

EMIS X MOBILE SERVICE TERMS AND CONDITIONS

These terms and conditions ("**Conditions**") govern the Services (as defined) as provided by Egton Medical Information Systems Limited ("**Optum**") to you (the "**Customer**") and/or, where agreed by the parties in writing, for the benefit of any Service Recipients. These Conditions, together with any quotation or order form as may be provided by Optum, these Conditions form the entire agreement between Optum and the Customer in respect of the supply of equipment, licence of software and provision of the Services (the "**Agreement**").

BACKGROUND

The Agreement details the deliverables, fees and conditions applicable to Optum's licensing of the App (as defined), activation of the App, the delivery of SIM cards (if applicable) and the provision of the Support Services (as defined) to the Customer.

For the avoidance of doubt the Agreement does not cover the sale or supply of Mobile Devices (as defined) to the Customer. Should the Customer wish to purchase Mobile Devices from Optum then this shall be detailed under a separate contract for the sale of goods.

The Customer wishes Optum to provide the Services detailed in the Agreement pursuant to the terms and conditions detailed herein.

AGREED TERMS

1. INTERPRETATION

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

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

Agreed Usage: means the Customer's data limit per SIM agreed between the parties which shall be 1GB per calendar month, unless otherwise detailed on the latest quote accepted by the Customer.

App: means the clinical management application named "EMIS X Mobile by Optum" that is available via the Apple App store and Google Play Store and which can (subject to the terms of the Agreement) be downloaded onto a Mobile Device.

Commencement Date: means the date from which Optum starts to perform its obligations under the Agreement.

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

Data Protection Legislation: means (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing

laws, regulations and secondary legislation, as amended or updated from time to time, in the UK including the Data Protection Act 2018 and then (ii) any successor legislation to the GDPR.

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

EMIS Web: means the clinical health care record and information technology system used by the Customer pursuant to a separate agreement with Optum detailing the terms of use of such system.

End User: means a medical practitioner the Customer and/or where appropriate the Service Recipient, authorises to use the App.

EULA: means the end user licence agreement which governs the use of the App by an End User.

Initial Term: means the period detailed in Optum's written quote or as otherwise agreed in writing with Optum.

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

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

Mobile Device: means any compatible mobile device confirmed by Optum in writing as being suitable for use in respect of the App provided the same is compatible with the latest versions of Android, and four 'major release' versions prior and the equivalent for iOS.

Operational Hours: means 7:30am – 7:00pm, Monday through Friday (excluding public holidays), 8:00am – 1:00pm Saturday and 8:00am – 4:00pm on public holidays.

Optum SIM: means the subscriber identity module integrated circuit, where purchased, provided to the Customer by Optum for use in Mobile Devices.

Service Charge: means the charges payable by the Customer to Optum as detailed in Optum's written quote or as otherwise agreed in writing with Optum (as may be modified from time to time by Optum pursuant to clause 6.4).

Services: means the services to be provided by Optum to the Customer as detailed at clause 3.1.

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

Support Services: means the support services to be provided by Optum to the Customer as detailed at clause 5.

Site: means the premises of the Customer and/or where appropriate the Service Recipients, as detailed in Optum's written quote or as otherwise agreed in writing with Optum.

Term: means the term of the Agreement, being (subject to any earlier termination in accordance with the terms of the Agreement) the Initial Term together with any extensions pursuant to clause 13.1.

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

1.2 Clause, annex, attachment and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A reference to: (i) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; (v) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and (vi)

writing or written shall include communications sent by email.

1.4 References to clauses and Annexes are to the clauses and annexes of the Agreement; references to paragraphs are to paragraphs of the relevant Annex.

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 To the extent Optum supplies equipment, performs Services and/or licenses software for the benefit of any Service Recipients, the Customer shall:

1.7 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to equipment supplied to, software licensed to and/or Services received by the Service Recipients (other than the obligation to pay the Service Charges) or that are otherwise stated in the Agreement to apply to such Service Recipients (including pursuant to clause 1.7) (collectively the "**Service Recipient Obligations**"); and

1.8 be liable to Optum for the acts and omissions of such Service Recipients to the extent they breach the Customer's or the Service Recipient Obligations, as if they were acts or omissions of the Customer.

