

DIGITISATION SERVICES TERMS AND CONDITIONS

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

BACKGROUND

Optum supplies services relating to the conversion of paper medical and health records to digital records ('digitisation') and their upload to Clinical Systems. Optum supplies, as a component of the Services different levels of digitisation services to customers including the Box Packing Services, the Scanning and Upload Services, the Scanning Only Services and the Upload Only Services depending upon the customer requirements.

AGREED TERMS

1. INTERPRETATION

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

Affiliates: 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.

Archive Boxes: means the boxes provided to the Customer and into which the relevant Paper Records will be placed, either by the Customer or, where Box Packing Services are being supplied under this Agreement, by Optum.

Box Packing Services: means the service for packing the relevant Paper Records into Archive Boxes at the Sites before they are scanned (which may be provided by Optum to the Customer under the Agreement only where the Scanning Only Service and/or Scanning and Upload Service is also being provided under the Agreement), and which is more particularly described in the Schedule.

Clinical System: means a clinical healthcare software product identified by Optum in writing (from time to time) as being supported in respect of the Services (including as at the Commencement Date, the solution known as EMIS Web).

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

Confidential Information: has the meaning set out in clause 9.1.

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.

Control Sheet: means a list, in a spreadsheet format, of all patients whose details are included in the relevant Scan Data (including, where available, details of each patient's forename, surname, date of birth and NHS number).

Customer Default: has the meaning set out in clause 5.3.

Data Protection Legislation: means all applicable data protection and privacy laws in force from time to time in the UK, including, but not limited to, the Data Protection Act 2018 (**DPA**) and UK GDPR (having the meaning given to it in the DPA) (in each case as may be amended or superseded from time to time).

Digital Record: means the digital version of a Paper Record.

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.

Equipment: means any equipment, including tools, systems, cabling or facilities, provided by Optum (or its subcontractors) and used directly or indirectly in the supply of the Services (and which are not the subject of

a separate agreement between the parties under which title passes to the Customer).

Extracted Patient List or EPL: has the meaning set out in the Schedule under the description of Box Packing Services.

Filled Archive Boxes: means Archive Boxes which the Customer has (or, where the Box Packing Services are included under the Agreement, Optum has) filled with Paper Records (together with, where relevant, the Master Manifest List).

In-put Material: means all Documents, information and materials provided by or on behalf of the Customer relating to the Services, including the Scan Data in relation to the Upload Only Services.

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

Master Manifest List: means a list, in a spreadsheet format, of all patients whose details are included in the relevant Paper Records (including, where available, details of each patient's forename, surname, date of birth and NHS number).

Milk-Round Services: means the service provided by Optum to the Customer comprising the collection of, scanning and upload of Paper Records on a routine basis, which are more particularly described in the Schedule.

Normal Support Hours: means Monday to Friday, 9:00am to 5:00pm, but excluding public holidays.

OCR Processing: means the OCR or optical character recognition processing of the Scan Data which may be provided by Optum to the Customer under the Agreement in addition to the Scan Only Services and/or the Scan and Upload Services.

Optum Materials: means any and all Documents, information and materials provided by Optum (or its subcontractors) in relation to the Services (including, any computer programs, data, reports and specifications (as the same may be updated from time to time)).

Paper Record: means a Lloyd George wallet/envelope (being the standard format for NHS primary care paper records) containing a paper patient notes record or such other format of paper medical or health records which Optum has agreed to scan pursuant to the Agreement.

Prescribed Format: means, in relation to the Upload Only Services, the format in which the Scan Data must be provided to Optum by, or on behalf of, the Service Recipient as notified to the Customer by Optum from time to time, to enable its upload to the Clinical System.

Scan Data: means the scans of the relevant Paper Records (in PDF or other industry standard format) together with the related index and upload data, where the circumstances require in the Prescribed Format.

Scan Data Portal: means the technology platform which the Customer owns in order to securely transfer the Scan Data to Optum.

Scanning and Upload Services: means the full scanning and upload services which may be provided by Optum to the Customer under the Agreement and which are more particularly described in the Schedule.

Scanning Only Services: means the scanning only services which may be provided by Optum to the Customer under the Agreement and which are more particularly described in the Schedule.

Service Charges: means the charges payable by the Customer in respect of the Services (as detailed in Optum's written quote or as otherwise agreed in writing with Optum, or in the absence of any such detail, as determined by reference to Optum's standard rates) and in respect of any additional services purchased.

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.

Services: means the services to be provided by Optum to the Customer under the Agreement which shall comprise: the Support Services and one or more of the Box Packing Services and/or Scanning and Upload Services and/or Scanning Only Services and/or Upload Services, as set out in the relevant quotation or order form which forms part of the Agreement as may be ordered by the Customer from time to time in accordance with clause 4.

