

EMIS X ANALYTICS (EXA) MASTER SERVICE AGREEMENT

1. INTERPRETATION

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

Additional Services: means any additional services delivered by Optum to the Customer in accordance with the terms of the Agreement, as detailed in an Order Form, including any support, training, EXA Optum Learn Course, Hosting Services, Deliverable Services, EDA Services, other consultancy or similar services (as agreed between the parties).

Additional Services Output: means any output developed, created and/or delivered to the Customer by Optum through the provision of any Additional Services.

Additional Terms: means the additional terms and conditions (if any) set out under the 'Additional Terms' section in the relevant Order Form in respect of the Services and/or relevant Solution(s) detailed therein.

Affiliate: means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

Agreement: means this master services agreement, consisting of these Master Terms, the Schedules, Appendices, any and all Order Forms as may be entered into by the parties from time to time and any attachments.

Agreement Commencement Date: means the date on which the first Order Form has been entered into by the parties.

Authorised Individual: means those users (being employees of the Customer, unless otherwise detailed in the relevant Order Form) that Optum and the Customer permit from time to time to access and use the relevant Solution(s) in accordance with the terms of the Agreement.

Authorised User: means: (a) an Authorised Individual; and/or (b) any automated process through which the Customer System automatically: (i) submits queries to; and/or (ii) downloads Data and/or Derived Data from, the Solution(s).

Bulk: means the first 'pull' of relevant Data from EMIS Web which creates the database and schema and populates the Data tables in the SQL Server Instance.

Business Day: means any day between Monday and Friday (other than any public holiday in England and Wales).

Charge(s): means: (i) the Subscription Charges and/or (ii) such other charges as may be paid or payable by the Customer under the Agreement, as set out in the relevant Order Form.

Confidential Information: means information (in any format) that falls within any of the following categories:

- (a) it relates to, includes or comprises the existence or terms and conditions (or both) of the Agreement;
- (b) it is Customer Data or Data;
- (c) it forms part of the Optum Materials;
- (d) it is marked as "confidential" (or similar);
- (e) it is of a nature that a reasonable person would (in all the circumstances) consider confidential, including:
 - (i) information concerning a party's business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, products, processes, techniques, equipment, marketing, market opportunities, plans, intentions, relationships with suppliers and customers, finances, personnel, computer software, and algorithms; and
 - (ii) similar information of third parties that a party maintains in confidence; or
- (f) any combination of the foregoing.

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

Control: means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of a party, and Controls, Controlled and the expression change of Control shall be construed accordingly.

Customer: means the party referred to as such in the relevant Order Form.

Customer Data: means data used by the Customer in relation to the Solutions and/or Environment, which comprises:

- (a) any Personal Data in respect of which the

Customer is a Data Controller; and

- (b) any data controlled by, provided by or in the possession of the Customer prior to the Agreement Commencement Date or which is otherwise obtained by the Customer outside of the Agreement (excluding any Third Party Data).

Such data may already be hosted by Optum for the Customer or may otherwise be provided to Optum by the Customer for hosting.

Customer IP: means any and all Intellectual Property Rights subsisting in: (a) Customer Systems; (b) Customer Data and Derived Customer Data; (c) In-Put Materials, and/or (d) any New Materials.

Customer Systems: means any software which is proprietary to the Customer (and/or its third party licensors) and which is, or will be, used by the Customer in connection with the Agreement, which in all cases shall be a system only accessible to and by the employees, agents and other members of staff of the Customer and its Affiliates (unless otherwise detailed in the relevant Order Form).

Data: means the relevant data sets consisting of:

- (a) Customer Data; and/or
- (b) Third Party Data,

as described in the Order Form, as updated and made available through the Environment. Unless expressly stated otherwise, references in the Agreement to 'Data' shall mean Customer Data and/or Third Party Data (as appropriate).

Data Access: means making the relevant Data available to the Customer through the Environment, as more particularly described at clause 6.

Data Controller: has the meaning as defined under the Data Protection Law.

Data Processor: has the meaning as defined under the Data Protection Law.

Data Protection Law: means (i) all applicable data protection and privacy laws in force from time to time in the UK, including the Data Protection Act 2018 (DPA) and UK GDPR (having the meaning given to it in the DPA) (GDPR) (in each case as may be amended or superseded from time to time) and (ii) any guidance issued by the ICO from time to time.

Data Quality Issue: means where one of more of the following scenarios occurs:

- (a) the Customer deletes Data from its installed database and needs to re-'pull' relevant Data from EMIS Web into the SQL Server Instance;
- (b) the Customer deletes a table from its installed database which will require a Rebulk from EMIS

Web to the SQL Server Instance; and/or

- (c) the Customer's installed database becomes corrupt and cannot be restored (after reasonable attempts by someone of appropriate technical ability to do so).

Data Subject: has the meaning as defined under the Data Protection Law.

Deliverable Services: means any Additional Services provided by Optum to the Customer involving Optum carrying out software development or configuration services and/or data replication services (or other such services), as more particularly described in a relevant Order Form and in accordance with, and subject to, these Master Terms including the Deliverable Terms.

Deliverable Terms: means the terms set out in Schedule 6 along with any other specific terms set out under a relevant Order Form that apply to any Deliverable Services.

Delta: means the daily incremental 'pull' of relevant Data from EMIS Web which will append any changes to the Data from the previous Delta within the installed database on the SQL Server Instance.

Derived Customer Data: means any data (including data presented in the form of charts and/or dashboards) which is produced by, or otherwise results from, the Customer's application of the Solutions in relation to Customer Data, in accordance with the Agreement.

Derived Data: means, as applicable, Derived Customer Data and/or Derived Third Party Data. Unless expressly stated otherwise, references in the Agreement to 'Derived Data', shall mean Derived Customer Data and/or Derived Third Party Data.

Derived Third Party Data: means any data (including data presented in the form of charts and/or dashboards) which is produced by, or otherwise results from, the Customer's application of the Solutions in relation to Third Party Data and for the avoidance of doubt, the use, ownership and rights relating to Derived Third Party Data shall be as set out under the Third Party Data Access Agreement.

Documentation: means all documents, information, manuals, guides, schematics, drawings and other material (excluding the Data) provided or made available by Optum to the Customer in relation to the Solutions and/or Services.

Driver: means a software component which enables the Customer Systems to communicate with the relevant Solution(s) and/or the Environment (including an Open Database Connectivity (ODBC) driver or a Java Database Connectivity (JDBC) driver), which the Customer is required to have in place.

EDA Consultancy: means Optum's Explorer Data Analytics consultancy services, as more particularly described in clauses 7.8 to 7.13 (inclusive) and in the relevant Order Form.

EDA Services: means either the EDA Consultancy Service and/or the EDA Training Service as appropriate (and as detailed in the relevant Order Form).

EDA Training: means Optum's Explorer Data Analytics training package, as more particularly described in clauses 7.8, 7.9, 7.14 and 7.15 and in the relevant Order Form.

Environment: means the EXA platform, being a secure, cloud based platform for providing analytics services in relation to healthcare data and via which a customer can access and use the Solutions and be provided with Data Access (as may be updated, revised or replaced from time to time).

EXA: means EMIS-X Analytics, the division of Optum concerned with data analytics, data access, artificial intelligence applications and data driven innovation.

EXA Optum Learn Course: means a training course(s) made available to the Customer and its Authorised Users in relation to the Solution(s) and Environment.

EXA Subscription means a subscription for the Services and Solutions as more particularly set out in the relevant Order Form to which the Subscription Charges and Subscription Terms apply.

Explorer: means Optum's proprietary software tool which enables a customer to explore, query and visualise Data in the Environment.

Explorer Client Server: means software provided by Optum to the Customer as part of the Explorer Insights Solution that runs on the Customer's machine and simplifies communication, processing and data extraction from Explorer Insights.

Explorer Insights: means a version of Explorer that has specific features and functionality as more particularly set out in the Agreement and such user guides as may be made available from time to time.

Hosting Services: means any Additional Services provided by Optum to a Customer specifically involving Optum hosting Customer Data.

Indexation: means an adjustment to all relevant Charges to reflect the effects of inflation calculated in accordance with the following formula:

$$\text{New Charges} = \text{Charges} \times (\text{Index d} / \text{Index o})$$

Where the following definitions apply:

“**Index**” means the Retail Price Index (RPI)

“**Index d**” is either (i) the value of the Index

published for the month immediately preceding the relevant Order Form Effective Date (for Indexation at the start of the first Renewal Order Form Term) or (ii) the month immediately preceding start of the relevant Renewal Order Form Term (for Indexation at the start of each Renewal Order Form Term thereafter); and

“**Index o**” is the value of Index published for the month preceding the start of the relevant Renewal Order Form Term.

Initial Order Form Term: has the meaning set out in clause 2.2.

In-put Materials: means any and all documentation, information and any other materials provided by the Customer under the Agreement.

Intellectual Property Rights: means all patents, rights to inventions, utility models, 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.

Licensed Driver: means a Driver which the Customer receives a licence of under the Agreement, details of which are set out in the applicable Order Form(s).

Live Date: means the date upon which the Customer is first given access to use a Solution (with Data Access) within the Environment under the relevant Order Form.

Master Terms: means clauses 0 to 30 inclusive.

Minimum Specification: means the minimum IT environment requirements (if any) in respect of the Customer Systems, as may be referred to in the relevant Order Form, set out within Optum Now and/or as may otherwise be notified by Optum to the Customer in respect of the relevant Solution(s) (as may be updated from time to time).

Month: means a calendar month during the Term.

New Materials: means any schema, code, queries, scripts or other materials generated by the Customer through its use of the Solutions and/or Services (including any Derived Customer Data but excluding any Derived Third Party Data).

Operational Hours: means 9:00am to 5:00pm on a Business Day.

Optum IP: means: (a) any and all Intellectual Property Rights subsisting in the Services, Solutions,

Environment, Additional Services Output (unless otherwise agreed between the parties in a relevant Order Form) and Optum Materials; and (b) all technology, skills, knowledge, know-how, methodologies, models (including, machine-learning models), formulae, concepts, techniques, inventions and processes in the Environment, Solutions, Optum Materials, Services and Additional Services Output (unless otherwise agreed between the parties in a relevant Order Form) which are owned or controlled by Optum before the date of the Agreement and/or created by Optum during the Term.

Optum: means Egton Medical Information Systems Limited, trading as Optum, a company incorporated in England and Wales (company number 2117205) whose registered office is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA.

Optum Learn: means the Optum software applications and platforms, known as Optum Learn, which it makes available to users via the internet for the purpose of providing a digital learning platform.

Optum Learn Terms of Use: means a binding, enforceable end user licence agreement between Optum and an Optum Learn user, concerning the user's use of Optum Learn, a copy of which is available [here: http://classroom.emisnet.co.uk/material/?page_id=2298](http://classroom.emisnet.co.uk/material/?page_id=2298)

Optum Materials: means any and all Documentation, information and materials provided by Optum in relation to the Solution(s) and/or the Services (including, any reports and specifications (as the same may be updated from time to time)).

Order Form: means an order form which describes inter alia the relevant Solution(s), Data, Charges and/or any other applicable additional terms and conditions not detailed in these Master Terms – once 'signed' by both parties (as detailed in clause 3.3), an Order Form shall form part of and be incorporated into the Agreement.

Order Form Effective Date: means the date upon which an Order Form becomes effective, identified as such in the relevant Order Form entered into between the parties.

Order Form Term: means the term of each Order Form (as detailed in clause 2.2).

Performance Guide: means a performance optimisation guide that can either be found [here https://www.optumhelpcentre.com/csm?id=kb_article&sysparm_article=KB0065129](https://www.optumhelpcentre.com/csm?id=kb_article&sysparm_article=KB0065129) or as may otherwise be provided by Optum to the Customer from time to time that includes, among other things, guidance (in Optum' opinion) on how best to run SQL queries in an efficient manner within the Environment.

Personal Data: has the meaning as defined under the Data Protection Law.

Personal Data Breach: has the meaning as defined under the Data Protection Law.

Prohibited Act: means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by a party a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) either (i) an offence under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) an offence under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud a party; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Project means the project in respect of which the Customer may use the Environment and Solution(s) (as licenced to the Customer under clause 5) and Services, as more particularly described in the relevant Order Form.

Query Minutes means the amount of query time the Customer is permitted to use within the relevant Solution(s) and Environment to query Data as more particularly set out in the relevant Order Form and/or an Additional Subscription Form (as defined in Schedule 4). Each Query Minute equates to 20 Standard Queries.

Rebulk: means the actions required to delete, recreate and re:'pull' the relevant Data from EMIS Web within the installed database on the SQL Server Instance.

Renewal Order Form Term: has the meaning set out in clause 2.2.

Restricted Data: means:

- (a) any data that is not Data (i.e., data that the Customer has not been granted rights to process under the terms of the Agreement or Third Party Data Access Agreement or which is not Customer Data (as applicable)); and/or
- (b) any Personal Data (in the absence of Specific Data Terms consisting of data processing / data sharing provisions (as applicable) entered into between the parties pursuant to the Agreement).

Services: means, as applicable, the provision of Data Access, Support Services and/or any Additional Services.

Service Levels: means the service levels set out in Schedule 3 of these Master Terms.

Solution: means the systems, applications and software (which may include a Licenced Driver and/or Explorer) which the Customer receives a licence of under the Agreement, details of which are set out in the applicable Order Form(s), together with any associated Optum Materials provided by Optum to the Customer.

Special Category Data: has the meaning as defined under the Data Protection Law.

Specific Data Terms: means the data specific terms, set out in clause 17, that apply to the Data specified under the relevant Order Form.

Standard Query: means a form of credit, and equates to 3 seconds of compute time in the Environment.

SQL: means structured query language.

SQL Server Instance: means an installation by the Customer of an SQL server database engine on a single computer hosting a collection of databases, this is identified by a unique name or network address.

Subscription Charges: means the subscription charges payable as set out in a relevant Order Form for an EXA Subscription.

Subscription Terms: means the terms and conditions that apply to an EXA Subscription as set out in Schedule 4.

Support Services: means any services in relation to the support and/or maintenance of the Solutions and/or Environment as Optum may provide to the Customer from time to time, as further described in clauses 7.3 to 7.5 inclusive and Schedule 3.

Term: means the term of the Agreement, as determined in accordance with clause 2.1.

Third Party Data: means any data (including Personal Data) which is provided by a Third Party Data Controller and which Optum facilitates the Customer's access to via the Environment, as further described in Annex 3 of the Order Form.

