiver of any right under the 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 the Agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of the 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 The 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 the 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 the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

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 the 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 the Agreement.

19. NO PARTNERSHIP OR AGENCY

Nothing in the 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

The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the 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

The Agreement does not confer any rights on any person or party (other than the parties to the 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 the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address first set out in the Agreement (and, in respect of notices to the Supplier, shall be marked for the attention of Legal Counsel), or such other address as may have been notified by that party for such purposes, or by email (to, in respect of notices sent to 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 before 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 The 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 law 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).

25. CORRUPT GIFTS AND PAYMENTS

- 25.1 For the purposes of the 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 the Agreement;
 - (ii) showing or not showing favour or disfavour to any person in relation to the Agreement; or
 - (iii) entering into the 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 the 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 the Agreement.

Schedule 1 - Fees

1. SOFTWARE AS A SERVICE FEE

- 1.1 The Fees shall comprise, where specified in the Quote, all, some, or any of the Software As A Service Fee(s), Support Fee(s) and the Configuration and Deployment Fee(s).
- 1.2 All Fees are non-refundable.
- 1.3 All additional 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 Schedule 5.
- 1.5 As provided for in clauses 3.9 and 3.10, the Customer shall be liable to pay the Supplier for any Training Services which have be rescheduled by the Customer with less than 10 days notice and any Training Services which have not been booked within 6 months of Business Go Live and taken within 12 months of Business Go Live such Training Services shall be deemed to have been delivered.

Schedule 2 - Configuration Services

1. PROJECT PLAN & TIMETABLE

The Supplier shall agree the Project Plan in co-operation with the Customer during the initial stages of the Configuration Services. The Project Plan shall detail all Deliverables, pre-deployment planning and preparation, deployment phases, training and implementation.

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 provisions of the Project Plan.

4. TRAINING

In accordance with the implementation and roll out provisions of the Project Plan, training will be provided by the Supplier using a variety of learning methods as agreed with the Customer in Schedule 1. Training will be delivered in accordance with the Project Plan. The Supplier shall provide 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 Project Plan.

Schedule 3 - Hosting Services

1. HOSTING SET-UP

The set-up phase of the Hosting Services includes those services provided by the Supplier (either directly or via a subcontractor) 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 of the relevant Customer Data.

If the Customer requests a data restore, the Supplier will restore the most recent available back-up of the Customer Data to the data centre. The Customer may make a maximum of one such request every three (3) months. If any additional requests are made then additional costs may be incurred by the Customer.

Schedule 4 - Software Specification – EMIS Web

1. The Software consists of the following components:

Core Module	Sub Module	Functions
Care Record	Care Record Summary	A condensed one page summary of key clinical events including EPR record sharing contributors; problems; medication; allergies; planned events; last four clinical contacts including clinician details, location and date; health status entries.
	Consultations	- View all consultation/contact history and search/filter on various parameters including coded entries, date, user, job category and organisation. - Add new, edit and review consultations/contacts. - Add consultations/contacts for multiple problems. - View various decision support tools including Mentor/PILS. - Care record configuration for individual or organisation wide style and type settings. - Confidentiality policy settings.
	Medication	- View full patient prescribing history. - Add new acute/repeat/automatic medication. - Issue standard/private prescriptions. - Link medication to specific problems. - Review patient medication compliance. - Add adverse drug reactions and view clinical safety warnings - Use standard/individual user formulary. - Access the British National Formulary (BNF). - Create bespoke local mixtures.
	Problems	- View all active, past, significant and minor problems. - Link problems to specific medication. - Group, combine and evolve problems and amend problem status. - Add reviews.
	Investigations	- View all values and laboratory reports for a patient. - Filter and search on results - Tabular and graphical trends.
	Care History	Display all clinical events in chronological order including Non Value Data, Allergies, Health Status, Family History and Immunisations; a clinical event refers to data entered from any care record screen excluding medication.
	Diary	Displays all active diary entries, planned events, tasks, outstanding test requests, appointments due, unfilled pathology reports*.