1.9 In the Agreement, unless the context requires otherwise:

1.10 references to the Customer receiving equipment, licensed software and/or the Services shall include, to the extent that they are receiving equipment, licensed software and/or Services, the Service Recipients;

1.11 references to the Customer's:

1.12 assets, systems, business, operations and the like; and

1.13 customers contractors, advisors and other similar third parties

1.14 shall include, to the extent that they are receiving equipment, licensed software and/or the Services, those of the Service Recipients;

1.15 other references to the Customer shall be deemed to include the Service Recipients where such reference relates to a right of the Customer which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the equipment, licensed software and/or Services under the Agreement.

1.16 Without prejudice to the generality of this clause 1.7, a number of clauses refer specifically to

both the Customer and/or the Service Recipients for the sake of clarity.

2. APPLICATION OF TERMS

2.1 These Conditions shall apply to the provision of all Services hereunder and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Documents supplied by the Customer (and/or any Service Recipient), or implied by law, trade custom, practice or course of dealing.

2.2 The Agreement shall come into effect upon the Commencement Date.

2.3 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or any other Document issued by or on behalf of the Customer shall not form part of the Agreement.

2.4 Quotations are given by Optum on the basis that no contract shall come into existence except in accordance with this clause 2. Any quotation is valid for a period of thirty (30) days from its date, provided that Optum has not previously withdrawn it.

3. APP AND SERVICES

3.1 Optum shall use its reasonable endeavours to: (i) make the App available for download and use by the Customer (and/or where appropriate any Service Recipients) (through the End Users); (ii) perform the Support Services detailed at clause 5.1, and (iii) enable the activation of the software within EMIS Web which enables the Customer to access selected patient records held on EMIS Web remotely through the App on their Mobile Device subject always to the terms governing the Customer's (and End Users') access to and use of EMIS Web and the App).

3.2 In consideration of the Customer agreeing to abide by the terms of the Agreement, and procuring that:

3.3 each End User; and

3.4 where applicable, each Service Recipient shall and shall procure that each End User authorised by it,

3.5 abides by the terms of the EULA, Optum hereby grants to the Customer a non-exclusive, non-transferable licence to use the App in the UK on the terms of the Agreement.

3.6 The Customer (and/or where appropriate the Service Recipient) may:

3.7 (acting through the End Users) install and use the App on the Mobile Devices for its internal business purposes;

3.8 receive and shall use any supplementary software code incorporating "patches" and corrections of errors as may be provided by Optum from time to time in respect of the App; and

3.9 use any documentation (as may be provided by Optum from time to time) in support of the use permitted under clause 3.7.

3.10 Except as expressly set out in the Agreement or as permitted by any applicable law, the Customer shall:

3.11 not copy the App (or any related documentation) except where necessary for the purpose of back-up or operational security;

3.12 not rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App (or any related documentation);

3.13 not make alterations to, or modifications of, the whole or any part of the App (or any related documentation) nor permit the App or any part of it to be combined with, or become incorporated in, any other programs;

3.14 not disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the App nor attempt to do any such things;

3.15 maintain accurate and up-to-date records of the End Users using the App;

3.16 not remove any copyright notice from any copies of the App (or any related documentation); and

3.17 not provide, or otherwise make available, the App in any form, in whole or in part (including, program listings, object and source program listings, object code and source code) to any person other than End Users (who must download the same via an app store subject to the EULA).

3.18 The Customer (and/or where appropriate the Service Recipient) may use the App (through the End Users) to:

3.19 add clinical data into the defined templates (which can then be imported into EMIS Web);

3.20 add data into patients' Care Episodes (Community and Child Health users) to support CSDS (community services data set) data collection;

3.21 add tasks which can then be imported into the EMIS Web Workflow Manager;

3.22 check appointment schedules and the relevant End User's diary;

3.23 access patient records held within EMIS Web (subject to the relevant storage available on the Device);

3.24 (provided that the End User has an appropriate network connection and the Customer expressly requests this functionality be enabled) search the Customer's patient records held within EMIS Web to identify a specific patient and then download that patient's details to the App;

3.25 work offline within the App in areas with limited network connectivity, with the ability to reconcile the data with EMIS Web when returning to an area with suitable connectivity; and

3.26 use mapping services to display the locations of appointments in relation both to each other and the current location of the relevant End User. For the avoidance of doubt, the Customer acknowledges that the mapping services are provided by a third party service provider (being Google as at the Commencement Date) and that by using the mapping function, the relevant End User will be providing data (in the form of the inputted address details) to that third party service provider which will be held by that third party in accordance with their privacy policy.