Third Party Data Access Agreement: means the agreement between the Customer and relevant Third Party Data Controller, concerning the Customer's rights and obligations in relation to accessing and using the Third Party Data.

Third Party Data Controller: means an organisation who is: (a) a user of an Optum clinical system; and (b) a Data Controller in respect of the Third Party Data.

Third Party Data Purpose: means any purpose agreed between a Customer and relevant Third Party Data Controller in relation to the Customer's use of the Third Party Data, as set out under the relevant Third Party Data Access Agreement.

Top Up means a top up of Query Minutes purchased by the Customer during an Order Form Term in accordance with clause 13.4 and/or paragraph 6 of Schedule 4.

Top Up Rate means £10,000 (or such revised sum as Optum may determine from time to time).

Usage Cap means the maximum number of Query Minutes available for use by the Customer as set out under a relevant Order Form.

User Notice means the 'acceptable use' notice provided to Authorised Individuals, concerning the Authorised Individual's use and receipt of the Solutions and Services, which shall contain the terms set out in Schedule 2 (as may be updated or revised from time to time).

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

- 1.2 Clause, 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; and (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 e-mail, (provided that, in respect of correspondence sent from the Customer to Optum, that the same is sent to uk.contracts@optum.com) but not faxes; and (vii) clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 1.4 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.

- 1.5 Where the terms of any Order Form conflict with the Master Terms, these Master Terms shall prevail. For the avoidance of doubt, the Data and Solutions referred to as defined terms in these Master Terms will be as defined or described in the relevant Order Form (or as otherwise notified by Optum in writing).
- 1.6 All of these Master Terms shall apply to the supply of all Solutions and the Services, except where application to one is specified.
- 1.7 By entering into an Order Form and/or by using any Services, Solution(s) or the Environment, the Customer agrees that the Agreement, including these Master Terms, shall apply to the Customer's use of the same to the exclusion of all other terms and conditions.

2. COMMENCEMENT AND DURATION

- 2.1 **Agreement Term:** Subject to the remaining terms of this clause 2, the Agreement shall be made effective as of the Agreement Commencement Date and shall (subject to any earlier termination pursuant to the terms of the Agreement) continue for an initial term of 1 year from the Agreement Commencement Date and shall then continue on an annual rolling basis unless or until it is terminated by either party giving not less than three (3) months' notice in writing to expire at the end of the initial term or on any subsequent anniversary of the Agreement Commencement Date.
- 2.2 **Order Form Term:** Unless the parties expressly agree otherwise in an Order Form, the Order Form Term in respect of each Order Form shall commence on the relevant Order Form Effective Date, and subject to any earlier termination of the Agreement and/or the relevant Order Form, continue for a 12 month period from the relevant Live Date ("**Initial Order Form Term**") and thereafter shall automatically renew on an annual basis (each a "**Renewal Order Form Term**"), subject to the Customer's continued payment of the relevant Charges, until:
 - 2.2.1 it is terminated by either party giving not less than three (3) months' notice in writing to the other party, such notice to expire at the end of the Initial Order Form Term or Renewal Order Form Term (as appropriate); or
 - 2.2.2 termination or expiry of the Order Form or the Agreement in accordance with its terms.

- 2.3 Subject to the Customer's compliance with the Agreement, Optum shall (subject to any earlier termination in accordance with the terms of the Agreement) provide to the Customer the Services and/or relevant Solution(s) under each agreed Order Form during the relevant Order Form Term.
- 2.4 For the avoidance of doubt, subject to clause 18.4, the termination of a single Order Form shall not (in itself) result in the termination of the Agreement as a whole, or any other Order Form (or termination of the provision of the Services and/or relevant Solution(s) provided thereunder).

3. PURCHASING PROCEDURE

- 3.1 The terms of this clause 3 shall apply in the event that Optum is providing one or more of the Solution(s) under the Agreement.
- 3.2 The Customer may purchase the right to use one or more Solutions for a Project by entering into an Order Form (which is then incorporated into, and forms part of, the Agreement) with Optum, which shall inter alia specify the relevant:
 - 3.2.1 Solution(s) which the Customer is authorised to use pursuant to clause 5.1 for the relevant Project;
 - 3.2.2 the nature and scope of Data to be made available through the provision of Data Access;
 - 3.2.3 any Additional Services which Optum is to deliver, along with details of any Additional Charges;
 - 3.2.4 Charges payable in respect of the Customer's use of the Solution(s) for the relevant Project; and
 - 3.2.5 the Order Form Term (if different to clause 2.2).
- 3.3 In respect of any Order Forms which are to be:
 - 3.3.1 signed by the Customer; or
 - 3.3.2 made available electronically and completed by the Customer (for example, by clicking a button marked 'Accept' or ticking the appropriate boxes),

then in each case this will constitute an offer by the Customer to use the relevant Solution(s) and/or Services for the relevant Project as specified in the Order Form under these Master Terms and any or all of: (i) the execution and return of a signed copy of the Order Form by Optum; (ii) an acknowledgement of the Order Form (including, one sent by email); (iii) the issuing of an invoice; or (iv) Optum'

commencement of work pursuant to the Order Form, will mean that the Order Form is deemed to have been entered into so as to form part of the Agreement.

- 3.4 For the avoidance of doubt, any standard terms and conditions of the Customer attached to, enclosed with, or referred to in any Order Form or otherwise shall not form part of the Agreement or otherwise govern the delivery of any Solution(s) or Services.

4. OPTUM OBLIGATIONS

- 4.1 Optum shall use its reasonable endeavours to:
- 4.1.1 deliver the Services and provide the Solution(s) in accordance (in all material respects) with the terms of the Agreement;
 - 4.1.2 provide any Service with reasonable care and skill; and
 - 4.1.3 meet any performance dates specified in the Agreement but any such dates shall be targets or estimates only and time shall not be of the essence in relation to the delivery of any Service and/or provision of any Solution(s).

5. LICENCES

General Licences

- 5.1 Optum hereby grants to the Customer, strictly for the purposes of exercising its rights and obligations under the Agreement (as detailed in the relevant Order Form(s)), a non-exclusive, non-transferable, limited, personal and revocable right (in accordance with the terms of the Agreement only) during the Agreement to access and use:
- 5.1.1 the Environment; and
 - 5.1.2 the Solutions (save in respect of any Driver which shall be licenced by Optum to the Customer in accordance with an Order Form (if relevant and required by the Customer)),
- in the manner contemplated in the Agreement and, in each case, for the relevant Project.
- 5.2 The Customer may only exercise the rights granted to it by virtue of this clause 5 through the Authorised Users. The Customer is responsible for notifying Optum of the relevant Authorised Users for each Project. Optum shall use its reasonable endeavours to provide only the Authorised Users for each Project with the required Data Access for that Project (in accordance with the Customer's instructions). However, Optum makes no warranty and shall

have no liability to the Customer in the event that any Authorised User is incorrectly given Data Access in relation to another Project.

EXA Optum Learn Course

- 5.3 Where an Order Form includes access to the EXA Optum Learn Course, Optum shall use its reasonable endeavours to make the EXA Optum Learn Course available (via Optum Learn) to the Authorised User(s) notified by the Customer to Optum in accordance with clause 5.4 from time to time.
- 5.4 The Customer shall provide Optum with details of the relevant Authorised User(s) and Optum shall use its reasonable endeavours to create an Optum Learn user account for each user and Optum will send an email to invite them to activate their account. The Customer shall ensure it has all necessary permissions and consents to instruct Optum to undertake the creation of the Optum Learn accounts on behalf of the relevant Authorised User(s) and to send the aforementioned communications.
- 5.5 Authorised Users must accept the Optum Learn Terms of Use when they first log in to use Optum Learn and shall otherwise be responsible for the use of their own Optum Learn account in accordance with those terms.
- 5.6 Without prejudice to any other rights Optum may have, if any Authorised User breaches any part of the Optum Learn Terms of Use, Optum may suspend indefinitely or terminate such Authorised User's access to and/or use of Optum Learn, including the EXA Optum Learn Course.
- 5.7 Optum reserves the right to remove access to the EXA Optum Learn Course from any and all Authorised User(s) if there are no active Order Form(s) and/or upon termination of the Agreement. Subject to clause 5.6, such removal shall not affect the Authorised User(s) ability to access other Optum Learn content or services.

Third Party Data

- 5.8 For the avoidance of doubt, nothing in the Agreement or otherwise shall be construed as requiring Optum to grant or procure the grant of any licences, consents or other rights in respect of any Third Party Data.
- 5.9 The parties acknowledge that any licences in respect of the Third Party Data and any other rights granted to the Customer to use the Third Party Data shall be governed under the relevant Third Party Data Access Agreement.

Explorer Insights

If the Customer purchases a licence to Explorer

Insights under a relevant Order Form, the following terms shall also apply:

- 5.10 Optum shall provide the Customer with the Explorer Client Server (as updated from time to time) so that the Customer can undertake the relevant actions set out in clause 5.13 within the Explorer Insights Solution.
- 5.11 The Customer must not attempt to amend or modify the Explorer Client Server and/or undertake any actions within Explorer Insights in contravention of the Explorer Client Server. Any breach of this clause shall constitute a material breach of the Agreement.
- 5.12 All Bulks, Deltas and Rebulks must be run in accordance with the Explorer Client Server. The Customer shall not create its own SQL queries (including any amended version of the Explorer Client Server) to run within the Explorer Insight Solutions unless expressly directed to do so by Optum.
- 5.13 Subject to clause 5.14, Explorer Insights entitles the Customer to a maximum of:
 - 5.13.1 an initial Bulk to be run by the Customer within the first 2 Business Days of the relevant Live Date;
 - 5.13.2 one Delta per day; and
 - 5.13.3 one Rebulk for every 6 months of the relevant Order Form Term.
- 5.14 If a Data Quality Issue is identified which is caused by:
 - 5.14.1 Optum and/or is due to an issue with the Explorer Insights Solution, any Deltas and Rebulks required to resolve Data Quality Issue shall not count towards the Customer's Usage Cap; or
 - 5.14.2 the Customer and/or is due to an issue with the Customer's software, hardware or use of the Explorer Insights Solution not in accordance with the Agreement, then the Customer can undertake the following actions which shall not count towards the Customer's Usage Cap:
 - 5.14.2.1 2 additional Deltas per day; and
 - 5.14.2.2 1 additional Rebulk for every 6 months of the relevant Order Form Term.
- 5.15 Explorer Insights will be accessible by one nominated Authorised User only (unless Optum agrees otherwise in writing) who must establish a machine-to-machine connection between Explorer Insights and a relevant Customer System. Optum recommends that the Customer sets up its nominated Authorised

User using a generic service mailbox rather than a named individual account. Where the Customer chooses to use a named individual, Optum shall not be liable in respect of any issues with access to Explorer Insights arising as a consequence of such individual being the only person authorised to administer the Authorised User account (e.g., if they are unavailable for whatever reason and/or no longer employed by the Customer).

- 5.16 Without prejudice to any other rights Optum may have under the Agreement, if the Customer uses Explorer Insights in breach of these terms:
 - 5.16.1 this may result in the Customer exceeding its Usage Cap and additional Charges may be payable by the Customer to Optum; and/or
 - 5.16.2 Optum shall be entitled to immediately (and indefinitely) suspend use of Explorer Insight. Any such suspension will be without prejudice to the Customer's obligation to pay the Charges.

6. DATA ACCESS & INGESTION & STORAGE

Data Access

- 6.1 During the Term, Optum shall provide Data Access in accordance with the Agreement.
- 6.2 The Customer acknowledges, agrees and accepts that Optum's ability to upload and make available Third Party Data is dependent upon Optum receiving the same from the relevant Third Party Data Controller and Optum shall in no way be liable to the Customer (or otherwise due to any failure or delay by the relevant Third Party Data Controller(s) to provide the Third Party Data to Optum (or that it will be correct or complete).
- 6.3 The Customer acknowledges, agrees and accepts that Optum's ability to upload and make available Customer Data is dependent upon Optum receiving the same from the Customer and Optum shall in no way be liable to the Customer (or otherwise) due to any failure or delay by the Customer to provide the correct Customer Data to Optum.
- 6.4 The Customer shall follow any further technical guidelines and procedures set out in the Documentation regarding the receipt of Data Access.

Data Ingestion

- 6.5 Optum may agree (as detailed in the relevant Order Form) to provide a 'data ingestion' service in order to take Customer Data which was not

previously hosted by Optum from the Customer (or, subject to Optum's approval a third party on behalf of the Customer) into the Environment so that the Customer can receive other Services in respect of that Customer Data.

- 6.6 Charges due in relation to the Hosting Services in respect of the ingested Customer Data will be as detailed in the relevant Order Form (alongside any changes due in relation to any other Services being delivered in respect of that data).
- 6.7 The Customer will be responsible for:
 - 6.7.1 delivering the relevant Customer Data into the 'ingestion zone' identified by Optum (following which Optum will use its reasonable endeavours to ingest and process the Customer Data so that it is in a format suitable use in respect of the Services); and
 - 6.7.2 ensuring that the Customer Data to be ingested has been scanned using an up to date anti-virus solution prior to delivery to the ingestion zone.
- 6.8 In the event that Optum identifies any issues with the Customer Data on receipt and/or following ingestion (including, in terms of its format or contents) then it will notify the Customer. If Optum (acting reasonably) believes that it would be impracticable to resolve the relevant issue(s) then it may (on notice) delete the relevant Customer Data.
- 6.9 The volume of data which the Customer can request to be ingested cannot be more than three (3) times the volume of Third Party Data already held by Optum and in respect of which the Customer is receiving Services (unless otherwise expressly agreed in writing).
- 6.10 Once received Optum will hold the relevant data in substantially the same manner as any other Customer Data (save that ingested Customer Data will be deleted following completion of the relevant Services unless otherwise expressly agreed in writing to the contrary).
- 6.11 Without prejudice to the Fair Usage Policy, the Customer shall ensure that:
 - 6.11.1 it will not seek to upload any large files (e.g. individual files in excess of 1 GB); upload excessive volumes of very small files (i.e. files of no more than a few KB);
 - 6.11.2 –requests in relation to the ingested Customer Data will complement those made in relation to the other Customer Data being hosted; and

6.11.3 the Environment is not a single or primary store for the relevant Customer Data (i.e. the data will be a secondary source for secondary use cases).

