

EMIS ANYWHERE TERMS AND CONDITIONS

These terms and conditions ("**Conditions**") govern the Solution (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, form the entire agreement between Optum and the Customer in respect of the sale of the Goods (as defined), supply of Equipment (as defined) and licence of software and provision of the Solution (the "**Agreement**").

BACKGROUND

Optum has created a service enabling the Customer to access Clinical System (as defined) remotely using a Device (as defined) by accessing the N3 via an internet connection.

The Customer uses a Token (as defined) and VPN Software (as defined) to gain (through a secure VPN tunnel) the N3 access to which it is ordinarily entitled.

If the Customer has also purchased the Desktop Equipment (as defined) from Optum then the Customer may use the Tablet as a desktop solution to access EMIS Web.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 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.

Agreed Usage: 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.

Clinical System: means the clinical health care record and information technology systems known as EMIS Web and SystmOne as may be used by the Customer pursuant to a separate agreement with the relevant licensor detailing the terms of use of such system.

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.

Desktop Equipment: means the desktop keyboard, monitor, mouse and Tablet docking station as may be provided by Optum to the Customer.

Device: means the relevant laptop or tablet device provided by Optum to the Customer as specified in the relevant quotation or order form.

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 X Mobile: means the clinical management application named "EMIS X Mobile" that is available via the Apple App store, Google Play Store & Windows App Store.

End Users: means the medical practitioners which the Customer and/or where applicable any Service Recipient, authorises to use the Solution.

Equipment: means, collectively, the Keyboard, the SIM Card, the Device and the Token.

Goods: means the Desktop Equipment or the Equipment (or both, as appropriate) as specified in the relevant quote or order form.

Initial Term: means the period stated 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, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or

equivalent rights or forms of protection in any part of the world.

Keyboard: means the portable keyboard provided by Optum to the Customer for use with the Tablet.

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

N3: means the national broadband network for the English National Health Service which securely links acute hospitals and GP surgeries in England and Scotland.

Operational Hours: means 6:00am to 11:00pm from Monday to Friday inclusive.

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

Pin Code: means the individual pin code assigned by the Customer and/or where applicable any Service Recipient to each End User so as to allow them to access the Solution.

Service Charge: means the charges payable by the Customer to Optum under the Agreement 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 8.4).

Service Recipient(s): means, where the Customer is contracting for delivery of the Solution 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.

SIM Card: means the subscriber identity module integrated circuit provided by Optum to the Customer for use in the Device.

Solution: means the solution to be provided by Optum to the Customer as detailed at clauses 3.1 and 3.2.

Support: means the support services to be provided by Optum to the Customer pursuant to clause 7.

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.

Token(s): means the authentication token(s) provided by Optum to the Customer.

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

VPN Software: means the virtual private network software provided by Optum to the Customer.

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 not (save as expressly provided for below) 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 sells the Goods, supplies Equipment, licences software and/or delivers the Solution for the benefit of any Service Recipients, the Customer shall:

1.6.1 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to the Goods sold to, Equipment supplied to, software licensed to and/or the Solution 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

1.6.2 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.

1.7 In the Agreement, unless the context requires otherwise:

1.7.1 references to the Customer receiving the Equipment and/or Goods, licensed software and/or the Solution shall include, to the extent that they are receiving the Equipment and/or Goods, licensed software and/or the Solution, the Service Recipients;

1.7.2 references to the Customer's:

1.7.2.1 assets, systems, business;

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

shall include, to the extent that they are receiving the Equipment, Goods, licensed software and/or the Solution, those of the Service Recipients;

1.7.3 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, Goods, licensed software and/or the Solution under the Agreement.

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 the Solution (including, the relevant goods and services) 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 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. SOLUTION

3.1 Optum shall use its reasonable endeavours to provide the Customer with the Solution so as to enable the Customer to access the relevant Clinical System remotely using the Device. In order to do so the Customer will access the N3 remotely via the internet connection provided by the SIM Card or a Wi-Fi connection and the Device. The Customer will then use the Token (and VPN Software provided) to connect through a secure VPN tunnel. The Customer shall input its security details (the Pin Code and the additional code produced by the Token) which will be validated by an authentication platform which can allow the Customer to connect to the N3. Once connected, the Customer will have the same N3 access to which it is ordinarily entitled and it may then access the relevant Clinical System using the Device.

3.2 If the Customer also purchases the Desktop Equipment the Customer will be able to use the Tablet as a desktop solution to access EMIS Web.