3.27 Optum may, at its discretion and from time to time, add additional functionality to the App. Optum may make such features available to the Customer by way of updates to the App.

3.28 The Customer acknowledges that when accessing the App on a Mobile Device, End Users will have three (3) attempts to login. After three (3) consecutive failed login attempts all cached data in respect of the App will be cleared from the relevant Mobile Device and the Customer will then need to arrange for synchronization with EMIS Web.

3.29 For the avoidance of doubt the App will function, and the Support Services will only be provided, in respect of EMIS Web and no other clinical healthcare records system. Should the Customer terminate its agreement to use EMIS Web then the Customer shall nevertheless remain liable to pay all applicable Service Charge and fees under the Agreement for the remainder of the Term.

3.30 Optum shall activate the application within EMIS Web to enable access to EMIS Web functionality on a Mobile Device via the App (subject to the terms of the Agreement, the EULA and the relevant EMIS Web licence agreement).

3.31 Optum shall provide reasonable assistance to the Customer in relation to implementing the use of the App into their working practices through the provision of a customer support line and training materials via a customer portal.

3.32 Should the Customer require additional training in relation to the use of the App then the

Customer shall contact Optum providing details of their requirements to discuss the same.

3.33 Optum shall provide the Support Services detailed at clause 5.1 during the Term.

4. CUSTOMER OBLIGATIONS

4.1 The Customer shall:

4.2 co-operate with Optum in all matters relating to the Services;

4.3 where relevant, provide a copy of these Conditions to the Service Recipients and ensure that each is aware of the same;

4.4 provide to Optum, in a timely manner, such information and assistance as Optum may reasonably require;

4.5 provide Optum with such remote access to its systems as Optum may reasonably require for the purposes of providing the Services and complying with its obligations under the Agreement;

4.6 notify Optum in the event that an Optum SIM is lost and provide such information as is reasonably requested so as to assist Optum in deactivating the lost Optum SIM;

4.7 only allow the End Users to use the App in accordance with the terms of the Agreement, the EULA (and the EMIS Web licence terms as appropriate) and use of the Support Services in accordance with the terms of the Agreement;

4.8 supervise and control use of the App and ensure that the End Users: (i) are properly trained medical practitioners; (ii) use the App in accordance with the terms of the EULA; and (iii) are registered to use the App (and Support Services) by the applicable Site Administrator;

4.9 be responsible for the acts or omissions of the End Users in respect of their use (or mis-use) of the App (and their compliance with the terms of the EULA);

4.10 ensure that it puts in place an appropriate mobile device usage policy (which shall include, a requirement that all Mobile Devices on which the App may be installed are encrypted);

4.11 contact the customer support line to register any faults with the App; and

4.12 only use the App and the Support Services in accordance with applicable laws and regulations.

4.13 The Customer shall not (and shall ensure that the End Users (and the Service Recipients as appropriate) shall not):

4.14 misuse the App, or receipt of the Support Services, in any manner;

4.15 allow End User(s) at any site other than the Sites to use an Optum SIM;

4.16 allow Optum SIMs to be transferred between the Sites (the Optum SIMs must only be used by End Users at the particular Site to which they are assigned by Optum); or

4.17 use the Optum SIM to download more than the Agreed Usage in any month.

4.18 Should the Customer (or any End User) use an Optum SIM to download more than the Agreed Usage in any month (in breach of clause 4.17), then Optum shall be entitled to either:

4.19 increase the Service Charges (in accordance with Optum's standard rates); or

4.20 suspend access to the SIM to the End User(s) of such Optum SIM(s) which are exceeding the Agreed Usage.

4.21 If the Customer wishes to change the Agreed Usage at any time then it may request Optum to prepare a revised quote, including any associated changes to the Service Charges, which the Customer may choose to accept.

4.22 If the Customer requires:

4.23 a replacement Optum SIM following an Optum SIM being damaged or reported lost, then Optum shall supply a replacement Optum SIM at Optum's standard rates; or

4.24 additional Optum SIMs,

4.25 then it may request the same from Optum (from time to time) who shall advise the Customer as to the availability and price of the required Optum SIMs and, if they are available and the Customer wishes to receive the same, shall arrange for delivery of the relevant Optum SIMs (together with an invoice which the Customer shall pay within thirty (30) days).

4.26 The supply (and use) of such replacement or additional Optum SIMs is subject to the terms of the Agreement.

4.27 For the avoidance of doubt the Customer shall remain liable to pay the Service Charges in the interim period whilst it awaits delivery of a replacement Optum SIM.