6.12 If the Customer requests that Optum ingests Customer Data direct from a third party source:

- 6.12.1 the Customer shall ensure that the relevant third party complies with the terms of the Agreement and at all times the Customer is responsible for such third party under the terms of the Agreement as if the Customer were providing the Customer Data direct to Optum;
- 6.12.2 Optum shall be entitled to review any such third party's security and data protection arrangements and it may refuse to ingest data from any third party if it is not satisfied with such arrangements (acting reasonably);
- 6.12.3 the Customer shall procure such assistance from any third party as may be reasonably required by Optum to fulfil its obligations under the Agreement;
- 6.12.4 Optum shall have no liability to the Customer whatsoever in the event that it is unable to fulfil its obligations under the Agreement as a consequence of any third party's acts or omissions; and
- 6.12.5 then the third party shall have no rights under the Agreement (in accordance with clause 29.4).

7. OTHER OPTUM SERVICES

Availability and Maintenance

- 7.1 In respect of any Solution(s) which is hosted by (or on behalf of) Optum, it shall, subject to any down time, use its reasonable endeavours to make the relevant Solution(s) available for use by the Customer during Operational Hours in accordance with the Service Levels. Should the relevant Solution(s) not be available during Operational Hours then the Customer may contact Optum for Support Services as detailed in clause 7.3 to clause 7.5 inclusive.
- 7.2 Optum may apply (remotely or in person) any updates, upgrades or patches in respect of any Solution(s) from time to time. If any such application is scheduled to take place during Operational Hours and is likely to cause any material disruption to the Customer's use of the same then Optum shall endeavour to provide reasonable advance notice (but the Customer acknowledges this may not always be possible, including in cases of emergency).

Support Services

- 7.3 Optum shall, during the Term, use its reasonable endeavours to provide the Support Services (including, remote support services) in accordance with the Service Levels and its standard support processes and procedures (and, where relevant, as more fully detailed in the Order Form).
- 7.4 The Data, Environment, and Solution(s) may, from time to time, be unavailable due to maintenance activities, including if Optum (acting reasonably) feels this is necessary for security or clinical safety purposes. Optum shall, where practicable seek to communicate in advance the details of any planned maintenance of the Environment, Data or relevant Solution(s) to the Customer where this is expected to have a material impact in terms of the availability of the same.
- 7.5 Optum shall only provide Support Services in respect of its most current version of the relevant Solution(s) and the preceding two (2) versions.

Changes to the Services and Solutions

- 7.6 Optum reserves the right to change (from time to time) the Services, Environment or Solutions provided under the Agreement at any time. Such changes may include:
 - 7.6.1 introducing or removing features of a Solution, the Environment and/or the Services; or
 - 7.6.2 replacing the Services, Environment and/or relevant Solution with an equivalent service or solution.
- 7.7 If, in the reasonable and evidenced opinion of the Customer (acting in good faith), any change made by Optum in accordance with clause 7.6 results in a material degradation to the relevant Services, Environment and/or Solution(s), the Customer may immediately terminate any relevant Order Form affected by the change by giving notice in writing to Optum.

EDA Services

- 7.8 In relation to any EDA Services purchased by the Customer under an Order Form, the parties agree that:
 - 7.8.1 the relevant EDA Services must be used within 12 months of the later of: (i) the Live Date or, (ii) if the Live Date has already passed, from the date of purchase. If the EDA Services are not used within this period then the EDA Services shall be deemed to have been

delivered in full by Optum and the relevant Charges shall be payable in full / no refund shall be due to the Customer in respect of any Charges. The only exception to this is in the event that notice is provided by the Customer in accordance with clause 7.8.2 but the parties are unable to agree a start date within the 12 month period;

- 7.8.2 the date for delivery of the EDA Services shall be as set out in the relevant Order Form or, if not, can be booked by the Customer by giving Optum not less than 30 days' written notice of its desired start date. Such notice must be given within 10 months of the later of: (i) the Live Date or, (ii) if the Live Date has already passed, from the date of purchase;
- 7.8.3 subject to notice in accordance with clause 7.8.2, Optum shall use its reasonable endeavours to commence the EDA Services on the requested start date and in any event it will offer available start dates that fall within the first 60 days from the notice;
- 7.8.4 the Customer may cancel its start date and rebook at a later time by giving Optum notice in writing, subject to the following abortive Charges being paid by the Customer to Optum:
 - 7.8.4.1 cancel within 20 days of the start date: 25% of the Charges originally paid (or payable) for the EDA Service;
 - 7.8.4.2 cancel within 10 days of the start date: 50% of the Charges originally paid (or payable) for the EDA Service; or
 - 7.8.4.3 cancel within 5 days of the start date: 100% of the Charges originally paid (or payable) for the EDA Service;
- 7.8.5 if the Customer does not pay the abortive Charges set out clause 7.8.4, in accordance with clause 13, then the EDA Services shall be deemed to have been delivered in full by Optum and the original Charges shall be payable in full by the Customer / no refund shall be due to the Customer in respect of any Charges;
- 7.8.6 any use of Query Minutes undertaken during or as part of the EDA Service (whether by the Customer or Optum, at the Customer's instruction) count towards the Customer's Usage Cap save in the

event that:

7.8.6.1 such usage is caused by Optum's error and/or negligence (subject to clause 7.13); and/or

7.8.6.2 SQL queries are being run in a pre-production test environment with test data; and

7.8.7 the Customer shall ensure that it engages with the EDA Service, making its employees (and any relevant third party contractors) available at the agreed times and dates and providing Optum with such reasonable assistance and instruction as Optum may reasonably require in order to deliver the EDA Service. In the event that Optum is unable to wholly or fully provide the EDA Service as a consequence of the Customer's breach of this clause, Optum shall have no liability to the Customer and the Customer shall not be entitled to any refund, discount or additional day(s) of EDA Service.

7.9 Optum hereby grants to the Customer, strictly for the purposes of exercising its rights and obligations under the Agreement (as detailed in the relevant Order Form(s)), a non-exclusive, non-transferable, limited, personal and revocable right (in accordance with the terms of the Agreement only) during the Agreement to access and use and output(s) (including any SQL searches) created by Optum during the delivery of the relevant EDA Services to the Customer.

EDA Consultancy

7.10 Unless agreed by Optum in the relevant Order Form, EDA Consultancy consists of 10 Business Days (9am – 5pm with 1 hour for lunch) consultancy to be taken either in:

7.10.1 one block of 10 Business Days; or

7.10.2 two blocks of 5 Business Days,

with each block being a consecutive number of Business Days.

7.11 EDA Consultancy is provided by Optum for the purposes of improving the Customer's knowledge in use of Explorer and SQL queries and is delivered remotely (unless otherwise detailed in the relevant Order Form). The particulars of the consultancy service to be delivered shall be as agreed between Optum and the Customer and may include things such as advice and optimisation of SQL queries, creation of SQL queries and answering

specific questions raised by the Customer before or during the EDA Consultancy Services. However, Optum shall not be responsible for any of the following matters:

7.11.1 any subsequent maintenance and/or support of any developed SQL queries or other information provided during the EDA Consultancy;

7.11.2 development of bespoke Solutions or views within those Solutions;

7.11.3 updating Customer repositories; and/or

7.11.4 such other exclusions as Optum may notify the Customer of from time to time.

7.12 The Customer may choose to book the EDA Training as part of the EDA Consultancy providing this is confirmed in the relevant Order Form or notified to Optum in accordance with clause 7.8.2

7.13 Optum will use its reasonable endeavours to deliver the EDA Consultancy with appropriate skill, care and attention however, it makes no guarantee or warranty as to, and shall have no liability in respect of, the fitness for purpose of any SQL query written by Optum under the Customer's instruction (including whether such query breaches the Fair Usage Policy).

EDA Training

7.14 Unless agreed by Optum in the relevant Order Form, EDA Training consists of a consecutive 2 Business Days (9am – 5pm with 1 hour for lunch) remote/online training course. The particulars of the training course will be in accordance with Optum's standard EDA Training package at the relevant time, as supplied by Optum to the Customer.

7.15 EDA Training does not include any technical advice on Customer SQL queries, troubleshooting and/or EMIS Web training.

8. SQL QUERIES

8.1 The Customer acknowledges that the way in which SQL queries are written and used by the Customer within the Environment and/or Solutions may impact upon the Customer's use of Standard Queries / Query Minutes. If such SQL queries are inefficient in the way in which they have been coded this may result in increased Charges being incurred by the Customer and/or the Customer breaching the 'fair usage policy' set out at clause 11.1.3 / its Usage Cap. As such, the Customer agrees to, at all times, run SQL queries within the Environment/Solutions in accordance with best practice. The Customer may wish to refer to the suggested Performance Guide when drafting

any SQL queries.

8.2 In the event that the Customer does not run the SQL queries in accordance with best practice, the Customer agrees and acknowledges that this may result in:

8.2.1 suspension of the Customer's access and use of the Environment in accordance with clause 11.1.3; and/or

8.2.2 the Customer having to pay additional Charges to Optum.

8.3 The Customer acknowledges that Optum shall be entitled to monitor the Customer's use of SQL queries / codes (and any associated documentation) in relation to the Agreement in order to allow Optum to:

8.3.1 track the Customer's use of Standard Queries / Query Minutes for the purposes of determining whether the Customer remains within its Usage Cap and the Charges payable by the Customer;

8.3.2 check the Customer's compliance with clause 8.1 (and the Customer shall provide Optum with all reasonable co-operation, access and assistance in relation to any such audit); and/or

8.3.3 understand how the Solutions, Environment and Services are being used and whether this is in an optimised manner, with the objective of (in the context of its performance obligations under the Agreement) improving the performance of the Solutions and Environment generally.

8.4 In respect of the Customer's use of the Data, Optum may monitor the Customer's usage of the Solutions, Environment and Services and collect, store and analyse any associated fully anonymised usage data (for instance, the time of day during which the Solutions are used, the number of Authorised Users using the Solutions etc.), for:

8.4.1 the purposes of providing summary reports to the Customer containing statistics regarding usage of the Solutions, Environment and Services by its Authorised Users; and

8.4.2 its own internal purposes, including for monitoring and seeking to improve the performance of the Solutions, Environment and/or Services.

9. AUTHORISED USERS

9.1 The parties acknowledge that, notwithstanding

the licence restrictions set out at clause 11:

9.1.1 there is in principle no limit on the number of Authorised Individuals who may access and use the Solutions and Environment or otherwise receive the Services; and

9.1.2 the Customer shall be limited to one machine-to-machine Authorised User per Order Form. Additional machine-to-machine Authorised Users can be provisioned, subject to Optum's agreement in writing and the Customer paying any associated Charges.

9.2 In relation to the Authorised Users, the Customer:

9.2.1 is, and shall at all times remain, responsible for the acts and omissions of all Authorised Users as if they were the acts and/or omissions of the Customer itself;

9.2.2 shall inform Optum of the relevant Authorised Users for each Project;

9.2.3 will provide all Authorised Individuals with a copy of the User Notice prior to their accessing or using the Solutions, Environment and/or Services;

9.2.4 will ensure that each Authorised User keeps a secure and unique password for their use of the Solutions and access to the Environment and Services, that such password is changed no less frequently than once per Month and that each Authorised User keeps their password confidential;

9.2.5 acknowledges that if any Authorised User does not log in for any continuous period of 30 days or more, Optum may (at its discretion) prompt such user to change their password before allowing any further access to the Solutions, Environment and/or Services (for that user only);

9.2.6 shall maintain a written, up to date list of current Authorised Users and provide such list to Optum within 5 Business Days of Optum's written request and shall otherwise notify Optum as soon as reasonably practicable when any Authorised Users cease to be employed by the Customer (or, in the event that the Authorised User is from a different organisation (as approved by Optum in accordance with the Agreement) then when they cease to be employed by such third party organisation) and/or cease to

require access to the Solutions, Environment and/or Services;

9.2.7 acknowledges that Optum has the right, acting reasonably but entirely in its discretion, to refuse to allow any particular proposed Authorised Individual from becoming an Authorised User; and

9.2.8 will not permit any Authorised User account to be used by more than one individual unless it has been reassigned in its entirety to another individual, in which case the prior Authorised Individual shall no longer have any right to access or use the Solutions, Environment and/or receive the Services. For the avoidance of doubt an Authorised User account cannot be reassigned on a regular or frequent basis between Authorised Users.

9.3 At the Customer's request, Optum may (acting reasonably but in its absolute discretion) permit Authorised Users that are not employees of the Customer and/or that are not Customer Systems. Where Optum agrees to allow use by such Authorised Users:

9.3.1 it shall confirm the same in writing to the Customer (with such authority not being effective until this written confirmation is sent by Optum to the Customer); and

9.3.2 the Customer agrees and acknowledges that the terms of the Agreement shall apply to, and it shall remain responsible for, all such third party Authorised Users.

10. WARRANTIES

10.1 Without prejudice to clauses 10.2 to 10.5, Optum hereby warrants that:

10.1.1 it has the power and authority to enter into the Agreement in its own right and grant the rights and licenses that it grants or purports to grant to the Customer pursuant to the Agreement; and

10.1.2 it has, will maintain and continue to hold and comply with all consents necessary for Optum to perform its obligations under the Agreement (unless such consents can no longer be maintained, held or complied with for legal or clinical reasons outside of Optum's reasonable control).

10.2 Optum makes no warranties express or implied (and expressly excludes any liability) in

respect of:

10.2.1 the fitness of the Data for any particular purpose; or

10.2.2 the content of (including, with regard to any inaccuracies or missing data) any Data provided by a Third Party Data Controller and/or the Customer

10.3 Based on the information provided by the Customer to Optum regarding its operating system(s), Optum shall use its reasonable endeavours to ensure that any Licenced Driver will enable the Customer Systems to communicate with the relevant Solution(s). However, Optum makes no warranties express or implied (and expressly excludes any liability) that any Licenced Driver is the most appropriate Driver for use by the Customer or that any Licenced Driver will be the only Driver required by the Customer in order for it to comply with its obligation under clause 12.2.2.

10.4 Optum does not guarantee that the Solutions, Environment and/or the Services will always be available or that their use will be uninterrupted. Optum will not be liable to the Customer if for any reason the Solutions, Environment and/or the Services are unavailable at any time or for any period. The Solutions, Environment and Services are provided by Optum on an 'as is' and 'as available' basis, with any and all faults as may be present.

10.5 Except as expressly stated in the Agreement, to the extent permitted by applicable law any and all implied or statutory statement, representation, condition, warranty or other term as to the quality, merchantability, suitability or fitness for any particular purpose of the Solutions, Environment and/or the Services is hereby excluded.