3.3 Subject to any planned down-time, Optum shall use its reasonable endeavours to make the Solution available for use by the End Users during the Operational Hours. Should the Solution not be available during the Operational Hours then the Customer shall direct the End User(s) to contact Optum's customer support line. Optum shall handle any faults in accordance with the provisions of clause 7.

3.4 For the avoidance of doubt:

3.4.1 if the Customer chooses to use EMIS X Mobile, instead of EMIS Web, on the Device, pursuant to a separate agreement detailing the terms of use of such app, the Customer does not need to connect to the N3; and

3.4.2 the Solution is provided for use only within the United Kingdom.

4. GOODS

4.1 Optum will deliver the Goods detailed in any accepted Order Form in accordance with the terms of the Agreement (and such Goods will form part of the relevant Solution).

4.2 Optum will deliver the Goods to the location set out in Optum's written quote or as otherwise agreed in writing with Optum (the "**Delivery Location**") at any time after Optum notifies the Customer that the Goods are ready. Delivery of the Goods will be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence of the Agreement. Optum shall not be liable for any delay (or failure) in delivery of the Goods that is caused by the Customer's failure to provide Optum with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Customer fails to accept or take delivery of the Goods, then (except where such failure or delay is caused by Optum's failure to comply with its obligations under the Agreement) in respect of the Goods:

4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the first business day following the day on which Optum notified the Customer that the Goods were ready; and

4.4.2 Optum shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.5 If ten (10) days after Optum notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Optum may (without prejudice to any other right or remedy available to it and without any liability to the Customer) resell or otherwise dispose of part or all of the Goods.

4.6 The Customer shall not be entitled to reject the Goods if Optum delivers up to and including five (5) per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.7 Optum may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.8 Optum shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer's warranty regarding the relevant Goods.

4.9 Optum warrants that on delivery, the Goods shall:

4.9.1 conform in all material respects with the relevant specification (if any) set out in the Optum Materials; and

4.9.2 be free from material defects in design, material and workmanship,

provided that Optum reserves the right to amend any specification(s) in respect of the Goods to reflect any changes made by the relevant manufacturer(s) or if required by any applicable statutory or regulatory requirements.

clause 4.11, if:

4.10.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.9;

4.10.2 Optum is given a reasonable opportunity of examining such Goods; and

4.10.3 the Customer (if asked to do so by Optum) returns such Goods to Optum's place of business at the Customer's cost,

then Optum shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.11 Optum shall not be liable for the Goods' failure to comply with the warranty in clause 4.9 if:

4.11.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.10;

4.11.2 the defect arises because the Customer failed to follow Optum's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

4.11.3 the Customer alters or repairs such Goods without the written consent of Optum;

4.11.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or

4.11.5 the Goods differ from the relevant Goods specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.12 Except as provided in this clause 4, Optum shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.9.

4.13 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by Optum under the Agreement.

4.14 Risk in the Goods will pass to the Customer on completion of delivery.

4.15 Title to the Goods shall not pass to the Customer until Optum receives payment in full (in cash or cleared funds) for the Goods (and any other goods that Optum has supplied to the Customer in respect of which payment has become due), in which case title to the Goods shall pass at the time of payment of all such sums. For the avoidance of doubt, title relates only to the physical Goods and not to the VPN Software (and/or any software as may be embedded within the Goods) provided by Optum, or any third party licensor, as software is only ever licensed to the Customer (in accordance with the terms of the Agreement).

4.16 Until title to the Goods has passed to the Customer, the Customer shall:

4.16.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Optum's property;

4.16.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

4.16.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Optum's behalf from the date of delivery;

4.16.4 notify Optum immediately if it becomes subject to any of the events listed in clause 13.4; and

4.16.5 give Optum such information relating to the Goods as Optum may require from time to time.

4.17 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.4.3, then, without limiting any other right or remedy Optum may have:

4.17.1 the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and

4.17.2 Optum may at any time: (i) require the Customer to deliver up the relevant Goods in its possession; and (ii) if the Customer fails to do so promptly, enter any sites where the Goods are stored in order to recover them.