4.28 If Optum's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (and/or any Service Recipient), its agents, subcontractors, consultants or employees, then:

4.29 Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay; and

4.30 the Customer shall (and/or where appropriate shall procure the Service Recipient shall):

4.31 agree with Optum a reasonable extension of time corresponding to the delay; and

4.32 fully indemnify and hold harmless Optum for all costs, fees, damages, lost revenue or other expenses arising from any such event.

4.33 Optum shall not be liable for any delays, faults or interruptions in the Services caused by a failure or inadequacy in any Customer (and/or where appropriate any Service Recipient) or other third party equipment or processes or any incompatibility between any Customer (and/or where appropriate any Service Recipient) and third party equipment or processes.

4.34 The Customer shall be liable to pay Optum, on demand, all reasonable costs, charges or losses sustained or incurred by Optum arising from the Customer's and/or any Service Recipient's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement (including, the obligation to comply with the terms of the EULA). Optum shall confirm any such costs, charges and losses to the Customer in writing.

5. SUPPORT SERVICES

5.1 During the Term, Optum shall use its reasonable endeavours to:

5.2 provide a customer support line for the logging of faults in respect of the App during Operational Hours;

5.3 assign a priority level to each fault reported; and

5.4 resolve such faults in accordance with the following service levels (resolution times starting from the point of reporting of the fault to Optum during Operational Hours):

Priority Level	Incident Category	Description	Target Resolution Time
1	High	Outage of all services related to the App for all End Users.	Between 4 – 24 hours dependent on the nature of the defect
2	Medium	The services related to the App for one or more (but not all) End Users are disrupted or materially degraded.	Approx. 4 - 8 hours (subject to clause 5.6)

3	Low	The services related to the App of one or more End Users are degraded but the core functionality of the App is still available.	Approx. 24 hours (subject to clause 5.6)
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5.5 The App may from time to time be unavailable due to planned maintenance activities (and such unavailability shall not be deemed to be a fault).

5.6 THE RESOLUTION TIMES REFERRED TO ABOVE ARE ESTIMATES ONLY. THESE ESTIMATES ARE PROVIDED BY OPTUM AS A TARGET AND AS AN INDICATIVE ESTIMATION AS TO HOW LONG IT MAY TAKE TO RESOLVE SUCH FAULTS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW OPTUM SHALL NOT BE LIABLE TO PAY ANY DAMAGES, COSTS, EXPENSES, FEES, PENALTIES, FINES, SERVICE CREDITS OR BE IN ANY OTHER WAY LIABLE FOR FAILURE TO RESOLVE FAULTS IN ACCORDANCE WITH THE TARGET RESOLUTION TIMES.

5.7 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW OPTUM SHALL NOT BE LIABLE FOR ANY INTERRUPTION, DEGRADATION OR UNAVAILABILITY OF THE APP OR ANY RELATED SERVICES DURING OPERATIONAL HOURS. THE CUSTOMER'S AND/OR THE SERVICE RECIPIENT'S SOLE REMEDY IN RELATION TO SUCH EVENTS SHALL BE FOR OPTUM TO ENDEAVOUR TO RECTIFY SUCH FAULTS IN ACCORDANCE WITH THIS CLAUSE 5.

6. CHARGES AND PAYMENT

6.1 The Customer shall pay Optum the Service Charge due in respect of the Services during the Term.

6.2 Subject to clause 6.13, Optum shall raise invoices in relation to the Service Charge following the Commencement Date in accordance with the frequency for such payments detailed in Optum's written quote or as otherwise agreed in writing with Optum. Should Customer not receive such invoices from Optum then Customer shall notify Optum in writing that it has not received such invoice and Optum shall duly issue the invoice.

6.3 The Customer shall pay each invoice in full and in cleared funds, within thirty (30) days of the date of such invoice to a bank account nominated in writing by Optum.