Core Module	Sub Module	Functions
		Also includes all completed tasks, appointment history and completed test requested.
	Documents	View, search and filter all attached documents.
	Referrals	- Allows the user to create and manage inbound and outbound referrals. - Displays all referrals recorded in a patient's care record with a detailed view including associated referral activity. - Direct access to Episode Management screen.
Summary Care Record (SCR) Viewer*	SCR Viewer	View Summary Care Records held on the NHS spine
Workflow Manager	Workflow Manager	An electronic organiser for local document management; task management; pathology results*.
Appointments	Appointment Book	- View, book and cancel appointments/visits. - Configure the appointment book/visit lists at both organisation and user level. - Manage multiple staff appointment books/visit lists for multiple clinic types. - Add scheduled patient appointments via the Assignment List to named clinicians' diaries. If the organisation offers speciality services an appointment 'schedule' can be generated for patients who need regular repeat appointment (e.g. twice a week for the next six weeks)* - The patient schedules for each day are then combined into an assignment list which can be used to book the actual appointments into the appointment book.*
	Week Templates	- Create diary and weekly templates for regular appointments/visit lists to store for future use. - Session types include 'timed sessions' defined duration, 'untimed sessions' allocated sequentially, 'list sessions' allocated to different session holder), and 'non-clinical sessions' not divided into appointment slots, 'group session' when patient details do not need to be recorded.*
	Planner	- Schedule the organisation's sessions as far in advance as required. - Assign session and week templates to specific session holders' diaries.
	Holidays & Closures	Record staff holidays and organisation closures.
	Appointment Reporting	- Create and manage reports based on appointment activity including wait/consulting times, slot types, slot statuses, date parameters, session holders. - Report on past, present and future appointment book data.

Core Module	Sub Module	Functions
Electronic Referral Service (ERS)	ERS Provider	• Upload appointment sessions to the spine to allow referring organisations to book directly via ERS on the NHS spine • Action appointments that are booked through Workflow Manager and assign to Patient Administration lists*
Registration	Registration	• Register new patients via Patient Trace if sharing agreement in place. • Amend registration details. • Record patient contacts including relationship to the patient and next of kin details.
	PDS*	• Personal Demographic Service (NHS Spine) Trace and Retrieval service • Search and register patient directly from the Spine
	Carers	• Adding and allocating carers to patients.
	Professional Contacts*	• Adding and allocating contact details of other professionals involved in the patients care
Patient Administration	Patient Administration	• Enables an organisation to manage patients through the whole care process: from referral, to treatment, to discharge. • As a patient moves through the care process, they automatically move from list to list; services can use all or a selection of these lists, depending on their workflows. • There are a number of standard patient administration workflows available to suit different requirements.
	Episode Management	• The Episode Management module has been developed to enable organisations to collect information to be used for the community services data set (CSDS). • In accordance with the local Information Standards Notice (ISN) for CSDS, Episode Management captures the following key information: ○ Personal and Demographic ○ Service Referrals ○ Care Activities ○ Indirect Patient Activities ○ Onward Referrals ○ Group Sessions ○ Non Patient Activities
Reporting	Population Reporting	• Enables users to create and run local searches and reports. • Create aggregate reports to compile statistical trends. • Features a library containing a selection of pre-defined searches and features. • Searches and reports can be scheduled to run on a user defined recurrence basis. • Reports can be exported to Excel, CSV and HTML.

Core Module	Sub Module	Functions
	Enquiry Manager	Creating reports based on local queries.
	FP34D Reports	The standard report gathers information based on prescription issues of vaccines made through the patients' prescribing record. These reports can be run for a specific month.
	Batch Data Manager	Assists users in adding clinical codes, running protocols and performing set calculations against a targeted group of patients identified within a search population, on an admin list, or within an appointment list.
Configuration	Organisation Configuration	Manages set up and configuration of the local EMIS Web organisation, users, role based access control (RBAC) including local role profiles, teams, locations and services.
	Data Sharing Manager	- Allows the organisation to share and view data with other external organisations including patient demographics and/or specific care record modules, tasks, appointments, coded datasets and/or users assigned to specific job categories. - Electronic sharing agreements can be activated and deactivated locally from within this module. - A data sharing agreement can be created that only shares a patient's demographic information between participating organisations to streamline the registration process. The information shared contains names, Date of birth, Sex, NHS/CHI number, Address, Telephone numbers, Registered/Usual GP, Dispensing status, plus other additional demographics including Ethnicity. - Care record sharing allows organisations to share specific modules of clinical data from the care record module within EMIS Web i.e. Care Record Summary, Consultations, Medication, Problems, Investigations, History, Diary, Documents, Referrals, Care Plans. The sharing agreement can include a 'point of contact consent' indicator to record patient consent during a clinical contact. - Consultation write back enables an automatic copy/ send of a consultation from within a PCN Hub to the patient's registered GP. This is powered by a data sharing agreement and configured within data sharing manager in EMIS Web. - A task sharing agreement allows users from one organisation to assign tasks to a team/user in a different organisation. - An appointment sharing agreement will allow users in an organisation to book appointments in another organisation. - Patients can opt out of global sharing at any time.
	Confidentiality Policy Manager	- Restrict access to flagged data items for specific work groups of users. - Policies can be applied to patients' entire records or individual items/events within the records.