Site: means the locations (which may be controlled by the Customer or a Service Recipient as appropriate) in respect of which Optum shall provide the Services under the Agreement (as stated in Optum's written quote or as otherwise agreed in writing with Optum).

Support Services: means the support services to be provided by Optum as detailed in the Schedule.

Term: shall have the meaning set out in clause 12 of the Agreement..

Upload Only Services: means the upload only services which may be provided by Optum to the Customer under the Agreement and which are more particularly described in the Schedule.

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

Working Day: means a day, other than a Saturday, a Sunday, a public holiday or a statutory holiday in England.

1.2 Clause, annex, attachment, schedule 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 includes communications sent by email.

1.4 References to clauses, Schedules and Annexes are to the clauses and annexes of the Agreement; references to paragraphs are to paragraphs of the relevant Schedule or 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 In the Agreement, unless the context requires otherwise:

1.6.1 references to the Customer receiving the Services shall include, to the extent that they are receiving the Services, the Service Recipients;

1.6.2 references to the Customer's:

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

1.6.2.2 customers, contractors, advisors and other similar third parties,

shall include, to the extent that they are receiving the Services, those of the Service Recipients; and

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

Without prejudice to the generality of this clause 1.6, 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 provided under the Agreement and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Documents supplied by the Customer (and/or any Service Recipient), or implied by law, trade custom, practice or course of dealing.

2.2 The 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 govern the delivery of the Services.

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

2.5 The parties agree that Optum shall provide the Services in respect of the Paper Records and/or the Scan Data (as appropriate) on an 'as is' basis and that the Customer shall have full responsibility for ensuring that:

2.5.1 the Paper Records are correctly filed prior to being scanned; and/or

2.5.2 the Scan Data is correct and no Personal Data therein is contained in the incorrect patient's file.

2.6 Optum shall have no liability for, and shall not be responsible for, misfiled records as the Paper Records are scanned but the contents are not checked by Optum and any Scan Data uploaded to the Clinical System should have been verified by the Customer in advance of any such upload.

3. OPTUM'S OBLIGATIONS

3.1 Optum shall, during the Term:

3.1.1 use its reasonable endeavours to provide the Services materially in accordance with the Schedule;

3.1.2 use its reasonable endeavours to meet any performance dates specified in the Agreement (but any such dates shall be estimates only and shall not be of the essence in relation to the performance of the Services);

3.1.3 use its reasonable endeavours to carry out the OCR Processing in compliance in accordance with any current, published national NHS standard and to the level as specified in the national NHS technical guideline from time to time;

3.1.4 observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Sites and that have been reasonably communicated to it, provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under the Agreement; and

3.1.5 ensure that each Optum representative has the necessary skills, qualifications and experience to perform the relevant Services.

3.2 In relation to the Upload Only Services, Optum shall have no obligations to ensure or check the accuracy of the Scan Data and the Customer acknowledges and

agrees that the Scan Data will be uploaded into the Clinical System on an 'as is' basis.

4. SERVICES

4.1 Optum reserves the right to charge the Customer for any additional costs incurred as a result of any act or omission on the part of the Customer (or any third party acting on its behalf or on whose behalf the Customer is acting, including any Service Recipient).

4.2 Optum may, at its discretion, add additional functionality and/or deliverables to the Services during the Term.

5. CUSTOMER'S OBLIGATIONS

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

5.1.1 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to the 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 1.6) (collectively the "**Service Recipient Obligations**"); and

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

5.2 The Customer shall:

5.2.1 ensure that the terms of the order or quotation which forms part of the Agreement are complete and accurate;

5.2.2 ensure that the Paper Records and/or the Scan Data are correctly filed and warrants that it has checked that the medical records are not misfiled;

5.2.3 provide Optum with such information and materials as Optum may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

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

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

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

5.2.7 comply with the documentation procedures as applicable including quality acceptance, EMIS Web

upload process, and destruction procedure/s as notified by Optum; and

5.2.8 comply with all Customer obligations relevant to the Services set out in the Schedule.

5.3 If Optum's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (each a **Customer Default**):

5.3.1 without limiting or affecting any other right or remedy available to it, Optum shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Optum's performance of any of its obligations; and

5.3.2 Optum shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Optum's failure or delay to perform any of its obligations as set out in this clause 5.3.