5. OPTUM OBLIGATIONS

5.1 Optum shall use its reasonable endeavours to:

5.1.1 provide the Solution in accordance in all material respects with the terms of the Agreement;

5.1.2 install the VPN Software on each Tablet before it is delivered to the Customer;

5.1.3 deliver to the Customer the Goods, the VPN Software, and a Pin Code for each of the Customer's End Users;

5.1.4 provide reasonable assistance to the Customer in installing and using the Solution by providing a customer support line and training materials via a dedicated customer portal;

5.1.5 maintain the Solution, including the VPN Software, to allow the End User(s) access to services through the N3 network;

5.1.6 provide the Support detailed at clause 7;

5.1.7 provide the Customer with Microsoft BitLocker encryption software which the Customer may use pursuant to its obligations under clause 6.7.2 (and pursuant to any third party end user licensing terms relating to the same);

5.1.8 upon termination of the Solution (and at its option) collect the Token from the Customer using such method(s) as it sees fit;

5.1.9 if the Customer orders a replacement Token or SIM Card pursuant to clause 6.1.11, supply these at its prevailing rates as at the relevant time. The supply of such replacement Token or SIM Card, and the Customer's use of the same, shall be subject to the terms and conditions of the Agreement; and

5.1.10 provide any additional training requested by the Customer pursuant to clause 6.2.

5.2 Optum offers no guarantee or warranty with respect to the precise compatibility or suitability of the Goods to meet the needs or requirements of the Customer (whether or not they have been communicated to Optum). It is the Customer's responsibility to check this prior to ordering.

6. CUSTOMER OBLIGATIONS

6.1 The Customer shall:

6.1.1 provide Optum with details of each End User, including their NHS or practice email address, work address and telephone number, so as to allow their Tokens to be registered;

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

6.1.3 ensure that the Solution is only accessed using the Goods, the VPN Software and the Pin Code (as provided by Optum from time to time);

6.1.4 ensure that each End User's Device is connected to the internet, using the SIM Card or other method, in order to access the Solution;

6.1.5 ensure that each End User inputs their Pin Code and the code produced by the Token when requested to do so in order to access the Solution;

6.1.6 ensure that each End User is properly authorised to use the relevant Clinical System;

6.1.7 when using EMIS Web through the Solution without the Desktop Equipment in relation to a tablet device, ensure that the Keyboard is connected to the Device at all times in order to minimise the risk of any potential clinical risk being created by using the Device's own keyboard function which may obscure part of the Device's screen;

6.1.8 only allow the use of the Solution: (i) by End Users; and (ii) in accordance with the terms and conditions of the Agreement;

6.1.9 promptly contact Optum's customer support line to register any fault with the Solution;

6.1.10 where required by Optum, run self-test procedures or correct problems with remote telephone support;

6.1.11 notify Optum if any Token or SIM Card is lost, providing such information as is reasonably required to assist Optum in deactivating the lost item, and state if the Customer wishes to order a replacement; and

6.1.12 co-operate with Optum in all matters relating to the Solution.

6.2 Should the Customer require additional training in relation to the Solution then it shall contact Optum providing details of its requirements and requesting a quote.

6.3 For the avoidance of doubt, the Customer shall remain liable to pay the Service Charge in the interim period whilst it awaits delivery of any replacement Token(s) or SIM Card(s).

6.4 The Customer shall not (and shall ensure that the End Users shall not):

6.4.1 allow anyone other than an End User to use the Solution;

6.4.2 allow Tokens assigned to one End User to be transferred to, or used by, another End User;

6.4.3 disclose any log-on or other access details in respect of the Solution to anyone other than an End User (or allow such details to be shared between End Users);

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6.4.4 use the SIM Card for the download of more than the Agreed Usage in any month;

6.4.5 use the Solution to connect to the N3 for any use that breaches any applicable terms of use, rules or guidelines;

6.4.6 use the Solution outside of the United Kingdom; and/or

6.4.7 misuse the Solution in any manner.

6.5 Should the Customer (or any End User) use a SIM Card to download more than the Agreed Usage in any month (in breach of clause 6.4.4), then Optum shall be entitled to immediately:

6.5.1 charge the Customer for any additional usage (in accordance with Optum's standard rates); and/or

6.5.2 suspend access to the Solution to the End User(s) of such SIM Card(s) which are exceeding the Agreed Usage.

6.6 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.

6.7 In order to use the Solution, the Customer shall:

6.7.1 first secure (and maintain) appropriate authorisation from the relevant authority to use the N3 which may require the installation of an N3 link at the End Users' relevant surgery or location; and

6.7.2 ensure that it has in place at all times, on any Device used to access the Solution, industry standard encryption software and adequate and appropriate protections against any computer software that contains any "time-bombs", "worms", "viruses", "Trojan horses", "protect codes", "data destruct keys" or other programming devices that might, or might be used to, improperly access, modify, delete, damage, deactivate or disable any third party's computer software, hardware or data.