11. LICENCE RESTRICTIONS

Fair Usage Policy

11.1 Except as expressly set out in the Agreement, or as permitted by applicable law which cannot be excluded, the Customer shall not, and shall not permit any third party (including, any Authorised Individuals or Affiliates) to:

11.1.1 use the Solutions or Environment for any purposes beyond those permitted under the Agreement ;

11.1.2 copy any Solution or Environment (the parties acknowledge that the Customer's right to copy any Third Party Data and/or Customer Data, as applicable, is subject to the Customer obtaining any necessary separate permissions); or

- 11.1.3 use the Solution, Environment or Services in a manner which (in Optum' reasonable opinion) is excessive and/or puts any undue strain on the Environment, for instance: placing a large, unnecessary 'cross join' (excessive engine load) and/or submitting very large number of queries in a short period time (excessive querying).
- 11.2 Without prejudice to any other rights Optum may have under the Agreement, in the event that the Customer breaches clause 11.1.3, Optum shall be entitled to suspend the Customer's, its Affiliates' and all Authorised Users' access to the Services, Environment and Solutions. Such suspension shall continue until a resolution to the Customer's excessive use has been agreed between the parties to Optum' reasonable satisfaction.
- 11.3 The Environment and Solutions can safely accommodate only a certain number of concurrent SQL queries being run at any one time (both in respect of a single Authorised User and for all Authorised Users for all customers using the Environment and Solutions at any one time). As such, the Customer agrees and acknowledges that SQL queries run by its Authorised Users may be queued and run at a later time to protect the integrity of the Environment and Solutions and ensure that they do not become overburdened. All queued SQL queries will be processed as soon as reasonably practicable in line with the time the SQL query is submitted and the capacity of, and demand upon, the Environment and Solutions.
- 11.4 Any restrictions regarding the Customer's use of the Third Party Data and/or Derived Third Party Data (including the relevant Third Party Data Purposes(s)) shall be governed by the terms of the relevant Third Party Data Access Agreement.
- Solutions**
- 11.5 The Customer shall:
- 11.5.1 not copy, merge or incorporate the Environment or any Solution (or any part thereof) with or into any other software nor (subject to any rights under any applicable law that cannot be excluded) attempt to disassemble, decompile, modify, adapt or reverse engineer the Environment or any Solution;
- 11.5.2 not translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license or create derivative works from the Environment or any Solution;
- 11.5.3 not use the Environment or any Solution or any portion thereof as a component of, or a base for, products or services prepared for sale, sublicense, lease, access or distribution;
- 11.5.4 complete in a timely and accurate manner any pre- installation checklists as may be required by Optum from time to time;
- 11.5.5 supervise and control use of the Solution(s), Environment and Services in accordance with the terms of the limited rights granted under the Agreement;
- 11.5.6 use the Environment, relevant Solution(s) and Services in accordance with the Documentation and any other user documentation, guides or training (and any other reasonable instructions received from time to time) as may be provided by Optum from time to time;
- 11.5.7 not allow the Environment or any Solution(s) to become the subject of any charge, lien or encumbrance;
- 11.5.8 ensure that Authorised Users are notified of the relevant terms of the Agreement prior to their using the Environment and/or Solution(s) or receiving the Services;
- 11.5.9 not sub-license, assign, novate, transfer, sell, lease, rent, charge or otherwise deal in or encumber any Solution(s) (in whole or in part);
- 11.5.10 not provide or otherwise make available the Solution(s) to any person other than Authorised Users or as specified herein without Optum' prior written consent;
- 11.5.11 not use any Solution(s) or Services in order to provide a bureau service (or any similar service) on behalf of any third party;
- 11.5.12 not display the Solution(s) (or any Optum Materials) on a public bulletin board, ftp site, worldwide web site, chat room or by any other unauthorised means; and/or
- 11.5.13 not use the Solution(s) or any Services for any immoral or illegal purpose or for any other purpose which may be determined by Optum (acting reasonably) to be damaging to its reputation, threatening, abusive or harmful.

12. CUSTOMER OBLIGATIONS

12.1 The Customer shall:

- 12.1.1 co-operate, in a timely manner, with Optum in all matters relating to the provision of any Service and its use of the Environment and relevant Solution(s) (including, providing such assistance (and access, including, remote access to records and/or systems) as Optum may reasonably require in connection with its delivery of any Solution(s) or any Service);
- 12.1.2 complete any preparation activities that Optum may require promptly and in accordance with any reasonable timescales so as to enable Optum to deliver, and the Customer to receive, the Environment, any Solution(s) and/or Service;
- 12.1.3 provide Optum with access to Customer Systems and/or Customer Data, where applicable;
- 12.1.4 provide to Optum, in a timely manner, such In-put Material and other information as Optum may require (and ensure that the same is accurate in all material respects);
- 12.1.5 not cancel any direct debit (or amend its bank details) in relation to any payments due under the Agreement without giving reasonable advance notice to Optum (and if the Customer fails to comply with this obligation then it shall (without prejudice to its other rights and remedies) pay Optum a £100 administration charge);
- 12.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its receipt of the Services, its use of the Environment and relevant Solution(s), the use by Optum of any In-put Material and the use by Optum of any of the Customer's equipment, in all cases before the relevant start date;
- 12.1.7 where applicable, fully comply with the terms of any relevant Third Party Data Access Agreement(s);
- 12.1.8 where the terms of a relevant Third Party Data Access Agreement and/or instructions received from a relevant Third Party Data Controller, conflict with the Customer's rights and/or obligations in relation to Third Party Data pursuant to the Agreement, the Customer shall

immediately bring such conflict to Optum' attention and:

- 12.1.8.1 in particular, where such term(s) of the relevant Third Party Data Access Agreement or instructions received from the relevant Third Party Data Controller, conflict with clause 15 (Confidentiality) of the Agreement, the relevant terms of the Third Party Data Access Agreement and/or instructions, as applicable, shall take precedence (but only to the extent of such conflict or inconsistency); and
- 12.1.8.2 in respect of all other terms of the Agreement, the parties shall co-operate in good faith to seek to resolve such conflict;
- 12.1.9 promptly contact Optum' support desk to register any faults with regard to the Environment, Services and/or Solution(s);
- 12.1.10 accept and install all maintenance releases, patches and updates as required by Optum from time to time in respect of the Environment and relevant Solution(s);
- 12.1.11 promptly notify Optum as soon as it becomes aware of:
 - 12.1.11.1 any unauthorised use of the Environment, any Solution(s) or Services; or
 - 12.1.11.2 any errors in respect of any Environment, Solution(s) or Services;
- 12.1.12 comply with all applicable laws in relation to its receipt or use of the Environment, Services and/or any Solution(s), including, any professional licences and permissions (and shall ensure that its users do the same);
- 12.1.13 comply with such generally applicable security policies as Optum may introduce from time to time;
- 12.1.14 ensure that it has in place at all times, on any device used to access the Environment, Services and/or any Solution(s) 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;

12.1.15 ensure that it implements and enforces reasonable security measures so as to minimise the risk of any unauthorised access to the Environment, Services and/or any Solution(s) (including enforcing appropriate password and other login security measures);

12.1.16 have in place and operate data backup and archiving procedures in accordance with good industry practice; and

12.1.17 unless expressly agreed otherwise between the parties in writing, have data backups and archives of the Customer Data available to it at all times in other locations in accordance with such data backup procedures.

12.2 The Customer shall, in order for it to properly receive and use the Environment, relevant Solution(s) and Services, have in place:

12.2.1 an IT environment that meets any relevant Minimum Specification identified;

12.2.2 appropriate additional Drivers (and Optum accepts no liability or responsibility to the Customer whatsoever in the event that the Customer's use of the Environment and/or Solutions is adversely affected due to the Customer failing to have suitable additional Drivers in place); and

12.2.3 maintain all necessary network connections and environments for it to: (i) properly receive and use the Environment, relevant Solution(s) and/or Services; (ii) access and use the full functionality of the Environment and relevant Solution(s), and (iii) allow remote access to the Environment, relevant Solution(s) and/or Services as required to enable to provision of any support and maintenance (and any other diagnostic) services.

12.3 The Customer shall be responsible for the security of any and all Customer Data it stores, enters or processes using the Services, Environment and/or any Solution(s) and for taking appropriate backup copies of its Customer Data (save to the extent that such backup services are being expressly provided by Optum as detailed in the relevant Order Form).

12.4 The Customer:

12.4.1 accepts responsibility for the selection of the Solution(s) and/or Services to achieve its intended results and acknowledges that none of the Solution(s) and/or Services have been developed to meet the individual requirements of the Customer;

12.4.2 acknowledges that the Data accessible through the Solution(s) will not necessarily be an exact replica of (or an up to date version of) any clinical data which it is derived from; and

12.4.3 accepts and acknowledges that it is not advised that any Solution(s) are used for any clinical purposes and/or as a principle clinical system, however, should you choose to do so, you do so entirely at your own risk.

12.5 If Optum's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (its Affiliates, agents, subcontractors, consultants, Authorised Users, or employees), Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly).

13. CHARGES AND PAYMENT

13.1 In consideration of the Customer's right to access and use the Environment and relevant Solution(s) and receive the Services, the Customer shall pay the Charges as set out in the relevant Order Form(s) (as may be amended in writing from time to time in accordance with the terms of the Agreement).

13.2 Subject to any alternative payment terms or timetable set out in an Order Form, payment is due upon receipt of an invoice and the Customer shall pay each undisputed 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.

13.3 The Subscription Terms shall apply where the Customer has taken an EXA Subscription under a relevant Order Form.

13.4 If the Customer exceeds its Usage Cap, Optum shall be entitled to charge the Customer a Top Up fee in respect of any additional usage. The provisions this clause and of Schedule 4 shall apply in relation to any such Top Up notwithstanding whether the Customer has taken an EXA Subscription or not.

- 13.5 Subject to any fixed pricing agreed in the relevant Order Form, Optum may adjust its prices on an annual basis during the Term (by Indexation or otherwise). Optum shall notify the Customer in writing of any change in its pricing other than in the case of Indexation which may automatically be applied without notice.
- 13.6 For the avoidance of doubt all Charges are exclusive of VAT, which Optum shall add to its invoices at the appropriate rate.
- 13.7 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 charge interest on such sum from the due date for payment at the annual rate of four percent (4%) above the base lending rate from time to time of Clydesdale Bank plc, 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).
- 13.8 If Optum does not receive payment of any applicable Charges by the relevant due date, then it may issue a demand for such Charges and if payment is not received within fifteen (15) days of the demand, then (without prejudice to any other rights and remedies available to it) Optum may suspend the provision of the Services and any licence to use (and access to) the Environment and any Solution(s), without any liability to the Customer, unless or until payment has been made in full.
- 13.9 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 13.9 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 13.10 If Optum is unable to provide any Service, the Environment or any Solution ordered by the Customer due to any act or omission on the part of the Customer (including, as a result of the unavailability of the relevant members of the Customer's staff) then Optum shall be entitled to charge the Customer in respect of any time spent attempting to deliver the same (in addition to any charges due in respect of any replacement Services provided).
- 13.11 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.

14. INTELLECTUAL PROPERTY RIGHTS

Optum IP

- 14.1 In the event that Optum produces or creates any new inventions, designs or processes in connection with the performance of its obligations under the Agreement, the Customer acknowledges that the same shall be the property of Optum.
- 14.2 All Optum IP shall remain exclusively with Optum (or its third party licensor(s) as appropriate) and the Customer shall have no rights in or to the same other than the right to use the same in accordance with the terms of the Agreement.
- 14.3 The Customer acknowledges that where Optum does not own the Intellectual Property Rights in any Solution(s), then the Customer's use of such Solution(s) 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 sub-license such rights to the Customer.
- 14.4 The Customer shall not remove or alter any copyright or trade mark notices included in any Solution(s), Optum Materials or the Environment and it shall reproduce the same in any and all copies which it may make in accordance with the terms of the Agreement.
- 14.5 In the event a claim, relating to the infringement of any third party rights, is made, or in Optum's reasonable opinion is likely to be made, against the Customer in relation to any of the Environment, Solution(s), Services and/or Optum Materials (the "**Relevant Product or Service**"), Optum may, at its sole option:
 - 14.5.1 procure for the Customer the right to continue to use the Relevant Product or Service in accordance with the terms of the Agreement;
 - 14.5.2 modify the Relevant Product or Service so that it ceases to be infringing;
 - 14.5.3 replace the Relevant Product or Service with non-infringing materials; or
 - 14.5.4 terminate the Agreement immediately by notice in writing to the Customer.
- 14.6 Except as expressly stated herein, these terms do not grant the Customer any rights to, or in, any Intellectual Property Rights subsisting in the Optum IP.
- 14.7 The Customer shall, at the expense of Optum,

take all such steps as Optum may reasonably require to assist Optum in maintaining the validity and enforceability of the Optum IP during the Term.

- 14.8 The Customer shall not do, or authorise any party to do, any act which would or might invalidate or be inconsistent with any Optum IP and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 14.9 Optum shall defend the Customer in relation to any claim that the Services, Environment or Solutions or use thereof infringes the Intellectual Property Rights of any third party, provided that:
 - 14.9.1 Optum is given prompt notice of any such claim;
 - 14.9.2 use of the Services, Environment and/or Solutions is in accordance with the terms of the Agreement;
 - 14.9.3 the Customer provides reasonable co-operation to Optum in the defence and settlement of such claim, at Optum's reasonable expense; and
 - 14.9.4 Optum is given sole authority to defend or settle the relevant claim.

Customer IP

- 14.10 Optum acknowledges that any and all Customer IP is and shall remain the property of the Customer (and/or its third party licensor(s) as appropriate).
- 14.11 The Customer hereby grants Optum a revocable, personal, non-exclusive licence for the duration of the Term, to use the Customer IP, as necessary for Optum to perform its obligations under the Agreement.
- 14.12 Except as expressly stated herein, these terms do not grant Optum any rights to, or in, any Intellectual Property Rights subsisting in the Customer IP.
- 14.13 Optum shall, at the expense of the Customer, take all such steps as the Customer may reasonably require to assist the Customer in maintaining the validity and enforceability of the Customer IP during the Term.
- 14.14 Optum shall not do, or authorise any party to do, any act which appears reasonably likely to invalidate or be inconsistent with any Customer IP and shall not omit or authorise any third party to omit to do any act which, by its omission, would be reasonably likely to have that effect or character.
- 14.15 The Customer shall defend Optum (its

Affiliates, officers, directors and employees) in relation to any claim that any Customer IP, or Optum's use thereof infringes the Intellectual Property Rights of any third party, provided that:

- 14.15.1 the Customer is given prompt notice of any such claim;
- 14.15.2 use of the Customer IP is in accordance with the terms of the Agreement;
- 14.15.3 Optum provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's reasonable expense; and
- 14.15.4 the Customer is given sole authority to defend or settle the relevant claim.