6. DELAYS

6.1 If Optum is prevented or delayed from performing the Services, including meeting its obligations in the Agreement, or otherwise suffers any costs, expenses or loss, due to any act or omission of the Customer (and/or any Service Recipient), its agents, subcontractors, consultants or employees, then:

6.1.1 Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer and/or Service Recipients arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly);

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

6.1.3 agree with Optum a reasonable extension of time corresponding to the delay so caused; and

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

and for the avoidance of doubt Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer and/or any Service Recipient arising directly or indirectly from such prevention or delay.

6.2 Optum shall not be liable for any delays, faults or interruptions in the Services where caused by a failure or inadequacy in any Customer, Service Recipient or third party equipment or processes or any incompatibility between any Customer, Service Recipient and third party equipment or processes, or through any Customer, Service Recipient or third party otherwise delaying or preventing Optum from performing its obligations under the Agreement through any act, omission or default.

7. CHARGES AND PAYMENT

7.1 The Customer shall pay Optum the Service Charges due in respect of the Services during the Term in accordance with the payment schedule set out in clause 7.11.

7.2 Optum will raise invoices in relation to the Service Charges following the Commencement Date in accordance with the frequency for such payments detailed in clause 7.11. Should the Customer not receive such invoices from Optum then the Customer shall notify Optum in writing that it has not received such invoice and Optum will issue the invoice.

7.3 Save where a charge is expressed to be payable in advance (in which case it will be payable on receipt of the relevant invoice) then the Customer shall pay each invoice in full and in cleared funds within thirty (30) calendar days of the date of such invoice to a bank account nominated in writing by Optum.

7.4 The quoted Service Charge is based on the assumption that each Paper Record will contain (on average) 85 individual pages. If Optum finds that the Customer's Paper Records contain (on average) more than 10 per cent above the assumed average then Optum shall be entitled to increase the Service Charges on a pro rata basis.

7.5 For the avoidance of doubt all Service Charges are exclusive of VAT, which Optum shall add to its invoices at the appropriate rate.

7.6 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:

7.6.1 charge interest on such sum from the due date for payment at the rate of four percentage points a year above the Bank of England's base rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand (or Optum may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or

7.6.2 suspend all Services without any liability to the Customer (or any Service Recipient) until payment has been made in full.

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

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

7.9 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.

7.10 Where the Customer is purchasing Services for the benefit of a number of Service Recipients the date of actual receipt of Services 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.

7.11 The Customer shall pay the Service Charges to Optum in accordance with the following payment schedule depending upon the Services contained in the Agreement and the total Service Charges under the Agreement:

Services in Contract	Total Service Charges (£)	
	Less than £250,000	Greater than £250,000
Scan Only Services and any associated Box Packing Services	100% of total Service Charges are payable in advance	100% of total Service Charges are payable in advance
Scan and Upload Services and any associated Box Packing Services	100% of total Service Charges are payable in advance	1. 50% of total Service Charges are payable in advance; 2. 25% of total Service Charges are payable following collection of 40% of Filled Archive Boxes collected from Sites; and 3. 25% of total Service Charges are payable on 80% of Filled Archive Boxes collected from Sites
Upload Only Services	100% of total Service Charges are payable	1. 50% of total Service Charges are payable in advance; and 2. 50% of total Service Charges are payable once Scan Data relating to 50% of Sites uploaded
Milk-Round Services	100% of total Service Charge (as set out in agreed quote, utilising Optum rate card as provided on request and as updated from time to time) that	100% of total Service Charge (as set out in agreed quote, utilising Optum rate card as provided on request and as updated from time to time) that are

	are payable in advance of Services. If the use of the Services exceeds quoted volume, then Optum will undertake a true-up at the end of the relevant period and issue an invoice accordingly.	payable in advance of Services. If the use of the Services exceeds quoted volume, then Optum will undertake a true-up at the end of the relevant period and issue an invoice accordingly.
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8. INDEMNIFICATION

8.1 The Customer shall indemnify Optum fully and keep Optum indemnified fully at all times against any claim, loss, charge, injury, expense, damage and/or costs suffered, sustained or incurred by Optum arising from the Customer's and/or any Service Recipient's negligence or failure to perform or delay in the performance of any of its obligations under the Agreement or from the Customer's and/or any Service Recipient's use of the Services 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. CONFIDENTIALITY

9.1 The Customer shall keep in strict confidence all Optum Materials and any technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and which 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 the services which the Customer may obtain (collectively, the "**Confidential Information**").

9.2 The Customer and/or where appropriate a Service Recipient may disclose the relevant Confidential Information:

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

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

9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any Confidential Information keep the same confidential and otherwise comply with this clause 9.

9.4 The Customer shall not use any Confidential Information for any purpose other than as necessary in receipt of the Services or to perform its obligations under the Agreement.