Core Module	Sub Module	Functions
	Formulary Manager	- Create drug formularies for different kinds of users. - A formulary is a list of medication used to populate the preferential display, which serves as a guideline for the selection of medication when prescribing. - Formularies can be created using a blank formulary, using all generic preparations in the system, all preparations issued in the last 6 months or based on a pre-existing formulary.
	Template Manager	- Create, edit and maintain clinical templates, protocols and document templates. - Clinical templates are used to improve consistency and efficiency in data entry by guiding users through a pre-defined pro-forma. - Document or word templates work together with the integrated 'mail merge' functionality to populate standard documents and letters with clinical, activity and demographic data held within the EPR. - A protocol contains a series of decisions and actions allowing the system to automatically determine the outcome of the decision or to prompt users to select an answer. Protocols can be used to add data, medication, consultations, add referrals and add or cancel diary entries. They can also be used to book an appointment, launch a template, additional protocol or protocol alert and launch a document.
	Concepts Manager	- Concepts are decision making tools that enable you to automate decision making processes. A concept is a named patient characteristic that is re-usable throughout a protocol or template. These are based on clinical codes, medication courses and issues, diary items and based on existing concepts. - Concepts are used in collections and rarely operate on their own. A collection is a list of concepts that can be used by a protocol (or other application components) to make a decision.
System Tools	Scanning and Documents	- Scan documents or images and save them in EMIS Web. - Attach documents to medical records and code or annotate the document. - Link documents to problems or referrals. - Find past documents stored in the system.
	Audit Trails	- Audits user activity within patient records by event, date and action. - Users cannot edit or delete audit trail entries and so provide useful information for data integrity, governance and training. - System audits can be run to monitor non patient specific events e.g. Editing templates, modified appointment sessions etc.

Core Module	Sub Module	Functions
	Prescription printing	- Reprint one or more prescriptions – reprint any prescriptions that have been issued in the last 24 hours. - Print stored prescriptions – print all recently stored prescriptions. You can print all for a particular user or you can print selected prescriptions. - Print prescriptions for an automatic prescription group – print all prescriptions assigned to a particular prescription group; for example, all prescriptions assigned to a particular nursing home.
	Legacy Data Mapping*	Allows users to match legacy system data including Local Codes, Consultation Source, Patient Type, Job Category, Referral Organisation, Users, Observation Qualifiers and Medication.
	Patient Archive	Management of archived patients.
	EMAS Manager	The EMIS Web Messaging Application Services can be activated if an organisation wishes to receive managed referrals, activate Partner API, activate inbound documents, external pathology results etc.
	Non-Patient Data Transfer	Allows current LV/PCS organisations to transfer existing clinical templates, appointment data and schedules to EMIS Web prior to EMIS Web go-live.
External Links	Mentor Online	Reference site and knowledge base containing clinical resources and guidelines, PILs, and DILs.
	Patient UK	Patient.info is one of the most trusted medical resources in the UK, supplying evidence based information on a wide range of medical and health topics to patients and health professionals.
Patient Tracking*	Patient Tracking	- Supports healthcare services delivering unscheduled care. - Allows healthcare professionals to track and manage the delivery of care for patients.
	Manchester Triage	- Optum authored licensed content supporting the use of Manchester Triage acuity assessment. - Manchester Triage to provide training on the methodology.
Electronic Prescribing Service*	EPS	Allowing prescribers to generate and transmit electronic prescriptions, in order that EPS upgraded dispensers can download them.
Bed Management*	Bed Management	- Create a visualisation of a ward and assign patients to a bed with the following functionality: - Ward Creator - Ward View - Waiting List

Core Module	Sub Module	Functions
		○ Empty Bed Status • Transfer

*Components only applicable if detailed on the Quote.