Third Party IP

- 14.16 For the avoidance of any doubt, the ownership of (and any rights granted to the Customer in respect of) any Intellectual Property Rights in or in relation to Third Party Data and Derived Third Party Data shall be governed by the relevant Third Party Data Access Agreement.

15. CONFIDENTIALITY

- 15.1 Subject to clause 15.2, each party receiving Confidential Information belonging to the other party shall:
 - 15.1.1 hold all Confidential Information in strict confidence and keep it secure, applying to any Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (and in any case not less than a reasonable standard of care);
 - 15.1.2 seek to access Confidential Information, and use Confidential Information, in each case only:
 - 15.1.2.1 for the purpose of performing its obligations under the Agreement or Third Party Data Access Agreement (in respect of the relevant Third Party Data only); and
 - 15.1.2.2 in accordance with the Agreement and Third Party Data Access Agreement (in respect of the relevant Third Party Data only);

and specifically refrain from seeking to access Confidential Information, and from using Confidential Information, for its own or any third party's benefit or in any other manner not authorized in writing by the disclosing party;

- 15.13 disclose, or permit access to, Confidential Information only to persons who are its employees, or its independent contractors, who both:
 - 15.13.1 have a need to know the Confidential Information in order to give effect to the Agreement or advise in connection with it (or both); and
 - 15.13.2 are subject to nondisclosure obligations substantially similar to those of the Agreement,
 - 15.14 accept responsibility for any access to, use, or disclosure of any Confidential Information in violation of the terms of the Agreement and to take such steps as may be required by applicable law to enforce this obligation;
 - 15.15 return to the disclosing party (or, at the disclosing party's request, destroy in such manner as not to allow its re-creation and confirm to the disclosing party the receiving party's compliance with this obligation) within fourteen (14) days of the expiry (or earlier termination) of the Agreement (or the relevant Order Form or such earlier date as the disclosing party may reasonably request) all materials (in writing or otherwise, including copies) containing any Confidential Information; and
 - 15.16 promptly notify (where it is permitted to do so by law) the disclosing party if the receiving party is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing party may if it chooses seek an appropriate protective order.
- 15.2 In relation to any Confidential Information contained in Third Party Data and/or Customer Data, the parties acknowledge that the Customer's use of the same shall, notwithstanding clause 15.1, be governed by the relevant Third Party Data Access Agreement or other separate terms, as applicable.
- 15.3 Notwithstanding clause 15.1, a receiving party's obligations of confidentiality contained in the Agreement shall not apply:
- 15.3.1 to the extent required by law, by any court of competent jurisdiction, or by an official regulatory body; or
 - 15.3.2 where the disclosing party has consented in writing to the information's disclosure; or
 - 15.3.3 to information that:
 - 15.3.3.1 at the time of disclosure was in the public domain or comes into the public domain other than through breach of the Agreement by the receiving party;
 - 15.3.3.2 was known by the receiving party (as established by its own records or other competent proof) before it received the Confidential Information, or was exposed to it, or had the ability to access it; or
 - 15.3.3.3 is lawfully disclosed to the receiving party by a third party acting in good faith and not bound by a confidentiality obligation.
- 15.4 The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of five (5) years following the termination or expiry of the Agreement.
- 15.5 The parties acknowledge that either party's breach of this clause 15 may cause the other party irreparable injury for which damages would not be an adequate remedy. Therefore, in the event of such breach, the non-breaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.
- 15.6 Without prejudice to clause 15.1.5 Optum shall, within thirty (30) days of the expiry (or earlier termination) of the Agreement for any reason (or such earlier date that the Customer may reasonably request), applying its standard charges (as notified to the Customer in advance):
- 15.6.1 return, in an industry standard format, a copy of any Customer Data that it (or its subcontractors) is electronically storing (or is under its (or its subcontractors') possession or control);
 - 15.6.2 following the Customer's confirmation of receipt of the returned Customer Data referred to above, delete or destroy, in accordance with its standard operating procedures, the relevant Customer Data; and
 - 15.6.3 notify the Customer, in writing, that the

relevant Customer Data have been successfully returned and destroyed in accordance with this clause 15.6.

- 15.7 Nothing in this clause 15 shall prevent a party who receives Confidential Information from the other party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the disclosing party's Confidential Information or an infringement of its Intellectual Property Rights.

16. LIMITATIONS OF LIABILITY

- 16.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 16 WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

- 16.2 This clause 16 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, third party licensor(s) and subcontractors) to the Customer, including in respect of:

- 16.2.1 any breach of the Agreement;
- 16.2.2 any use made by the Customer of the Services, Data, Environment and/or Solution(s) (or any part of them); and/or
- 16.2.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

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

- 16.3.1 death or personal injury resulting from its negligence;
- 16.3.2 any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or
- 16.3.3 any liability which cannot be excluded or limited pursuant to applicable law.

- 16.4 Subject to clause 16.3, Optum shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

- 16.4.1 loss (whether direct or indirect) of revenue or profits;
- 16.4.2 loss (whether direct or indirect) of

business opportunity;

- 16.4.3 loss (whether direct or indirect) of goodwill or injury to reputation;
- 16.4.4 loss (whether direct or indirect) of anticipated savings;
- 16.4.5 loss (whether direct or indirect) of, or corruption to, any data; or
- 16.4.6 indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement (including, pursuant to any Order Form).

- 16.5 Subject to clause 16.3 and clause 16.4, Optum' (and its Affiliates and sub-contractors) total aggregate liability (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise) in each Contract Year arising out of or in connection with the Agreement:

- 16.5.1 in respect of all claims arising in any Contract Year in respect of a specific Solution, the Environment, Data or the Services will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to Optum under the relevant Order Form in that Contract Year (or in respect of any and all such claims arising after the relevant Order Form has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid and/or due to be paid in the final twelve (12) months of the relevant Order Form); and

- 16.5.2 in respect of all other claims arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to Optum under the Agreement in that Contract Year (or in respect of any and all claims arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid or due to be paid in the final Contract Year of the Agreement).

- 16.6 For the avoidance of doubt, the terms of clauses 16.3 to 16.5 shall apply equally to any claim brought against any third party licensor of Optum (with those clauses being read as though a reference to Optum were to the relevant licensor) whose Solution(s) or Services are provided to the Customer under the Agreement (and such third party may rely upon and enforce the same in accordance with the

terms of the Agreement and the Contracts (Rights of Third Parties) Act 1999).

- 16.7 Optum recommends that the Customer obtains appropriate business continuity (or other) insurance cover in order to protect its business in the event that there is any issue with the delivery of any Service, Solution, Environment or Data.
- 16.8 Optum shall not be liable for any failure in respect of the: (i) Solutions, Environment, Data and/or Services; or (ii) performance of any of its obligations under the Agreement, to the extent that such failure is caused by a defect or failure with the Customer System and/or in the relevant Drivers used by the Customer.

17. DATA PROTECTION, SPECIFIC DATA TERMS, RESTRICTED DATA AND DATA SECURITY

General obligations

- 17.1 The parties shall, in the relevant Order Form, detail the Data that will be made available to the Customer in accordance with clause 6. Depending upon the type of Data specified, the following Specific Data Terms will apply, as appropriate, provided that the Restricted Data and Data Security terms in this clause 17 apply regardless of the type of Data.
- 17.2 Irrespective of the roles of the parties, the type of Data being accessed and the proposed use case, the parties shall each comply with their respective obligations under the Data Protection Law. The obligations imposed on the parties under the Specific Data Terms are in addition to, and do not relieve, remove or replace, either party's obligations under Data Protection Law.

Third Party Data

- 17.3 In providing the Third Party Data to the Customer, Optum is acting on the instructions of (and as a Data Processor acting on behalf of) the relevant Third Party Data Controller; it is not acting as a Data Processor (or sub-processor) on behalf of the Customer.
- 17.4 The Customer warrants and undertakes that the relevant Third Party Data Controller, as a Data Controller(s) of any Personal Data comprising or contained within the Third Party Data, has authorised the Customer (by way of an appropriate Third Party Data Access Agreement) to process the relevant Third Party Data for the Third Party Data Purpose (and that such processing is in accordance with the terms of the Data Protection Law). The

Customer's ability to process the Third Party Data will depend on whether it is itself a Data Controller or a Data Processor in respect of the Third Party Data (and the terms of the relevant Third Party Data Access Agreement, which subsists as between the Customer and the relevant Third Party Data Controller(s)).

- 17.5 Where agreed with the Customer, Optum will use its reasonable endeavours to:
 - 17.5.1 enable the data sharing manager function within the relevant Optum system (the "Optum System") in accordance with the agreement in place between Optum and the relevant Third Party Data Controller; and
 - 17.5.2 where necessary, depending on the volume of Third Party Data being shared, replace or amend its existing data sharing instruction with the relevant Third Party Data Controller, so that the Third Party Data Controller's instruction to Optum provides for the Customer's access to the Third Party Data, subject to the Customer:
 - 17.5.2.1 informing Optum as to the identity of the relevant Third Party Data Controller; and
 - 17.5.2.2 informing the relevant Third Party Data Controller that Optum will remotely enable a screen within the relevant Optum System user interface which will allow the Third Party Data Controller (if it so wishes) to deliver the Third Party Data (pursuant to the Optum data sharing manager function within the Optum System) to the Customer.
- 17.6 Notwithstanding clause 17.5, Optum cannot procure that any relevant Third Party Data Controller(s) will opt to share data (or that such instruction will not later be revoked) and it is the Customer's responsibility to liaise with the relevant Third Party Data Controller(s) in this regard.
- 17.7 The Customer shall ultimately be responsible for procuring that the relevant Third Party Data Controller(s) provide the necessary authorisations to Optum. Optum shall not provide Data Access in relation to any Third Party Data:
 - 17.7.1 unless or until it has received the relevant authorisations to do so via the Optum data sharing manager function within the Optum System or otherwise; or

17.72 unless it is required to do so by law.

- 17.8 Each party shall promptly notify the other in the event that it becomes aware that any relevant Third Party Data Controller has withdrawn its authorisation to the processing of any of the Third Party Data. For the avoidance of doubt, notwithstanding that the Customer may be (or become) a Data Controller in respect of any of the Third Party Data, if any other Data Controller (including, any relevant Third Party Data Controller), should notify Optum that Optum is not authorised to process the Third Party Data then Optum shall not be obliged to process that Third Party Data, or be held to be in breach of any obligation under the Agreement, regardless of any authorisation to the contrary from the Customer.
- 17.9 Optum may (without any liability to the Customer or otherwise) suspend the delivery of Data Access if it (acting reasonably) identifies any issue with regard to the Solution, the Third Party Data or otherwise such that it believes that making the Third Party Data available may result in a breach of any applicable law (including the Data Protection Law) or any authorisations provided by the relevant Third Party Data Controller(s). Optum shall promptly notify the Customer in the event of any suspension and use its reasonable endeavours to resume the provision of Data Access as soon as is reasonably practicable once the relevant issue has been resolved.

Customer Data

- 17.10 The parties acknowledge that for the purposes of Data Protection Law, in the context of processing of any Personal Data under the relevant Order Form, either (as specified in the relevant Order Form: (a) the Customer is a Data Controller and Optum is a Data Processor; or (b) the Customer is a Data Processor and Optum is the Customer's Sub-Processor.
- 17.11 The table in Schedule 5 sets out the particulars of processing by Optum.
- 17.12 The Customer will ensure that it (and/or any relevant third party Data Controller(s), as applicable):
- 17.12.1 collects the Personal Data (including Customer Data) fairly and transparently;
 - 17.12.2 has all necessary rights, permissions, consents and notices in place (with the Data Subject(s) and any other relevant Data Controller(s), as applicable) to enable the lawful transfer of the Personal Data to Optum for the duration of the relevant Order Form and to

enable Optum to fully comply with its obligations under the Agreement; and

- 17.12.3 where Data Access to Third Party Data is being provided based on identification of relevant patients in Customer Data, provides accurate and complete Customer Data to Optum.

- 17.13 Optum shall have no liability to the Customer (or otherwise) whatsoever in the event that Data Access is provided to the Customer in respect of any Third Party Data based on any inaccurate or incomplete Customer Data.

- 17.14 Optum shall, in relation to any Personal Data processed in connection with the performance by Optum of its obligations under the Agreement in respect of a relevant Order Form:

- 17.14.1 process that Personal Data on the written instructions of the Customer (unless otherwise required by law) notify the Customer immediately if, in Optum's opinion, such instruction infringes Data Protection Law;

- 17.14.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

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

- 17.14.4 not transfer any Personal Data outside of the United Kingdom or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- 17.14.4.1 appropriate safeguards exist in relation to the transfer;

- 17.14.4.2 the Data Subject has enforceable rights and effective legal remedies;

- 17.14.4.3 Optum complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is

transferred; and

17.14.4.4 Optum complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

17.14.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

17.14.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;

17.14.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the relevant Order Form unless required by law to retain the Personal Data, in which case Optum shall inform the Customer of such legal requirement; and

17.14.8 allow for audits by the Customer or the Customer's designated auditor in respect of Optum's data processing activities under the relevant Order Form.

17.15 Optum may, from time to time, appoint third party sub-processors, to process the Personal Data, provided that:

17.15.1 Optum shall impose on any such sub-processor obligations equivalent to those set out on Optum under these Customer Data Specific Data Terms; and

17.15.2 Optum will remain liable (subject to the terms of the Agreement) for any acts or omissions of any such sub-processor.

17.16 A list of Optum' sub-processors is as notified to the Customer or as otherwise set out on Optum's website from time to time (the "**Relevant Sub-Processors**"). For the avoidance of doubt, the Customer hereby gives its approval to Optum appointing the Relevant Sub-Processors at the Commencement Date, in relation to Optum's obligations under the Agreement.