6.4 Optum may adjust the Service Charge:

6.5 (to reflect increases in its underlying costs and expenses) annually in the event that the Term is longer than one (1) year, or in the event that the term is extended by the parties beyond one (1) year. Optum shall notify the Customer in writing of any change in the Service Charge not less than three (3) months prior to the expiry of the Term, or as part of any extension of the Term; and

6.6 to reflect the effects of inflation in accordance with the provisions of this clause following the first anniversary of the Commencement Date. The adjustment shall be measured by changes in the relevant index published for that year as calculated in accordance with the following formula:

$$6.7 \quad \text{Service Charge} \times \left(\frac{\text{Index}_o}{\text{Index}_d} \right)$$

6.8 Where: "Index" means the Retail Prices Index (RPI) published by the Office for National Statistics from time to time; "Index d" is the value of Index published or determined with respect to the Commencement Date; and "Index o" is the value of Index published or determined with respect to the month immediately preceding the relevant anniversary of the Commencement Date.

6.9 Optum shall notify the Customer in writing of any change in the Service Charge prior to the expiration of the Term, or as part of any extension of the Term.

6.10 For the avoidance of doubt the Service Charge is exclusive of VAT, which Optum shall add to its invoices at the appropriate rate.

6.11 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Optum on the due date, Optum may: (i) charge interest on such sum from the due date for payment at the annual rate of four percent points a year above the Bank of England's base rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. Optum may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or (ii) suspend all Services without any liability to the Customer (or any Service Recipient) until payment has been made in full.

6.12 Time for payment shall be of the essence of the Agreement.

6.13 Notwithstanding any provision in the Agreement to the contrary, all sums payable to Optum under the Agreement shall become due immediately on its termination. This clause 6.13 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

6.14 Optum may, without prejudice to any other rights it may have, set off any liability of the Customer to Optum against any liability of Optum to the Customer.

6.15 Where the Customer is purchasing software licences, Services and/or the supply and use of equipment for the benefit of a number of Service Recipients the date of actual receipt of Services, software licences and/or delivery and installation of equipment may not be uniform across all Service Recipients, and accordingly Service Recipients will likely receive the benefit of the same at various points following the Commencement Date.

6.16 For the purposes of clause 6.17, Service Recipients who have received the benefit of the Services, software licences, equipment are referred to as "Actual Service Recipients", and those who have not yet received the benefit of the same are referred to as "Pending Service Recipients".

6.17 Notwithstanding clause 6.15, Optum shall be entitled to invoice the Customer in respect of Service Charges as follows:

6.18 for the first Contract Year, Optum shall be entitled to invoice the Customer in advance, immediately following the Commencement Date, for all Service Charges due in respect of all Service Recipients in the first Contract Year, on the basis that all Service Recipients are deemed to be Actual Service Recipients on or immediately following the Commencement Date;

6.19 where the Term exceeds 12 months:

6.20 for the second Contract Year, Optum shall adjust the Service Charges, on a pro rata basis, to reflect any period in the first Contract Year during which any Service Recipients were Pending Service Recipients; and

6.21 for the third and subsequent Contract Years, Optum shall be entitled to invoice the Service Charges in full, in respect of all Service Recipients; and/or

6.22 where the Term is only 12 months (or less), then at the expiry of the Term, Optum shall issue the Customer with a credit note in respect of the Service Charges on a pro rata basis, equivalent to the period during the Term that any Service Recipients were Pending Service Recipients.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer acknowledges and agrees that Optum (and/or its licensors) owns all Intellectual Property Rights created, developed, subsisting or used in or in connection with the App, EMIS Web 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 App, EMIS Web and/or the Services.

7.2 In the event that new inventions, designs or processes evolve in performance of or as a result of the Services, the Customer acknowledges that the same shall be the property of Optum unless otherwise agreed in writing by Optum.

7.3 For the avoidance of doubt, Optum licenses the App subject to the term of the EULA and EMIS Web subject to the terms of the relevant software licence agreement between the parties.

8. INDEMNIFICATION

8.1 The Customer shall defend, indemnify and hold harmless Optum (its directors, officers, agents and employees) at all times from and against any Losses suffered, sustained or incurred by Optum in relation to any claim relating to or arising from the Customer's and/or any Service Recipient's (or any of its or their directors, officers, agents and employees) (or any End User's) use of the Services or the App other than in accordance with the terms of the Agreement.

8.2 In the event Optum is able to claim under the indemnity in clause 8.1 (or such a claim seems likely to arise), then Optum may suspend delivery of the Services unless or until such time as Optum is certain, in its reasonable opinion, that there is not likely to be a claim or the claim has been resolved.

9. WARRANTY DISCLAIMER

9.1 Except as expressly stated in the Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Optum. Any condition, warranty, representation or other term concerning the supply of any equipment and/or any licensed software and provision of the Services which might otherwise be implied into, or incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

9.2 OPTUM DOES NOT WARRANT THAT ANY LICENSED SOFTWARE WILL BE ERROR FREE.

9.3 The Customer acknowledges that any licensed software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of any licensed software meet its requirements.