6.8 If Optum's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its End Users or a Service Recipient or their respective agents, subcontractors, consultants or employees then:

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

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

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

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

6.9 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

negligence or failure to perform or delay in the performance of any of its obligations under the Agreement. Optum shall confirm any such costs, charges and losses to the Customer in writing.

7. SUPPORT

7.1 Optum shall, during the Term:

7.1.1 provide a customer support line for the logging of faults which will be in operation between the hours of 7.00am to 10.00pm (Mondays to Fridays), and 8.00am to 1.00pm (Saturdays);

7.1.2 assign a priority level to each fault reported; and

7.1.3 use its commercially reasonable endeavours to resolve such faults in accordance with the service table at Annex 1 (response times starting from the point of reporting of the fault to Optum via the customer support line).

7.1.4 If the Device develops a fault during the Initial Period then (pursuant to a call to the customer support line) Optum shall use its reasonable endeavours to resolve the same remotely and if it is unable to do so then it will arrange for the Device to be collected and repaired and returned as soon as is reasonably practicable.

7.2 THE TARGET RESOLUTION TIMES REFERRED TO ABOVE ARE ESTIMATES ONLY. THESE ESTIMATES ARE PROVIDED BY OPTUM 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.

7.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW OPTUM SHALL NOT BE LIABLE FOR ANY INTERRUPTION, DEGRADATION OR UNAVAILABILITY OF THE SOLUTION (DURING OPERATIONAL HOURS OR OTHERWISE). THE CUSTOMER'S SOLE REMEDY IN RELATION TO SUCH EVENTS SHALL BE FOR OPTUM TO ENDEAVOUR TO RECTIFY SUCH FAULTS IN ACCORDANCE WITH THIS CLAUSE 7.

7.4 The Solution may from time to time be unavailable due to planned maintenance activities and such unavailability shall not be deemed to be a fault.

8. SERVICE CHARGES

8.1 The Customer shall pay Optum the Service Charge due in respect of:

8.1.1 the Solution during the Term annually in advance;

8.1.2 the purchase of the Goods and/or licensing of software (where applicable), in accordance with the:

8.1.2.1 total price for the sale or licence (as applicable) of such items; and

8.1.2.2 any additional payment terms,

as set out in Optum's written quote or as otherwise agreed in writing with Optum.

8.2 Subject to clause 8.12, Optum may raise an invoice in relation to the Service Charge at any time on or after the Commencement Date. Should the Customer not receive such an invoice from Optum within thirty (30) days after the Commencement Date then it shall notify Optum in writing and Optum shall duly issue the invoice.

8.3 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.

8.4 Optum may adjust the Service Charges annually in the event that the Term is longer than (or is extended by the parties beyond) one (1) year. Optum shall notify the Customer in writing and in advance of any such change.

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

8.6 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:

8.6.1 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

8.6.2 suspend delivery of or access to the Solution (without any liability to the Customer or any Service Recipient) until payment has been made in full.

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

8.8 Notwithstanding any provision in the Agreement to the contrary, all sums payable to Optum under the Agreement shall become due immediately on its termination. This clause 8.8 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

8.9 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.

8.10 Where the Customer is purchasing the Goods, software licences, the Solution and/or the supply and use of Equipment for the benefit of a number of Service Recipients the date of actual receipt of the Solution, software licences and/or delivery and installation of Equipment and/or the Goods 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.

8.11 For the purposes of clause 8.12, Service Recipients who have received the benefit of the Solution, software licences, Equipment and/or the Goods 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**".

8.12 Notwithstanding clause 8.10, Optum shall be entitled to invoice the Customer in respect of Service Charges as follows:

8.12.1 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;

8.12.2 where the Term exceeds 12 months:

8.12.2.1 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

8.12.2.2 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

8.12.3 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.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Customer acknowledges that any and all Intellectual Property Rights created, developed, subsisting or used in or in connection with the delivery of the Solution, (including in respect of the Optum Materials) are and shall remain the sole property of Optum (and/or its third party licensor(s) as appropriate).

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

9.3 The Customer acknowledges that, where Optum does not own the Intellectual Property Rights in any element of the Solution, then Customer's use of the same shall be conditional on Optum obtaining the necessary licence(s) from the relevant licensor(s) of such materials on such terms as will entitle Optum to license such rights to the Customer (and/or in respect of any embedded software, such use may be subject to end user licence terms imposed by the relevant third party licensor).

10. CONFIDENTIALITY

10.1 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 Solution which the Customer may obtain (collectively, the "**Confidential Information**").