9.5 All materials, equipment and tools, drawings, specifications and data supplied by Optum to the Customer (including, Optum Materials and the Equipment) 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.

10. LIMITATIONS OF LIABILITY

10.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 10, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

10.2 This clause 10 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors), including in respect of:

10.2.1 any breach of the Agreement;

10.2.2 any use of the Services (or any part of them); and/or

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

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

10.3.1 death or personal injury resulting from its negligence;

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

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

10.4 Subject to clause 10.3, 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:

10.4.1 loss (whether direct or indirect) of profits;

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

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

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

10.4.5 loss (whether direct or indirect) of use;

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

10.4.7 indirect, consequential or special loss or damage,

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

10.5 Subject to clause 10.3, Optum's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise arising out of or in connection with the Agreement in respect of all Losses (including, under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Service Charges 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 Charges paid and/or due to be paid in the final Contract Year of the Agreement).

10.6 Any Losses suffered by a Service Recipient under or in connection with the Agreement ("**Service Recipient Losses**") shall be deemed for the purposes of the Agreement to be Losses suffered by 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 10, 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).

11. DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

11.2 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).

11.3 Annex 1 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.

11.4 Without prejudice to the generality of clause 11.1, the Customer (and/or where appropriate the

relevant Service Recipient) will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Optum for the duration and purposes of the Agreement.

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

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

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

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

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

- a) the Customer (and/or where appropriate the relevant Service Recipient) or Optum has provided appropriate safeguards in relation to the transfer;
- b) the Data Subject has enforceable rights and effective legal remedies;
- c) Optum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- d) Optum complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;

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

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

11.5.7 at the written direction of the Customer (and/or where appropriate the relevant Service Recipient), delete

or return Personal Data and copies thereof to the Customer (and/or where appropriate the relevant Service Recipient) on termination of the Agreement unless required by law to store the Personal Data; and

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

11.6 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 will notify the Customer in writing about the identity of a potential Sub-Processor and the Customer will have the right to object to the same by giving notice in writing within one month from receiving the notification from Optum. If the Customer objects to the change then Optum may either accept the objection and not appoint the relevant Sub-Processor or it may terminate the Agreement without any liability to the Customer). Optum shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. Optum is accountable for any Sub-Processor in the same way as for its own actions and omissions.

11.7 The parties may, acting reasonably, agree to amend the Agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.

11.8 Optum acknowledges that the Customer has (and the relevant Service Recipients have) duties and obligations under the Freedom of Information Act 2000 (FOIA) and Optum will upon request give reasonable assistance where appropriate or necessary in relation to their compliance with such duties.

12. TERM AND TERMINATION

12.1 The Agreement shall commence on the Commencement Date. Unless terminated earlier pursuant to these terms, the Agreement shall expire following the completion of delivery of the Services by Optum.

12.2 Either party may terminate the Agreement by giving the other party not less than three (3) months' prior written notice.

12.3 No element of the Service Charge shall be refundable by Optum on termination of the Agreement.

12.4 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:

12.4.1 the other party fails to pay any amount due under the Agreement on the due date for payment and it remains in default not less than seven (7) days after being notified in writing to make such payment;

12.4.2 the other party commits a material breach of any 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

12.4.3 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).

12.5 On termination of the Agreement for any reason:

12.5.1 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, Optum may submit an invoice, which shall be payable immediately on receipt; and

12.5.2 the Customer shall (and shall ensure that any Service Recipients shall) destroy or return (as appropriate) all of the Equipment and Optum Materials, including anything provided by subcontractors. If the Customer fails to do so, then Optum may enter the Customer's (and/or where appropriate the relevant Service Recipient's) premises (or the Sites) and take possession of them. Until they have been returned or repossessed, the Customer (and/or where appropriate the relevant Service Recipient) shall be solely responsible for their safe keeping.

12.6 Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will

12.6.1 be without prejudice to any obligation or right of either party which has accrued prior to such expiry or termination (or will thereafter accrue in respect of the period before such expiry or termination); and

12.6.2 not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

12.7 Without prejudice to the generality of clause 12.6, the provisions of clauses 8, 9, 10, 12 and 21 will survive expiry or termination of the Agreement for any reason.

13. WARRANTY DISCLAIMER

13.1 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 Equipment, any licence of software and/or provision of the Services which might otherwise be implied into, or incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

13.2 Optum DOES NOT WARRANT THAT ANY SOFTWARE LICENSED UNDER THE AGREEMENT WILL BE ERROR FREE.

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

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 as a result of any 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, pandemic, epidemic, 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 legal 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 agreed 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 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. SUB-CONTRACTING AND ASSIGNMENT

19.1 Optum shall be entitled to sub-contract the delivery of any or all elements of the Services. Optum shall remain responsible for the delivery of the Services notwithstanding its use of subcontractor(s).