17.17 Optum may notify the Customer from time to time regarding any proposed changes to the list of Relevant Sub-Processors by updating Optum's website. If the Customer objects to an amendment to the list of Relevant Sub-

Processors may be escalated for discussion. 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:

17.17.1 accept the change; or

17.17.2 terminate the relevant Order Form(s) pursuant to which Optum is processing Customer Data, 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 Charges in respect of the relevant Order Form(s)).

17.18 In the event of any loss of, or damage to, any Customer Data, Optum shall use its reasonable endeavours to restore the lost or damaged Customer Data from the latest backup version of the Customer Data available to it. If the loss or damage was caused by Optum then it shall undertake such restoration at its own cost and expense and in any other circumstances it shall be entitled to charge the Customer in respect of any time spent at its then standard rates.

Restricted Data

17.19 In the event that the Customer is able to view, or access, any Restricted Data within a Solution, the Environment and/or the Services (whether as a result of an error, malfunction or otherwise with the Solution, Environment and/or Services and/or whether or not as a consequence of Optum' actions or omissions) the Customer shall:

17.19.1 notify Optum immediately once it is made aware that any Restricted Data is accessible to it, specifying the nature of the data in question and when and how it was obtained by the Customer;

17.19.2 not use, or allow any Restricted Data to be used, by it or any of its Affiliates or any third party for any purpose whatsoever; and

17.19.3 at Optum' request, promptly return and/or delete the Restricted Data.

17.20 In the event that the Customer is able to view or access any Restricted Data, then (without any liability to the Customer or otherwise):

17.20.1 the Customer's access to and use of the Environment, Services and Solutions may be suspended until such time that Optum (acting reasonably) is satisfied that the risk of further Restricted Data being accessed by the Customer has been suitably mitigated and minimised;

and

17.20.2 the Customer shall provide all reasonable assistance and co-operation to Optum in relation to investigating and identifying the root cause of such access to the Restricted Data, and the Customer shall take all reasonable steps to help Optum to mitigate and remediate the associated risks and consequences.

Data Security

17.21 Where the Data is in anonymised or pseudonymised form, the Customer shall not attempt to identify any individual using data contained within the Data or to otherwise attempt to reverse any anonymity or (where the Data is anonymised) to render any element of it Personal Data (save where in respect of Customer Data or Third Party Data, such activities have been agreed with the relevant Data Controller(s)).

17.22 The Customer's, and any Authorised Users', use of the Solutions and Services is subject to the Customer ensuring that the Access Security Measures, as set out in Schedule 1, are fully complied with.

17.23 In the event that there is any malfunction, incident or error affecting the Customer's System which may pose a potential risk to, or place an unusual burden on the Solutions, Environment and/or Services, (including where an abnormally high number of queries are simultaneously run on the Solutions and/or Environment by an automated Authorised User) (each a "**Customer System Error**"), the Customer shall immediately notify Optum and the Customer accepts that its further access to the Solutions, Environment and Services shall be suspended until such time that Optum (acting reasonably) is satisfied that such Customer System Error has been satisfactorily addressed and resolved.

17.24 In the event that Optum, acting reasonably but entirely in its discretion, identifies any information security and/or clinical related risk associated with the Data, Environment or Solutions and/or the Customer's use thereof, Optum shall be entitled to immediately suspend the Customer's access to and use of the Environment, Data and/or Solutions until such time that Optum (acting reasonably) is satisfied that such risk has suitably reduced or been sufficiently mitigated, as appropriate.

18. TERMINATION

18.1 Optum shall (subject to the terms of the

Agreement) provide the relevant Solution(s) and/or Services during the Term (subject to any specific Order Form Term).

18.2 Termination of an individual Order Form (by providing the necessary notice under clause 2.2 or under this clause 18) shall result in the termination of the Services and relevant Solution(s) detailed in the relevant Order Form only.

18.3 In the event that the provision of all of the Services and/or all Solutions under the Agreement are terminated pursuant to the relevant Order Form(s) then either party may give not less than one month's notice in writing to the other party to terminate the Agreement.

18.4 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement (and/or the relevant Order Form(s)) without liability to the other immediately on giving written notice to the other if:

18.4.1 the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and it remains in default not less than ten (10) Business Days after being notified in writing to make such payment;

18.4.2 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 that party being notified in writing of the breach; or

18.4.3 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).

18.5 Optum can terminate the Agreement, at any time, by giving the Customer not less than six (6) months' notice in writing.

18.6 In the event that the Customer wishes (for operational reasons or otherwise) to terminate the Agreement (or any individual Order Form) early for convenience then it may request that Optum consent to such termination (such consent not to be unreasonably withheld, provided always that the Customer pays to Optum any Charges due to be paid, or which would be due to be paid had the Agreement (or the relevant Order Forms) not been terminated

early).

- 18.7 On termination of the Agreement (or on termination of an Order Form) for any reason:

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

18.7.2 the Customer shall immediately destroy or return to Optum (at Optum's option) all relevant Optum Materials then in its possession, custody or control and, in the case of destruction, certify to Optum that it has done so. Until they have been returned or destroyed, the Customer shall be solely responsible for their safe keeping.

- 18.8 Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will:

18.8.1 be without prejudice to any obligation or right of any 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

18.8.2 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.

- 18.9 Without prejudice to the generality of clause 18.8, the provisions of clauses 10, 11, 12, 13, 14, 15, 16, 18, 20, 29 and 30 will survive expiry or termination of the Agreement for any reason.

19. CORRUPT GIFTS AND PAYMENT

- 19.1 Each party shall ensure that it (and any person associated with it in connection with the Agreement) shall refrain from committing, facilitating, encouraging or allowing a Prohibited Act. Each party shall be responsible for any Prohibited Act carried out by any person associated with it in connection with the Agreement.

20. NON-SOLICITATION

- 20.1 During the Term and for six (6) months thereafter, the Customer shall not solicit or entice away or attempt to solicit or entice away any individual who is or has been in the

employment of Optum and has been concerned with the performance of any Services and/or delivery of any Solution(s) under the Agreement. For the avoidance of doubt, this clause 20.1 shall not prohibit the Customer from employing an Optum employee who has responded to a public advertisement for a role placed by the Customer that is not targeted at a specific or specific Optum employee.

- 20.2 In the event that the Customer employs any Optum employee in breach of clause 20.1, the Customer shall promptly pay to Optum (as liquidated damages, being a reasonable pre-estimate of Optum's loss) a sum equal to fifty per cent (50%) of the annual compensation payable by Optum to the person so hired plus all recruitment agency costs incurred in appointing a replacement for such person.

21. CUSTOMER FEEDBACK AND REVIEW MEETINGS

- 21.1 Optum shall take into account any suggestions, recommendations and/or requests or other feedback received from the Customer from time to time, including in relation to suggested additional features in respect of the Solutions and/or Services.

- 21.2 The parties shall use reasonable endeavours to meet from time to time during the Term, in order to review and discuss matters relating to the Agreement.

22. AUDIT

- 22.1 Optum shall have the right (upon giving reasonable notice and within normal business hours) to inspect the Customer's use of the relevant Solution(s), Environment and/or Services and its compliance with the terms of the Agreement.

- 22.2 Optum may perform an inspection under clause 22.1:

22.2.1 either itself (e.g. through an internal auditor) or through an external auditor; and

22.2.2 no more than once per year (and once during the twelve (12) months immediately following the termination or expiry of the Agreement) unless a breach of the Agreement or of security has occurred in which case a further inspection may take place.

- 22.3 Optum shall use its reasonable endeavours to ensure that the conduct of any inspection does not unreasonably disrupt the business of the Customer.

22.4 The Customer shall provide such access and assistance (and access, including, remote access, to the relevant records and/or systems) as Optum may reasonably require in connection with any inspection or audit. Each party shall bear its costs of preparing for and undertaking an inspection pursuant to clause 22.1.

22.5 If an inspection pursuant to clause 22.1 finds material irregularities, errors or non-compliance by the Customer then, without prejudice to any other remedies available to Optum, the Customer shall promptly remedy the same.

23. FORCE MAJEURE

23.1 Optum shall have no liability to the Customer under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of Optum or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, pandemic, epidemic, 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.

24. VARIATION

24.1 Without prejudice to clause 7.6, Optum may, from time to time, amend the terms these Master Terms by updating them online. If any change to these Master Terms would have a material adverse effect on the Customer then Optum shall give not less than thirty (30) days' written notice of the relevant amendment and the Customer may, at any time within sixty (60) days of receiving the relevant notice, terminate the Agreement by giving one (1) month's notice to Optum during which time the original terms shall apply (unless, during that one (1) month period Optum gives notice that it is withdrawing the proposed variation in respect of the Customer in which case the Agreement shall continue as drafted in full force and effect).

24.2 Subject to clause 24.1, 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.

24.3 Additional Services and/or Solution(s) may be added by both parties entering into new Order Forms each of which shall be subject to and be

incorporated into (and form part of) the Agreement.

25. WAIVER

25.1 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.

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

26. SEVERANCE

26.1 Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (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.

27. ENTIRE AGREEMENT

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

27.2 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.

27.3 Nothing in this clause 27 shall limit or exclude any liability for fraud.

28. ASSIGNMENT

28.1 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.

- 28.2 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.
- 28.3 Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.
- 28.4 Subject to clause 16.6, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, the Agreement. For the avoidance of doubt, the terms of the Agreement may be varied pursuant to clause 24 without reference to any third party.

29. NOTICES

- 29.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by email (to uk.contracts@optum.com) or by hand or sent by pre-paid first-class post or recorded delivery post to the other party at such address as may have been notified by that party for such purposes.
- 29.2 A notice delivered by hand (or by email) shall be deemed to have been received when delivered (or if delivery is not during Optum's normal working 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.
- 29.3 All notices sent to Optum shall be marked for the attention of Legal Counsel.

30. DISPUTE RESOLUTION; GOVERNING LAW AND JURISDICTION

- 30.1 Any dispute arising out of or in connection with the Agreement (each a "**Dispute**") shall be referred by either party first to representatives of each of the parties for resolution.
- 30.2 If the Dispute cannot be resolved by the relevant representatives of the parties within ten (10) Business Days after the Dispute has arisen, either party may give notice to the other party in writing (each a "**Notice**") that a Dispute has arisen.
- 30.3 Within ten (10) Business Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Optum and the Customer for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Business Days after the date of the Notice, then each party shall be entitled to pursue such remedies as may be available to it under the Agreement or otherwise at law or in equity. This clause 30 is without prejudice to either party's right to seek interim relief against the other party (such as injunction) through local courts, as defined herein, to protect its rights and interests, or to enforce the obligations of the other party.
- 30.4 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 laws of England and Wales.
- 30.5 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).

Access Security Measures

1. The Customer shall, and procures that where relevant all Authorised Users shall, fully comply with the following security measures and controls, in respect of any access to the Solutions and/or Environment (as appropriate). The Customer acknowledges that it may be subject to additional security measures under the relevant Third Party Data Access Agreement in respect of the Third Party Data and/or Derived Third Party Data:
2. The Customer shall:
 - a) ensure that all Authorised Individuals are bound by a duty of confidentiality; are competent and qualified to perform the specific operations assigned to them; and instructed in the requirements and obligations relevant to the performance of the Agreement;
 - b) ensure that Authorised Individuals have all undergone suitable training in respect of information governance and information security and remain current in such training;
 - c) inform Optum immediately if an Authorised User's account is compromised or if they disclose their password to an unauthorised recipient;
 - d) ensure that Customer Systems may, in case of a physical or technical incident, be restored;
 - e) test, assess and evaluate the effectiveness of technical and organisational measures for ensuring the security of the Customer Systems.

CONFIDENTIAL
Schedule 2 – User Notice

- 1.1 This user notice (Notice) is provided to you (**you**) by Egton Medical Information Systems Limited, trading as Optum (**Optum, us or we**). The Notice relates to your use of our software solutions, including the EXA environment and software made available through the environment (collectively, the “**Optum systems**”).
- 1.2 The Optum systems incorporate intellectual property belonging to us (and/or our third party licensor(s), as appropriate, including rights licenced through the Apache 2.0 open source software licence – the licence agreement for which is available at <https://www.apache.org/licenses/LICENSE-2.0>).
- 1.3 The Optum systems are NOT free or shareware.
- 1.4 When accessing and using the Optum systems you must (subject to rights under applicable law which cannot be excluded):
- (a) not copy the Optum system (or any related software), other than for normal operation, nor disassemble, decompile or reverse engineer the system (or any part thereof);
 - (b) not translate, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from the Optum system; and
 - (c) not use the Optum system in relation to any immoral or illegal purpose or for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to Optum’ reputation.
- 1.5 In relation to your user account, you:
- (a) must ensure that you keep a secure and unique password for your use of the Optum Systems;
 - (b) must ensure that you keep your password confidential and update your password no less frequently than once per month;
 - (c) must not allow any other person to access your account and/or the Optum System using your account;
 - (d) acknowledge that if you do not log in for any continuous period of 30 days or more, we may (at our discretion) prompt you to change your password before allowing you any further access to the Optum System; and
 - (e) acknowledge that we have the right, acting reasonably but entirely in our discretion, to revoke your access to the Optum System at any time.
- 1.6 The Optum system is provided on an “*as is*” and “*as available*” basis without any warranty of any kind either express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement except to the extent that by statute liability may not lawfully be excluded in a notice of this nature.
- 1.7 All copyright, trade marks and other intellectual property rights subsisting in or used in connection with the Optum system (including but not limited to all images, animations, audio and other identifiable material relating to the software) are and remain the sole property of the Optum (or its third party licensors as appropriate).

CONFIDENTIAL
Schedule 3 – Service Levels

Optum shall use its reasonable endeavours to provide the Solutions and Services in accordance with the below service levels. The following definitions shall apply to this Schedule 3:

Explorer IPCV Tables means a set of data tables derived from the raw Explorer Web Tables (defined below), intended to present a more straightforward data model along with clear indicators of changes in the data over time.

Explorer Web Tables means the standard data tables for EMIS Web available within Explorer.

HSSI means a high Severity service Incident.

Incident means an incident (as defined by ISO20000).

ISO20000 means the standard ISO 20000: The International Standard for Service Management.

Mitigated has the meaning set out in ISO20000.

QOF means the Quality and Outcomes Framework.

Resolved has the meaning set out in ISO20000 (and Resolve and Resolution shall be construed accordingly).

Severity means the severity of an Incident as set out in, and decided in accordance with, the terms of this Schedule 3.

1. Availability

Optum shall use its reasonable endeavours to ensure that the Services and Solutions are available to the Customer not less than 95% of the time during Operational Hours (only).