10. CONFIDENTIALITY

10.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer and/or where appropriate any Service Recipient by Optum, its employees, agents, consultants or subcontractors and any other confidential information concerning Optum's business or its Services which the Customer may obtain (collectively, the "Confidential Information").

10.2 The Customer and/or where appropriate a Service Recipient may disclose such information:

10.3 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such Confidential Information for the purposes of carrying out the Customer's obligations under the Agreement and/or of receiving the Services; and

10.4 as may be required by law, court order or any governmental or regulatory authority.

10.5 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 10.

10.6 The Customer shall not use any such information for any purpose other than to perform its obligations under the Agreement.

10.7 All materials, equipment and tools, drawings, specifications and data supplied by Optum to the Customer shall, at all times, be and remain the exclusive property of Optum, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Optum, and shall not be disposed of or used other than in accordance with Optum's written instructions or authorisation.

11. LIMITATIONS OF LIABILITY

11.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 11, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

11.2 This clause 11 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to in respect of:

11.3 any breach of the Agreement;

11.4 any use of the App, the Services or any part of them; and

11.5 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

11.6 Nothing in the Agreement limits or excludes the liability of either party for:

11.7 death or personal injury resulting from negligence;

11.8 any Losses as a result of fraud or fraudulent misrepresentation by Optum; or

11.9 any Losses which cannot be excluded or limited pursuant to applicable law.

11.10 Subject to clause 11.6, Optum shall under no circumstances whatsoever be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

11.11 loss (whether direct or indirect) of profits;

11.12 loss (whether direct or indirect) of business or contracts;

11.13 loss (whether direct or indirect) of goodwill or injury to reputation;

11.14 loss (whether direct or indirect) of anticipated savings;

11.15 loss (whether direct or indirect) of use;

11.16 loss (whether direct or indirect) of, or corruption to, data or information; or

11.17 indirect, consequential or special loss of damages,

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

11.19 Subject to clause 11.6, Optum's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise, arising out of or in connection with the Agreement in respect of all Losses (including, under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Service Charge paid and/or due to be paid by the Customer under the Agreement in that Contract Year (or in respect of any and all Losses arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Service Charge paid and/or due to be paid in the final Contract Year of the Agreement).

11.20 Any Losses suffered by a Service Recipient under or in connection with the Agreement ("Service Recipient Losses") shall be deemed for the purposes of the Agreement to be Losses suffered by Customer under the Agreement, and that Customer shall be entitled to seek to recover from Optum any such Service Recipient Losses, subject always to the provisions of this clause 11, as though the relevant Losses had been suffered by the Customer (provided always that under no circumstances shall any Service Recipient have any

right to bring any claim or action against Optum other than via the Customer and subject to the terms of the Agreement and if any such claim should be brought then the Customer will indemnify Optum in respect of the same).

12. DATA PROTECTION

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is the data controller and Optum is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

12.3 Annex 1 (as may, from time to time, be updated to reflect any changes to the scope of the processing) sets out the scope, nature and purpose of processing by Optum, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update Annex 1 to reflect any changes to the scope of the processing.

12.4 Without prejudice to the generality of clause 12.1 (and/or where appropriate the relevant Service Recipient), the Customer will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Optum for the duration and purposes of the Agreement.

12.5 Optum shall, in relation to any Personal Data processed in connection with the performance by Optum of its obligations under the Agreement:

12.6 process that Personal Data on the written instructions of the Customer or where appropriate the relevant Service Recipient (unless otherwise required by law);

12.7 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer (and/or where appropriate the relevant Service Recipient), 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;

12.8 take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;

12.9 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer (and/or where appropriate the Service Recipient), has been obtained and the following conditions are fulfilled:

12.10 the Customer (and/or where appropriate the relevant Service Recipient) or Optum has provided appropriate safeguards in relation to the transfer;

12.11 the Data Subject has enforceable rights and effective legal remedies;

12.12 Optum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

12.13 Optum complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;

12.14 assist the Customer (and/or where appropriate the relevant Service Recipient), at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

12.15 notify the Customer (and/or where appropriate the relevant Service Recipient) without undue delay on becoming aware of a Personal Data breach; and

12.16 allow for audits by the Customer (and/or where appropriate the relevant Service Recipient) or its designated auditor in respect of Optum's data processing activities under the Agreement.