19.2 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.

19.3 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.

19.4 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.

19.5 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 19.6 each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

19.6 Notwithstanding clause 19.5, 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 from 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 Working Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

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

21. RECORD RETENTION

21.1 Optum may retain a copy of the manifest list, scanning operation audit and upload manifest for a period up to six (6) years after issuing the certificate of destruction referred to in the Schedule. Thereafter Optum may delete the documents referred to in this clause without notifying the Customer.

22. GOVERNING LAW AND JURISDICTION

22.1 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.

22.2 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).

SCHEDULE – Services

Overview:

The Services will comprise the Support Services and one or more of the (i) Scanning and Upload Services, (ii) Scanning Only Services, and/or (iii) Upload Only Services as set out in the Agreement. The elements of the Services are described in this Schedule. The Customer acknowledges that it is responsible for ensuring that the Services detailed in the Agreement meet its (and any Service Recipient's) requirements and that Optum shall not be liable for any failure to deliver any service which is not so detailed.

A Support Services:

The Support Services shall be supplied by Optum to the Customer as part of the Services.

1. Optum shall, during the Term, use its reasonable endeavours to:
 - 1.1 provide telephone support during Normal Support Hours; and
 - 1.2 work with the Customer to resolve any data acceptance queries or Scan Data problems, subject to Section D paragraph 9.

B Box Packing Services

The Box Packing Services are only available in addition to the Scanning and Upload Services and/or the Scanning Only Services. Where the Box Packing Services form part of the Service under this Agreement, Optum will liaise with the Customer to arrange a mutually convenient date for Optum, or its nominated contractor, to attend the Sites to fill the Archive Boxes with the Paper Records and shall provide the Customer with information and instructions about how to prepare the Paper Records for this process. The Customer shall co-operate with Optum (and/or its nominated contractor) to arrange for the Box Packing Services to take place as further detailed below.

Optum will arrange for a small team of personnel to attend a Site at a pre-arranged time and, on the Site's behalf, will pack the Site's Paper Records. The Service Recipient must provide Optum with a list of active patients from their computerised clinical system (known as an **Extracted Patient List** or 'EPL') prior to the packing team attending the relevant Site.

Any 'exceptions' (being files found for patients who are not present on the EPL or patients listed on the EPL where a physical file cannot be located) which are identified will be shared with the Site once the Filled Archive Boxes are checked in at the relevant scanning centre. The Service Recipient must review and acknowledge the list of any exceptions discovered post booking-in stage and provide confirmation for each exception identified.

The box packing team will attend the Site with the required consumables in order to appropriately pack the Paper Records into Archive Boxes. This includes flat-packed boxes, lids, cable ties and barcode stickers.

The arrival date of the box packing team and the duration they will be present at the Site will be shared by Optum with both the Site and the Customer as part of the project planning and scheduling stages.

C Service Description: Scanning and Upload Services and Scanning Only Services

Where the Scanning and Upload Services and/or the Scanning Only Services form part of the Agreement they will be delivered as set out in this Section C of the Schedule and the parties shall comply with their respective obligations. Where the description applies only to the Scanning and Upload Services and not to the Scanning Only Services, it is clearly indicated.

As more particularly described below, Optum will collect physical Paper Records from the Customer, scan them to create data files and provide the digital versions of the records to the Customer. In relation to the Scanning and Upload Services and, subject to acceptance of the Digital Records by the Customer, Optum will then upload the Digital Records into the Clinical System.

Following receipt of the relevant upload acceptance and the destruction authorisation the Paper Records and any back-up Digital Records will be destroyed (together with any Digital Records held by the relevant

scanning supplier). The Lloyd George wallets/envelopes will be returned to the Customer, together with any files where an issue has been identified as detailed in paragraph 2.3 below.