The Services and Solutions will count as being available if any Authorised User can connect to the service (either the query engine directly or the webapp), run a trivial query (e.g. select an arbitrary row from a commonly used table) and receive a result back. If the Services and/or Solutions are unavailable in accordance with clauses 7.2 and/or 7.4, such down time shall not count towards Availability.

2. Incident Resolution

2.1. Incident Management

2.1.1. The Customer will raise any Incidents it may identify to Optum via the Optum Help Centre Self-Service Portal, Live Chat function, email or telephone and it shall provide a summary of the relevant issue along with its view of the appropriate Severity level (applying the criteria set out below).

2.1.2. Optum shall review each Incident raised by the Customer and, taking the terms of this Schedule 3 and the Customer's view into account, acting reasonably (but ultimately in its discretion), it will attribute a Severity level to the Incident.

2.2. Target Resolution Times

Optum shall use its reasonable endeavours to Resolve or Mitigate an Incident in accordance with the following service levels (measured in accordance with paragraph 5 of this Schedule 3):

Severity Level	Target for Resolution / Mitigation
1	Target to Resolve/Mitigate Incident within 8 Operational Hours Severity 1 Incidents to be managed in accordance with ISO20000
2	Target to Resolve/Mitigate Incident within 16 Operational Hours Severity 2 Incidents to be managed in accordance with ISO20000
3	Target to Resolve/Mitigate Incident within 48 Operational Hours

	Severity 3 Incidents to be managed in accordance with Optum's standard processes
4	Target to Resolve/Mitigate Incident within 144 Operational Hours Severity 4 Incidents to be managed in accordance with Optum's standard processes
5	No specified resolution/mitigation timeframe Severity 5 Incidents to be managed in accordance with Optum's standard processes

2.3. Severities

The Severity of an Incident shall be determined by reference to the following matrix (please note that this advisory only and is to be used as a guide for calculation of Incident Severity).

Severity Level Matrix			
Impact			
Distribution	Unavailable	Performance Degraded	Non-Performance Issue
High	Severity 1	Severity 2	Severity 3
Medium	Severity 2	Severity 3	Severity 4
Low	Severity 3	Severity 4	Severity 4
Very Low	Severity 4	Severity 5	Severity 5

Distribution will be calculated as follows:

- High = Affecting $\geq 75\%$ of Authorised Users for all customers using the Environment/Solutions.
- Medium = Affecting $\geq 25\%$ and $< 75\%$ of Authorised Users for all customers using the Environment/Solutions.
- Low = Affecting $< 25\%$ of Authorised Users for all customers using the Environment/Solutions, but more than one Authorised User.
- Very Low = A single Authorised User of the Customer is affected.

Examples of impacts are:

- Unavailable = Service/Solutions are entirely unavailable for a customer (cannot connect or cannot run a trivial query).
- Performance degraded = service performance materially below reasonable expectations.
- Non-performance issue = any issue not related to performance (or where the impact on performance is relatively low or trivial).

Note that, due to the nature of the Environment and Solutions as a query platform, using a technology that many parties may be unfamiliar with, performance may vary greatly due to poorly implemented or not optimised SQLs. Raising performance Incidents will be subjective based on an analysis of the SQLs being used by the Customer. Poorly written SQLs will not be treated as evidence of performance degradation for the Services, Environment or Solution(s). Customers should refer to the Performance Guide for further information.

3. Data Latency

Optum shall use its reasonable endeavours to ensure that Third Party Data (relevant to the Customer and in accordance with the Customer's Order Form(s)) is updated within the Environment from EMIS Web as follows:

Table type	Target maximum data latency
Explorer Web Tables	12 hours
Explorer IPCV Tables	36 hours

The Data Latency target that is relevant to the Customer will depend upon whether it uses Explorer Web Tables and/or Explorer IPCV Tables. Optum does not guarantee the aforementioned latency targets. Please also be aware that that data latency can be affected by a number of factors that may impact the perceived data latency on a customer by customer basis. These include:

- Incidents occurring;
- the size of the source EMIS Web data type/table (e.g. big tables (e.g. Observation) with lots of data will take longer to replicate than smaller tables);
- the number of practices co-located in the same EMIS Web database (i.e. if a database has one practice, then it'll get replicated quicker than one with multiple practices);
- the number of practices on the relevant EMIS Web patch domain server (i.e. if a patch domain server has only a few practices, data may be replicated quicker);
- the time of day (for example it may take longer during EMIS Web operational hours when usage is higher); and/or
- during relevant periods of extra load (for example, during periods that GP QOF figures are being re-calculated in EMIS Web and/or reposted all databases will be under significant extra demand / load).

4. SQL Speed

Optum shall use its reasonable endeavours to achieve a target speed of SQLs, against a persisted table that does not contain joins and has been drafted in accordance with the Performance Guide (i.e. bulk queries or delta queries from Explorer IPCV Tables) of 2,000 – 15,000 data rows per second (during Operational Hours).

The Customer agrees and acknowledges that Optum's ability to deliver the target speed of SQLs will be dependent upon the Customer's compliance with its obligations under clause 12.2 and, in particular, ensuring that it has an appropriate and reliable internet connection.

5. Measuring Service Levels

- 5.1. Compliance with the timescales referred to in this Schedule 3 will be measured during Operational Hours only and the parties will 'stop the clock' outside of Operational Hours. Any notification of an Incident sent to Optum outside of the relevant Operational Hours will be deemed to have been received at the start of the next Operational Hour period.
- 5.2. Optum shall not be liable to the Customer whatsoever in the event that it is prevented from performing all or any of its obligations under this Schedule 3 as a consequence of:
 - 5.2.1. the Customer's or any of its employees, agents or sub-contractor's actions or omissions (including, for the avoidance of doubt, failure to comply with the Fair Usage Policy and/or to follow the Performance Guide); and/or
 - 5.2.2. any failure on the Customer's part to provide Optum with such reasonable assistance as it may require in order to fulfil its obligations.

The parties will 'stop the clock' during any period that Optum is unable to fulfil its obligations under this Schedule 3 for the aforementioned reasons.

CONFIDENTIAL
Schedule 4 – Subscription Terms

1. Definitions

1.1. The following definitions shall apply to this Schedule 4:

Additional Subscription Form means either i) a quote raised by Optum, ii) an additional subscription form, in the form of the template contained in the Appendix hereto, or iii) such other relevant documentation, in each case provided by Optum to the Customer and accepted by the Customer in accordance with this Schedule 4.

AU Population means the number of EMIS Web Users.

Community Customer means a customer which provides community services or clinical services and which has a contract with Optum for EMIS Web and/or are obtaining Data Access to Third Party Data from such EMIS Web customers.

EMIS Web Users means the number of users that are either authorised or concurrent (as specified in the relevant contract for EMIS Web) in relation to all and any of (a) the Customer's instance(s) of EMIS Web (b) any beneficiary's instance(s) of EMIS Web i.e., where the Customer has procured EMIS Web for third party beneficiaries; and (c) any instances of EMIS Web used by any relevant Site(s).

Explorer Insights Customer means a customer that has procured Explorer Insights under the relevant Order Form.

Hospice Customer means a customer that provides hospice services and which has a contract with Optum for EMIS Web and/or are obtaining Data Access to Third Party Data from such EMIS Web customers.

Initial Subscription means the initial subscription for the Solution(s) and Services purchased by the Customer under the relevant Order Form on its Order Form Effective Date (as set out therein).

Minimum Charge means the minimum charge for a Community Customer or a Population Customer taking an EXA Subscription or an Explorer Insights Customer as set out in the relevant Order Form.

Multiplier means the multiplier for calculating the Usage Cap as set out in the relevant Order Form (where appropriate).

Patient Population means the number of patients whose data/records are included within the Data to be made available through the Data Access under the relevant Order Form. In the case of Third Party Data, this will include all Third Party Data at each relevant Site.

Patient Population Bundle means an additional subscription for the Solution(s) and Services purchased by the Customer during an Order Form Term in accordance with paragraph 4 of this Schedule 4.

Population Customer means all customers which are not a Community Customer, Explorer Insights Customer or Hospice Customer.

Renewal Subscription means renewal of an Initial Subscription or previous Renewal Subscription purchased by the Customer at the start of any Renewal Order Form Term, in accordance with paragraph 3 of this Schedule 4.

Site means each site operated by a Third Party Data Controller that the Customer has requested Optum to enable a data sharing agreement in accordance with clause 17.5 (whether such agreements are activated by the relevant Third Party Data Controllers or not). A single Third Party Data Controller may operate more than one Site, each of which shall count as a single Site under the terms of the Agreement.

Subscription means, as applicable, an Initial Subscription, Renewal Subscription, Patient Population Bundle and/or a Top Up related to the relevant Order Form.

Subscription Rate means the relevant charge per patient or charge per authorised user (as appropriate).

2. General

- 2.1. The parties agree that:
 - 2.1.1. an Initial Subscription is valid for the Initial Order Form Term and any unused Query Minutes in the Usage Cap cannot be rolled over into a Renewal Order Form Term;
 - 2.1.2. Patient Population Bundles are valid until the end of the Initial Order Form Term or Renewal Order Form Term (as appropriate) and unused Query Minutes in the Usage Cap cannot be rolled over into the next Renewal Order Form Term;
 - 2.1.3. Renewal Subscriptions are valid for the relevant Renewal Order Form Term and unused Query Minutes in the Usage Cap cannot be rolled over into the next Renewal Order Form Term; and
 - 2.1.4. Top Ups are valid for a period of 12 months from the date of purchase and unused Query Minutes can be rolled over into the next Renewal Order Form Term provided they are used within 12 months of purchase. Usage of Query Minutes during the relevant next Renewal Order Form Term shall be deemed to use up any rolled over Top Up Query Minutes first.
- 2.2. Where appropriate, the Site(s) relevant to each Order Form shall be as set out the Appendix of the relevant Order Form or as otherwise notified to Optum by the Customer in a configuration request form (or other agreed format).
- 2.3. The Customer acknowledges that Optum shall be entitled to monitor the Customer's usage of Standard Queries/Query Minutes in accordance with clause 8.3, including for the purposes of determining whether the Customer has exceeded (or is likely to exceed) its Usage Cap.
- 2.4. Each Subscription may only be used for the relevant Project under the particular Order Form pursuant to which it has been purchased. The Usage Cap under one Order Form cannot be used for a different Project under a separate Order Form and vice versa (unless otherwise agreed in writing).
- 2.5. Unless agreed otherwise in a relevant Order Form, Subscription Charges for an EXA Subscription are calculated on the following basis:
 - 2.5.1. **Population Customer:** Patient Population x Subscription Rate (subject to the Minimum Charge);
 - 2.5.2. **Community Customer/Explorer Insights Customer:** AU Population x Subscription Rate (subject to the Minimum Charge); and
 - 2.5.3. **Hospice Customer:** in accordance with the table set out in the relevant Order Form.
- 2.6. Unless agreed otherwise in a relevant Order Form, Usage Caps for an EXA Subscription are calculated on the following basis:
 - 2.6.1. **Population Customer:** ((Patient Population x Multiplier) x 3 (being a Standard Query of 3 seconds)) / 60;
 - 2.6.2. **Community Customer/Explorer Insights Customer:** based on the Usage Cap table set out in the relevant Order Form; and
 - 2.6.3. **Hospice Customer:** in accordance with the table set out in the relevant Order Form.
- 2.7. Any Additional Subscription Form will be deemed to have been accepted by the Customer on the earlier of:
 - 2.7.1. the execution and return of a signed copy of the Additional Subscription Form by the Customer;
 - 2.7.2. an acknowledgement of acceptance of the Additional Subscription Form by the Customer (including, one sent by email); or
 - 2.7.3. Data Access being granted to the additional Patient Population Data (or, in the case of Third Party Data, the date that data sharing agreements are enabled by Optum in accordance with clause 17.5); or

2.7.4. in the case of **Top Ups** only: use of Query Minutes by the Customer in excess of its current Usage Cap under its relevant Subscription(s).

2.8. The parties agree that these Subscription Terms shall apply, as appropriate, to each Order Form that includes an EXA Subscription unless the parties agree otherwise in writing.

2.9. Any adjustment made to Subscription Charges payable by the Customer, in accordance with this Schedule 4, in respect of an increase or decrease in Patient Population / AU Population shall also adjust the Usage Cap available to the Customer in accordance with the Multiplier or Usage Cap table (as appropriate) under the relevant Order Form (and where relevant on a pro-rated basis).

3. Renewal Subscriptions

3.1. Renewal Subscriptions will automatically be purchased by the Customer at the start of each relevant Renewal Order Form Term. Subject paragraph 3.2 below, the Subscription Charges for the Renewal Order Form Term shall (unless agreed otherwise in writing) be in the amount set out in respect of the Subscription Charges in the relevant Order Form plus:

3.1.1. any adjustment to reflect an increase in Patient Population, as set out in a Patient Population Bundle purchased by the Customer; or

3.1.2. any adjustment to reflect an increase in the AU Population; and

3.1.3. an adjustment to reflect Indexation.

3.2. In respect of any Renewal Subscription, Optum reserves the right to:

3.2.1. review the Customer's Patient Population / AU Population (as appropriate) and charge the Subscription Charges based on the actual Patient Population / AU Population rather than the Patient Population / AU Population set out in the Order Form (plus any adjustment to that number under paragraph 3.1); and/or

3.2.2. remove any discount applied to any Renewal Subscription and/or Patient Population Bundle (as appropriate) at the start of a new Renewal Order Form Term.

3.3. In the event that the Customer believes that its Patient Population / AU Population has reduced, it must notify Optum within 30 days of receipt of the relevant Renewal Subscription invoice. Subject to Optum verifying the reduction in the Patient Population / AU Population, Optum shall, where appropriate, credit the original invoice and issue a new invoice based upon the agreed Patient Population / AU Population (but subject always to paragraphs 3.1 and 3.2 above and any Minimum Charge). If Optum does not receive such notice within 30 days, any reduction shall be at Optum's discretion.

3.4. Usage Cap:

3.4.1. **Population Customers:** the Usage Cap for any Renewal Subscription shall be calculated in accordance with the Multiplier and Patient Population originally set out in the relevant Order Form, subject to any amendments made to the Patient Population in accordance with this Schedule 4; or

3.4.2. **Community Customers/Explorer Insights Customers/Hospice Customers:** the Usage Cap shall be determined by reference to the table set out in the relevant Order Form based on the size of the AU Population.