Schedule 5 - Service Level Agreement - Maintenance and Support

1. TRAINING

The Supplier shall provide training in respect of the Services to such number of the Authorised Users as are specified in, and are otherwise in accordance with, the Project Plan.

MAINTENANCE EVENTS

- 1.1 Save in the case of emergency, the Supplier shall use reasonable endeavours to ensure that maintenance of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services ("**Maintenance Events**") does not take place during Support Hours (except in cases where 24hr Support Hours have been selected by the Customer and this would therefore be 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, save where 24hr Support Hours have been selected by the Customer, 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.
- 1.2 The Supplier will notify of a 1 hour monthly maintenance window 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.

MAINTENANCE

- 1.3 The Supplier shall maintain and update the Software. Maintenance includes all regularly scheduled error corrections, software updates and upgrades.
- 1.4 Should the Customer, acting reasonably, consider that the Software includes a defect, the Customer may at any time an error report with the Supplier's help desk. During maintenance periods, the Supplier may, at its discretion, upgrade versions, install error corrections and apply patches. The Supplier shall use its reasonable endeavours to avoid unscheduled downtime for Software maintenance.
- 1.5 All changes to the live environment will follow the agreed internal change processes; the Supplier will communicate to the Customer any changes which require a service outage.
- 1.6 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.

SUPPORT SERVICES

- 1.7 The Supplier shall provide the Customer with support services. Authorised Users and Customer personnel (together, the **CSRs**) shall be authorised to contact the Supplier in respect of the support services. The Supplier shall only 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.
- 1.8 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's support desk 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 Sunday excluding each Bank Holiday

- 1.9 All incidents reported to the Supplier's support desk will be logged during the Support Hours.
- 1.10 The Supplier's 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 relevant severity level for that incident. The target resolution time counter will only run during the Support Hours. Incidents will be closed once resolved, or where a suitable work around has been provided.
- 1.11 The target resolution time counter in respect of an incident will be paused should one of the following situations occur:
- (a) the minimum data set required to diagnose the issue is not available;
 - (b) the CSR's are 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 (and this is not due to some default on the part of the Supplier).
- 1.12 The Supplier's support function will determine the severity of any alleged defect, applying the following criteria:

Severity	Description	Target Resolution Time
Severity 1	EMIS Web Service is unava all users	Four (4) Support Hours
Severity 2	EMIS Web service is severe degraded for Multiple Users	Eight (8) Support Hours
Severity 3	Core/Clinical module failure unavailable	Fifty (50) Support Hours
Severity 4	Non core module failure	One hundred and twenty (120) Support Ho
Severity 5	Faults of a cosmetic nature are otherwise not material	Potential future release if the Supplier accep fault

- 1.13 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.

SERVICE AVAILABILITY

The Supplier shall achieve an uptime service availability level in respect of the Software of not less than 99.5% during Support Hours. This availability refers to the Customer being able to access 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:

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

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

Availability does not include Maintenance Events as permitted by paragraph 2.1 of Schedule 6. 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 6 Processing, Personal Data and Data Subjects

1. Processing by the Supplier
 - 1.1 Subject matter of the processing: The solution is a hosted flexible electronic patient record system which enables users to create, view and edit a patient's care record.
 - 1.2 Nature: such processing as is necessary to enable the Supplier to provide the services and solutions provided for under the Agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data). Data captured by each user is hosted by or on behalf of the Supplier. The data is made available to the user through an HSCN facing client.
 - 1.3 Purpose of processing: for the purposes of delivering the services and meeting other obligations specified in the Agreement.
 - 1.4 Duration of the processing: for the term of the 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).
2. Types of Personal Data: the solution enables users to record demographic 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.
3. Categories of Data Subject: patients, patients' family, system users both clinical and non-clinical staff (including those of associated entities or third party suppliers).