Optum obligations:

1. Optum will:
 - 1.1 following the Commencement Date register the Customer on the Optum customer database;
 - 1.2 except where the Box Packing Services are included in the Agreement, send to the Customer the required number of Archive Boxes (including lids and cable ties) and separately an electronic copy of the Master Manifest List template;
 - 1.3 except where the Box Packing Services are included in the Agreement, liaise with the Customer to schedule the collection of the Filled Archive Boxes from the Customer;
 - 1.4 collect Filled Archive Boxes using Optum's secure courier service; and
 - 1.5 give the Customer a signed receipt following collection of the Filled Archive Boxes (and keep a copy receipt as evidence that the collection has taken place).
2. After collecting the Filled Archive Boxes, Optum will:
 - 2.1 notify the Customer of how long it expects to take to complete the Services;
 - 2.2 contact the Customer if it identifies any missing Master Manifest List or any Paper Records contained in the Filled Archive Boxes which are not detailed on the Master Manifest List (or any Paper Records detailed in the Master Manifest List that are not contained within the Filled Archive Boxes);
 - 2.3 at its discretion if it identifies any such Paper Records which are not detailed on the Master Manifest List prepared in accordance with paragraph 4 of this Schedule, return them to the Customer. For the avoidance of doubt Optum reserves the right to charge for any such additional administration, secure separate storage and carriage costs incurred at its standard rates from time to time;
 - 2.4 scan the relevant Paper Records so as to produce the Scan Data;
 - 2.5 apply the OCR Processing to the Scan Data where relevant;
 - 2.6 store the original Paper Records for a period of up to sixty (60) calendar days after creating the Scan Data. If the Customer wishes the Paper Records to be stored for longer then it may request a quote for this from Optum and Optum reserves the right to charge for any such additional storage at its standard rates from time to time;
 - 2.7 at its discretion provide the Customer with a copy of the Scan Data either: (i) on removable media; or (ii) by making them available to the Customer via the Scan Data Portal for the Customer to accept;
 - 2.8 only when and if the Customer has confirmed to Optum acceptance of the Scan Data, upload the Scan Data into the Clinical System as a bulk upload within such timescales as may be agreed by the parties (and by applying Optum's standard uploading process (as updated from time to time));
 - 2.9 where appropriate, box and catalogue the Lloyd George envelopes and return them to the Customer; and
 - 2.10 after it has received written authorisation from the relevant Service Recipient to do so, destroy the original Paper Records, and all Digital Records (including any held by the relevant scanning supplier) and provide the Customer with an appropriate certificate of destruction, unless the parties have agreed to an extended storage period which, for the avoidance of doubt, would be subject to additional charges.
3. If within sixty (60) calendar days of receiving a copy of the Scan Data the Customer fails (pursuant to paragraph 2.68 of this Section C) to confirm that the Scan Data has been accepted, or to register any acceptance issues which are subsequently classified by Optum (acting reasonably) as genuine issues, then Optum may, at its absolute discretion and at the Customer's expense, either: (i) return the Paper Records to the Customer; or (ii) continue to store the Paper Records (and it may in any event arrange for any Digital Records to be deleted).

Customer obligations:

4. The Customer shall:
 - 4.1 liaise with Optum to schedule and facilitate the collection of the Filled Archive Boxes from the Site(s);
 - 4.2 prepare the Master Manifest List in accordance with Optum's reasonable instructions from time to time;
 - 4.3 when preparing the Master Manifest List, where relevant, ensure that it is appropriately encrypted and/or password protected;
 - 4.4 when transferring the Master Manifest List to Optum digitally, ensure that it either signs on to the secure Scan Data Portal and copies the completed Master Manifest List into the designated folder, or if no access to a secure Scan Data Portal is available, or if so requested by Optum, email a password protected version of the Excel Master Manifest List to Optum;
 - 4.5 fill the Archive Boxes with the Paper Records and ensure that each Filled Archive Box will close comfortably, is not over-filled and does not weigh more than fifteen (15) kilograms;
 - 4.6 only make available to Optum Paper Records for which, for the purposes of the Data Protection Legislation, the Customer is a data controller, and has a corresponding patient entry on the relevant practice's MML;
 - 4.7 secure the Filled Archive Boxes with the supplied cable-ties;
 - 4.8 promptly notify Optum if it requires any additional Archive Boxes (and/or cable ties; and
 - 4.9 allow Optum such access to the Site(s) as it reasonably requires in order to collect the Filled Archive Boxes.
5. Once the Customer has received a copy of the Scan Data it shall promptly (and in any event within sixty (60) days of receipt):
 - 5.1 review the Scan Data in order to check that the relevant Paper Records have been properly digitised and to accept the same; and
 - 5.2 contact Optum (via its Deployment and Implementation Team) to either confirm that the Scan Data has been accepted or to register any acceptance or other issues with the Scan Data.
6. If the Customer intends at any time during the Term to change the location of any Site, it shall (where possible) give Optum at least ten (10) days' prior written notice of its intention to do so and Optum shall notify the Customer of the additional charges, if any, that will apply as a result of the proposed move (or it may, at its discretion advise the Customer that it will not continue to provide the Services at the new location).
7. During the Term the Customer shall and, where appropriate, shall procure that any Service Recipient shall:
 - 7.1 provide such information and assistance as Optum may require in connection with the provision of the Services (or any related support);
 - 7.2 provide Optum with up to date and relevant contact details;
 - 7.3 only use the Services in accordance with any and all applicable laws and regulations, (including, the Data Protection Legislation);
 - 7.4 provide to Optum, in a timely manner, such In-put Material and other information as Optum may require and ensure that it is accurate in all material respects;
 - 7.5 not unreasonably refuse to accept changes to the Services which Optum may introduce from time to time in response to changes in technology and resultant changes in Optum's working practices;
 - 7.6 obtain and maintain all necessary licences and consents (including, if applicable, the licences necessary for it to use the relevant Clinical System) and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Equipment; and