12.17 The parties acknowledge that Personal Data held within EMIS Web will be managed in accordance with the separate contract which exists between them in respect of that solution. To the extent that any Personal Data is held within the Mobile App (in an encrypted form and in temporary cache) then such data will be deleted automatically at the point at which the relevant Mobile Device is synchronised (or uninstalled) in accordance with the relevant Mobile Device's standard operating system deletion process.

12.18 Optum 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 or where appropriate the relevant Service Recipient. Optum shall complete a written sub-processor

agreement with any Sub-Processors which shall include protections substantially similar to those under this agreement. Optum is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of Optum's material sub-processors as at the date of the Agreement is set out on Optum's website (or will otherwise be notified to the Customer). Any objection to an amendment to the list of Sub-Processors may be escalated for discussion within 10 days after receipt of a notification of any change. If the parties are (acting reasonably) unable to resolve the objection and Optum informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate this agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, Optum will refund any unused prepaid fees).

12.19 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.

12.20 Optum acknowledges the Customer's and, where appropriate, the Service Recipients' duties and obligations under the Freedom of Information Act 2000 and agrees that it shall, upon request, provide reasonable assistance where appropriate or necessary in relation to their compliance with such duties.

13. TERMINATION

13.1 The Agreement shall commence on the Commencement Date. Unless terminated earlier pursuant to these Conditions, the Agreement shall continue for the Initial Term and shall automatically renew at the end of the Initial Term (and on each anniversary of that date), for a further period of twelve (12) months.

13.2 Without affecting any other right or remedy available to it, either party may, by giving not less than ninety (90) days' prior written notice to the other party, terminate the Agreement at the end of the Initial Term (or on any subsequent anniversary of that date).

13.3 No element of the Service Charge will be refundable by Optum on termination of the Agreement.

13.4 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if:

13.5 the other party fails to pay any amount due under the Agreement on the due date for payment

and remains in default not less than seven (7) days after being notified in writing to make such payment;

13.6 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 being notified in writing of the breach; or

13.7 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).

13.8 On termination of the Agreement for any reason:

13.9 the Customer shall immediately pay to Optum all of Optum's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted (and Optum may submit an invoice, which shall be payable immediately on receipt);

13.10 the Customer shall (and shall ensure that the Service Recipient shall) return all of Optum's equipment and materials (if any) in its possession or control. If the Customer fails to do so, then Optum may enter the Customer's premises and/or Sites (and/or where appropriate the relevant Service Recipient's premises and/or Sites) and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

13.11 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive (including clauses 7, 8, 9, 11, 12, 13 and 21) or implicitly surviving termination shall not be affected.

14. FORCE MAJEURE

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

15. VARIATION

15.1 Optum may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature of, scope of, or the charges for, the Services. If Optum requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

15.2 Subject to clause 15.1, no variation of the Agreement or of any of the documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

16. WAIVER

16.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

16.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

17. SEVERANCE

Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (each an "Ineffective Provision"), such Ineffective Provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provisions or the remaining provisions of the Agreement. The parties agree to attempt to substitute for any Ineffective Provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the Ineffective Provision.

18. ENTIRE AGREEMENT

18.1 The Agreement (and the documents referred to in it) constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

18.2 Each party represents and agrees that in entering the Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than

as expressly set out in the Agreement. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of the Agreement.

18.3 Nothing in this clause 18 shall limit or exclude any liability for fraud.

19. ASSIGNMENT

19.1 The Customer shall not, without the prior written consent of Optum, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

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

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

19.4 The Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except always that, subject to clause 19.5 each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

19.5 Notwithstanding clause 19.4, the parties may by agreement rescind, vary or terminate the Agreement without the consent of any Service Recipient, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

20. NOTICES

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

20.2 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 working 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.

20.3 All notices sent to Optum shall be marked for the attention of Legal Counsel.

21. GOVERNING LAW AND JURISDICTION

21.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject

matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter or formation (including non-contractual disputes or claims).

ANNEX 1 – Processing, Personal Data and Data Subject

1. Processing by Optum

21.3 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.

21.4 Nature: such processing as is necessary to enable Optum 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). Data captured by each user is hosted by or on behalf of Optum.

21.5 Purpose of processing: for the purposes of delivering the services and meeting other obligations specified in this agreement.

21.6 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).

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).