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

10.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such

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information for the purposes of carrying out the Customer's obligations under the Agreement and/or of receiving the Solution; and

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

10.3 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 10.

10.4 The Customer shall not use any Confidential Information for any purpose other than to perform its obligations under the Agreement.

10.5 All materials, equipment and tools, drawings, specifications and data supplied by Optum to the Customer (including, the Optum Materials but excluding the Goods) 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) in respect of:

11.2.1 any breach of the Agreement;

11.2.2 any use of the Solution (or any part thereof); and

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

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

11.3.1 death or personal injury resulting from negligence;

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

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

11.4 Subject to clause 11.3, Optum shall under no circumstances whatever be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

11.4.1 loss (whether direct or indirect) of profits;

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

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

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

11.4.5 loss (whether direct or indirect) of use;

11.4.6 loss (whether direct or indirect) of, or corruption to, data or information; and/or

11.4.7 indirect, consequential or special loss, or damages,

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

11.5 Subject to clause 11.3, 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).

11.6 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 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 & SECURITY

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 2 (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).

12.4 Without prejudice to the generality of clause 12.1, 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.

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

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

12.5.2 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;

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

12.5.4 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:

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

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

12.5.4.3 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

12.5.4.4 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;

12.5.5 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;

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

12.5.7 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

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

12.6 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 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. 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 the 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).

12.7 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.

12.8 The Customer shall be responsible for ensuring that Pin Codes and any other passwords or authentication information related to the Solution are not disclosed to third parties and that Tokens are not left unsecured in circumstances where they may be accessed by anyone other than the relevant End Users.

12.9 Optum acknowledges that the Customer has (and the 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.

13. TERM AND TERMINATION

13.1 The Agreement shall commence on the Effective 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 thirty (30) 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 shall 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 in writing to the other if:

13.4.1 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;

13.4.2 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

13.4.3 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).

13.5 On termination of the Agreement for any reason:

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

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

13.5.3 the Customer shall make the Token, including any replacement Token, (both of which remain the property of Optum) available to Optum for collection. If the Customer fails to do so then the Customer shall pay Optum's prevailing rate for replacement Tokens as is in force from time to time.

13.6 Termination of the Agreement for any reason (whether under the Agreement or otherwise) will:

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

13.6.2 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 termination.

13.7 Without prejudice to the generality of clause 13.6, the provisions of clauses 9, 10, 11, 12, 13, 14 and 23 will survive termination of the Agreement for any reason.

14. INDEMNIFICATION

14.1 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) use of the Solution other than in accordance with the terms of the Agreement.

14.2 In the event Optum is able to claim under the indemnity in clause 14.1 (or such a claim seems likely to arise), then Optum may suspend delivery of the Solution 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.

15. WARRANTY DISCLAIMER

15.1 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 the Equipment, sale of the Goods, licence of any software and provision of the Solution 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.

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

15.3 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 such software meet its requirements.

16. 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, epidemic, pandemic war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17. VARIATION

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

17.2 Subject to clause 17.1, 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.

18. WAIVER

18.1 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.

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

19. 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.

20. ENTIRE AGREEMENT

20.1 The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

20.2 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.

20.3 Nothing in this clause 20 shall limit or exclude any liability for fraud.

21. ASSIGNMENT

21.1 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.

21.2 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.

21.3 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.

21.4 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 21.5 each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

21.5 Notwithstanding clause 21.4, 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.

22. NOTICES

22.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded

delivery post to the other party at its 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 the case of the Customer) by email to uk.contracts@optum.com.

22.2 A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in normal business hours, 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.

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

23. GOVERNING LAW AND JURISDICTION

23.1 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.

23.2 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 – Service Table

Priority Level	Incident Category	Definition	Target Resolution Time
1	High	Outage of all of the Solution for all End Users.	Between 4 – 24 hours dependent on the nature of the defect
2	Medium	Use of the Solution for one or more (but not all) End Users is disrupted or degraded.	Approximately 4 - 8 hours (subject to clause 7.1.4)
3	Low	Use of the Solution for at least one End User is degraded but its core functionality is still available.	Approximately 24 hours (subject to clause 7.1.4)

ANNEX 2 – Processing, Personal Data and Data Subject

1. Processing by Optum

- 1.1 Subject matter of the processing: the Solution enables remote access to a hosted electronic patient record system.
- 1.2 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).
- 1.3 Purpose of processing: for the purposes of delivering the services and meeting other obligations specified in this agreement.
- 1.4 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: end user details including name and address and email address.

3. Categories of Data Subject: clinical and non-clinical staff.