- 7.7 not (and shall ensure that no Service Recipient or any third party shall) misuse the Services in any manner.
8. The Customer acknowledges that it is responsible for ensuring that the Services detailed in the Agreement meet its (and any Service Recipient's) requirements and that Optum shall not be liable for any failure to deliver any service which is not so detailed.

D Upload Only Services

Where the Upload Only Services form part of the Agreement they will be delivered as set out below and the parties shall comply with their respective obligations.

As more particularly described below, Optum will upload the Scan Data provided to it by or on behalf of the Customer to the Clinical System.

Optum obligations:

1. If applicable, Optum will register the Customer and/or relevant Service Recipient(s) on the Optum customer database;
2. After receiving the Control Sheet and Scan Data from or on behalf of the Customer, or Service Recipient as applicable, Optum will:
 - 2.1 notify the Customer as to how long it expects to take to complete the Services;
 - 2.2 contact the Customer if it identifies the Scan Data is not in the Prescribed Format;
 - 2.3 upload Scan Data in the Prescribed Format to the Clinical System;
 - 2.4 report to the Customer on:
 - 2.4.1 number of files uploaded successfully (summary + detail); and
 - 2.4.2 number of files where upload was unsuccessful (summary broken down + detail), detail to include filename + exception reason; and
 - 2.5 following completion of the upload, issuing upload reports and acceptance of the upload by the Customer as detailed below, delete the Digital Records from the Scan Data Portal (if applicable).
3. Optum will:
 - 3.1 use its selected courier service to transport the items;
 - 3.2 retain a signed receipt as evidence of the handover of the items to the Customer; and
 - 3.3 acknowledge physical receipt and/or receipt by electronic transfer of the Control List and Scan Data but for the avoidance of doubt, such acknowledgement shall not constitute confirmation that Optum has checked the contents of the Control List and Scan Data.
4. If within thirty (30) calendar days of receiving a copy of the Scan Data the Customer fails (pursuant to paragraph 7 of this section D) to confirm that the Scan Data has been accepted, or to register any acceptance issues which are subsequently classified by Optum (acting reasonably) as genuine issues, then Optum may, at its absolute discretion and at the Customer's expense, either: (i) delete the Digital Records from the Scan Data Portal (if applicable); or (ii) continue to store the Digital Records for a maximum of an additional thirty (30) calendar days.

Customer obligations:

5. The Customer acknowledges and agrees that Optum will upload the Scan Data provided to it by the Customer and/or Service Recipient(s) on an "as is" basis and that Optum has no obligation to check the accuracy of the Input Materials.
6. The Customer shall:
 - 6.1 liaise with Optum to schedule and facilitate the provision of Scan Data relating to the Site(s);

- 6.2 provide the Control Sheet and Scan Data in the Prescribed Format and, where using the Scan Data Portal, shall comply with Optum's instructions from time to time for secure usage of the Scan Data Portal;
 - 6.3 satisfy itself as to the completeness and accuracy of the Scan Data before delivering it to Optum;
 - 6.4 when preparing the Scan Data ensure that it is appropriately encrypted and/or password protected; and
 - 6.5 only make available to Optum Scan Data for which, for the purposes of the Data Protection Legislation, the Customer is a data controller.
7. Once Optum has notified the Customer that the Scan Data has been uploaded to the Clinical System, the Customer shall promptly (and in any event within thirty (30) days of receipt of such notice):
 - 7.1 review the upload of the Scan Data within the Clinical System in order to check that the Scan Data has been uploaded in accordance with the Agreement and to accept the same;
 - 7.2 contact Optum to either confirm that the upload of the Scan Data has been accepted or to, acting reasonably, register any acceptance or other issues with the upload; and
 - 7.3 comply with any other instructions or directions as may be provided by Optum from time to time.
8. During the Term the Customer shall (and, where appropriate, shall procure that any Service Recipient shall):
 - 8.1 provide such information and assistance as Optum may require in connection with the provision of the Services (or any related support);
 - 8.2 provide Optum with up to date and relevant contact details;
 - 8.3 only use the Services in accordance with any and all applicable laws and regulations, (including, the Data Protection Legislation);
 - 8.4 provide to Optum, in a timely manner, such In-put Material and other information as Optum may require and ensure that it is accurate in all material respects;
 - 8.5 not unreasonably refuse to accept changes to the Services which Optum may introduce from time to time in response to changes in technology and resultant changes in Optum's working practices;
 - 8.6 obtain and maintain all necessary licences and consents (including, if applicable, the licences necessary for it to use the relevant Clinical System) and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Equipment; and
 - 8.7 not (and shall ensure that no Service Recipient or any third party shall) misuse the Services in any manner.
 9. If the Customer notifies Optum that Scan Data has been uploaded to the Clinical System by Optum but that it is inadequate (poor quality) or incorrectly loaded then Optum will, if so requested by the Customer, remove such files from the Clinical System then re-load corrected files. The Customer shall pay Optum's reasonable additional charges for this where the problem was caused by any act or omission of the Customer, the Service Recipient or their nominated third party supplier of scanning services.

E Milk-Round Services

1. Where the Milk-Round Services form part of the Agreement they will be delivered as set out in this Section E of the Schedule and the parties shall comply with their respective obligations.
2. The particulars of the Milk Round Services are as set out for the Scanning and Upload Services in Section C of this Schedule, including the Optum Obligations (Section C, paragraphs 1-3 of this Schedule) and the Customer Obligations (Section C paragraphs 4-8 of this Schedule). For the avoidance of doubt, the Box Packing Service will not apply to any Milk-Round Services. The Milk Round Services differ from the other services in that it is a service that will be delivered on a regular and routine basis and in relation to (typically) relatively small volumes of records so that the Customer can deal with any additional Paper Records it receives or identifies from time to time.

A Fair Usage Policy will apply to all Milk-Round Services, as further detailed below:

1. The Service Charges assume that each box will contain an average of 35 individual patient's records spread across not more than 45 pouches/wallets.
2. Practices should not attempt to overload or "stuff" boxes – if an excessive number of wallets/pouches are identified then Optum may require the Site to remove the excess files and/or put them into a separate box (and update the manifests accordingly).
3. Placing an excessive number of wallets into a box can result in damage to the wallets and their contents which in turn can lead to:
 - 3.1 increased time being spent in order to prepare the records prior to scanning;
 - 3.2 poor quality scans leading to unsuccessful uploads; and/or
 - 3.3 increased risk of individual papers being lost or mixed.
4. The wallets/pouches are expected to be in a reasonable condition – if any are damaged or torn to a material degree then the practice should repair or replace these prior to collection (otherwise the issues detailed above might arise)
5. The boxes must be ready for collection on the agreed date (and at the agreed time (where relevant)).
6. Any documentation/labels required by the supplier must be completed (correctly) in advance of collection.
7. Where Optum has provided the Site with boxes, then the Site must use those boxes when packing the wallets/pouches – if the box is lost or damaged then the Site should contact Optum to request a replacement.

Any additional remedial work required as a result of any failure to comply with this Schedule will be charged at Optum's standard day rates.

ANNEX 1 – Processing, Personal Data and Data Subject

1. Processing by Optum:
 - 1.1 Subject matter of the processing: The Service is designed to process patient medical records in paper format, scan those into digital format, where included in the Services, upload the scanned records into the Clinical System and destroy paper records and any temporary data files (including Digital Records) to complete the service.
 - 1.2 Nature: Paper records are boxed, catalogued and stored by the Customer and/or Service Recipient, followed by physical collection from the Customer's or Service Recipient's premises, transportation to a scanning centre including temporary secure storage and final secure destruction of paper records and digital copies.
 - 1.3 Purpose of processing: Patient medical records will be transformed from physical paper format to digital format suitable for uploading to, storage and retrieval using the Customer's Clinical System.
 - 1.4 Duration of the processing For the duration needed to deliver the service from collection of paper records through to upload and ultimate destruction of the paper records and any digital copies in accordance with this agreement.,.
2. Types of Personal Data: We may collect, use, store and transfer the following classes of personal data as follows:
 - Identity Data including first name, last name, gender, date of birth, post code and NHS number.
 - Contact Data including email address and telephone numbers as held on paper records.
 - Special Category Data including sensitive medical details such as symptoms, conditions, family history, medication, medical records, images and any other health data provided and or shared with other related organisations as held on the paper records.
3. Categories of Data Subject: Patients, patient's family or next of kin, staff notes, notes or comments on symptoms, conditions or family history from other clinical professionals.