4. Patient Population Increases (Population Customers only)

4.1. If, during the Order Form Term, the Patient Population under the relevant Order Form increases either:

4.1.1. organically by greater than 10% of the Patient Population stated in the relevant Order Form (as adjusted by any relevant Additional Subscription Form); and/or

4.1.2. through the addition of new Site(s) to the relevant Order Form,

the Customer must notify Optum, including details of any new Site(s), and the Customer will need to buy a Patient Population Bundle.

4.2. Once notified in accordance with paragraph 4.1 above, Optum will calculate the Charges and additional Usage Cap for the Patient Population Bundle on a pro-rated basis using the following information:

- 4.2.1. the number of additional patients being added to the Patient Population; and
- 4.2.2. the price per patient per annum set out in the relevant Order Form; and
- 4.2.3. number of days remaining in the Initial Order Form Term/Renewal Order Form Term (as appropriate).

Optum will send the calculation of the Patient Population Bundle in an Additional Subscription Form to the Customer for acceptance in accordance with paragraph 2.7 of this Schedule 4.

4.3. Optum reserves the right to review the Customer's Patient Population at any time. If, on review, the Patient Population has increased in accordance with either paragraph 4.1.1 and/or 4.1.2 above, this shall be deemed to be notice from the Customer to Optum in accordance with paragraph 4.1 and acceptance by the Customer (in accordance with paragraph 2.7.3) of a Patient Population Bundle calculated in accordance paragraph 4.2. Optum shall be entitled to invoice the Customer for the relevant Patient Population Bundle Charges.

5. AU Population Increases (Community Customers / Explorer Insights Customers / Hospice Customers)

- 5.1. In the event that the Customer's AU Population increases above the maximum number of Community Authorised Users set out in the relevant Order Form, the Customer must notify Optum.
- 5.2. Once notified in accordance with paragraph 5.1 above, Optum will calculate the additional Charges due based upon the Subscription Rate set out in the relevant Order Form on a pro-rated basis depending on the number of days remaining in the Initial Order Form Term/Renewal Order Form Term (as appropriate).
- 5.3. Optum will send the calculation in an Additional Subscription Form to the Customer for acceptance in accordance with paragraph 2.7 of this Schedule 4.
- 5.4. Optum reserves the right to review the Customer's AU Population at any time. If, on review, the AU Population has increased, this shall be deemed to be notice from the Customer to Optum in accordance with paragraph 5.1 and acceptance by the Customer. Optum shall be entitled to invoice the Customer for the relevant additional Charges.

6. Top Ups

- 6.1. Top Ups to the Customer's Usage Cap can be purchased at any time by the Customer in multiples of 5,000 Query Minutes at the then current Top Up Rate.
- 6.2. If the Customer wishes to buy a Top Up it will notify Optum and Optum will provide the Customer with an Additional Subscription Form confirming the current Top Up Rate for acceptance in accordance with paragraph 2.7 of this Schedule 4.
- 6.3. If the Customer exceeds its Usage Cap, then it must purchase a Top Up in order to continue to query Data within the Solution(s) and Environment. As such, if the Customer uses more than its Usage Cap, this shall be deemed to be a request in accordance with paragraph 6.2 and acceptance in accordance with paragraph 2.7.4 and Optum shall be entitled to invoice the Customer at the then current Top Up Rate.

7. Termination and Subscription Charges

- 7.1. Save as set out in this paragraph 7, all Subscription Charges are non-refundable.
- 7.2. In the event that an Order Form (or the Agreement) is terminated part way through the Initial Order Form Term or Renewal Order Form Term (as appropriate) for cause:
 - 7.2.1. where such termination is due to a default by Optum, Optum shall refund the Customer on a pro-rated basis by reference to the number of days remaining in the Initial Order Form Term / Renewal Order Form Term (as appropriate) and the amount of Query Minutes of the relevant Usage Cap unused by the Customer; or

- 7.2.2. where such termination is due to a default by the Customer, no refund shall be payable to the Customer.

8. Invoicing

- 8.1. Optum shall be entitled to invoice the Customer in relation to Subscriptions as follows:
- 8.1.1. **Initial Subscription:** on, around or after the Live Date;
 - 8.1.2. **Renewal Subscriptions:** on, around or after the start of the Renewal Order Form Term; or
 - 8.1.3. **All other Subscriptions:** on or after acceptance of the relevant Additional Subscription Form in accordance with this Schedule 4.

Appendix – Additional Subscription Form

This additional subscription form (“**Additional Subscription Form**”) is entered into pursuant to the terms of an Order Form (the “**Order Form**”) dated [] between Egton Medical Information Systems Limited (trading as Optum) and [INSERT NAME OF CUSTOMER] (the “**Customer**”).

Any definitions used in this this Additional Subscription Form shall have the meaning set out in the Order Form unless otherwise herein defined. Once signed by both parties, this Additional Subscription Form will form part of the relevant Order Form and the Agreement.

Agreed by Egton Medical Information Systems Limited t/a Optum Signed for and on behalf of Egton Medical Information Systems Limited t/a Optum	 <i>Signature</i> <i>Print Name:</i> <i>Date</i>
Agreed by the Customer Signed for on behalf of the Customer	 <i>Signature</i> <i>Print Name:</i> <i>Date</i>

1. Dates:	
Date of purchase:	
Date by which Subscription must be used up by:	

2. Subscription and Charges:
Subscription: [insert details, inc. type of Subscription] No of Query Minutes added to Usage Cap: [insert] Charges: [insert]

Schedule 5 – Customer Data Particulars of Processing

Purpose of processing:	To provide the Services, Solutions and Environment set out in the relevant Order Form under the terms of the Agreement.
Duration of the processing:	Relevant Order Form Term.
Nature of processing:	Storing, structuring and providing Data Access in accordance with the Agreement and the queries made by the Customer of the Customer Data within the Solution(s). Processing may include anonymisation or pseudonymisation as set out in the relevant Order Form.
Types of Personal Data (including any Special Category Data):	Personal Data which may be processed under the Agreement includes Special Category Data. The exact Personal Data being processed will be determined by the Customer however, it may include patient names, addresses, dates of birth, NHS numbers, ODS codes, telephone numbers, email addresses and other contact details, medical records, images and biometric data, ethnic origin, race, sex and religion/philosophical beliefs.
Categories of Data Subject:	The exact categories will be determined by the Customer however, they may include patients (registered and/or recently deceased), GPs or other medical practitioners or care providers and/or test/trial/study subjects and/or participants.
Source of Personal Data:	As set out in the relevant Order Form.

CONFIDENTIAL
Schedule 6 – Deliverable Terms

1. Interpretation

The definitions listed below when used in this Schedule 6 and are additional to the definitions in body of these Master Terms.

Acceptance Certificate: means the certificate to be signed by the Customer under paragraph 4.1.1.

Acceptance Criteria: means the acceptance criteria set out next to each Deliverable in the Deliverable Annex.

Acceptance Tests: means the tests of the Deliverable necessary to demonstrate that the relevant Deliverable meets the relevant Acceptance Criteria as set out in Appendix 1.

Accepted: means a Deliverable has been accepted in accordance with paragraph 4.

Completion Date: means the relevant estimated completion date for each Deliverable as set out in the Deliverable Annex.

Defect: means an error in the relevant Deliverable that means the Customer is unable to use the Deliverable in accordance with the relevant Acceptance Criteria.

Deliverable: means each of the deliverables to be undertaken by Optum in accordance with the Master Terms, this Schedule 6 and the relevant Order Form (including the Deliverable Annex) (each a “**Deliverable**” and together, the “**Deliverables**”).

Deliverable Acceptance Date: the date on which a Deliverable is Accepted.

Deliverable Annex: means the Deliverable Annex attached to the relevant Order Form pursuant to which the Deliverable Services are being provided.

Deliverable Documentation: means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms in relation to any Deliverable.

Explorer IPCV Tables: means a set of data tables derived from the raw Explorer Web Tables, intended to present a more straightforward data model along with clear indicators of changes in the data over time.

Explorer Web Tables: means the standard data tables for EMIS Web available within Explorer.

Good Industry Practice: means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Open-Source Software: means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, the Deliverables, or with which any Deliverable is compiled or to which it is linked.

Test Environment: means the Explorer pre-production test environment.

Test Period: means the test period(s) set out in the relevant Order Form.

Third-Party Licences: means any licences relating to Third-Party Software and/or Open Source Software.

Views: means the structured query language views to be built by Optum within EXA in accordance with the Deliverable Services (if any) that the Customer will be able to use within Explorer and which may be more particularly set out in the relevant Deliverable Annex.

Work: means all the works, duties and obligations to be carried out by Optum as part of the Deliverable Services including delivery of the Deliverables.

2. Deliverables

- 2.1. Optum shall use its reasonable efforts to develop the Deliverables in accordance with the Master Terms, this Schedule and the relevant Order Form.
- 2.2. Optum shall:
 - 2.2.1. where relevant carry out, in conjunction with the Customer, the Acceptance Tests; and
 - 2.2.2. use its reasonable endeavours to ensure that the Deliverables are all ready for Acceptance Tests by the relevant Completion Date(s) (however time shall not be of the essence for the purposes of the Deliverable Services).

3. Acceptance Tests

- 3.1. Where relevant, Optum shall notify the Customer by written notice once it determines that each Deliverable is ready for Acceptance Testing.
- 3.2. Acceptance Tests for the relevant Deliverable will be carried out by the relevant party or parties in accordance with the Deliverable Annex.
- 3.3. Where Customer acceptance is required then, subject to the Customer being satisfied (acting reasonably and in good faith) that the relevant Acceptance Criteria has been met, it will within 5 Business Days from the completion of the Acceptance Tests sign an Acceptance Certificate.
- 3.4. If the Customer reasonably determines that any Deliverable materially fails to pass the Acceptance Tests, the Customer shall as soon as reasonably possible, and in any event no later than 5 Business Days from the completion of the relevant Acceptance Tests, provide Optum with notice to this effect, giving details of such failure(s)/Defects, by logging a ticket with Optum's Service Desk. Optum shall endeavour to remedy the Defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 3.5. If any Deliverable fails in some material respect to pass any repeated Acceptance Tests within 20 Business Days from the date of its second submission to the Acceptance Tests, then Optum shall fix a new date for carrying out further tests on the Deliverable on the same terms and conditions. If the Deliverable fails such further tests then the Customer may request a repeat test under this paragraph 3.5.
- 3.6. If Optum is unable to correct any material Defects in the relevant Deliverable within a period of two months from the commencement of any repeat Acceptance Tests under paragraph 3.4, the Customer shall be entitled to reject the relevant Deliverable as not being in conformity with the Deliverable Services, in which event either party may terminate the Deliverable Services on written notice to the other. For the avoidance of doubt, termination or expiry of the Deliverable Services howsoever occurring, will not affect the existence of the relevant Order Form and/or these Master Terms, which will continue in full force and effect.

4. Acceptance

- 4.1. Acceptance of a Deliverable shall be deemed to have occurred:
 - 4.1.1. where Optum is required to confirm Acceptance Criteria has been met, on the date of such confirmation by Optum to the Customer; or
 - 4.1.2. in all other circumstance, on the earlier of:
 - 4.1.2.1. the signing by the Customer of an Acceptance Certificate in respect of the relevant Deliverable; or

- 4.1.2.2. the expiry of 5 Business Days after the completion of all the Acceptance Tests for that Deliverable, unless the Customer has given any written notice under paragraph 3.4.

5. Extension of Time

- 5.1. The timetable in respect of any Deliverable / the Completion Date will be extended if one of more of the following events occurs:
- 5.1.1. a variation to a Deliverable is made at the Customer's request under the change control procedures set out in paragraph 6;
 - 5.1.2. a force majeure event occurs as described in clause 23; and/or
 - 5.1.3. a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors including any failure on the Customer's part to comply with its obligations under clause 12.
- 5.2. If Optum is entitled to an extension of time under paragraph 5.1 of this Schedule, it shall give written notice to the Customer specifying the event relied on and, in the case of a force majeure event under clause 23, it shall estimate the probable extent of the delay.
- 5.3. The parties shall agree in writing what extension of time is reasonable in the circumstances. The Deliverable Services shall be deemed amended accordingly.

6. Change Control

- 6.1. The Customer may, by giving written notice to Optum at any time before completion of the Deliverable Services, request a change to all or any of the Deliverables.
- 6.2. Within 10 Business Days of receipt of such notice, Optum shall prepare for the Customer a written estimate of any increase or decrease in the relevant Charges, and of any effect that the requested change would have on the Deliverable(s) and/or the relevant Completion Date(s).
- 6.3. Within 10 Business Days of receipt of the written estimate referred to in paragraph 6.2, the Customer shall inform Optum in writing of whether or not the Customer wishes the requested change to be made. If the change is required, Optum shall not make the requested change until the parties have agreed and signed a written amendment to the relevant Order Form in accordance with clause 24, specifying, in particular, any changes to the Deliverable(s), Completion Date(s) and the relevant Charges.
- 6.4. If a variation cannot be agreed, then the parties shall continue to perform their respective obligations in respect of the Deliverable Services as if the change request had not been made and Customer shall be entitled to terminate the Deliverable Services subject to the Customer paying Optum any unpaid balance of the relevant Charges (whether the Work has been completed or not).

7. Ownership

- 7.1. The Intellectual Property Rights in the Deliverables and Deliverable Documentation (other than any Open-Source Software and/or Third-Party Software (if any)) constitute Optum IP and are, and shall remain, the property of Optum, and Optum reserves the right to grant a licence to use such Deliverables to any other party or parties.
- 7.2. Unless expressly agreed otherwise in an Order Form, Optum hereby grants to the Customer strictly for the purposes of exercising its rights and obligations under the Agreement, an exclusive, non-transferable, non-sub licensable licence, during the relevant Order Form Term to access and use the Deliverables and Deliverable Documentation, in the manner contemplated in the Agreement.
- 7.3. The Customer shall do and execute or arrange for the doing and executing of, each necessary act, document and thing that Optum may consider necessary or desirable to perfect the right, title and interest of Optum in and to the Intellectual Property Rights in the Deliverables and/or Deliverable Documentation.

8. Warranties

8.1. Optum warrants that:

- 8.1.1. it will perform the Works in a reliable and professional manner, in conformity with Good Industry Practice, by a sufficient number of competent personnel with appropriate skills, qualifications and experience;
- 8.1.2. the Deliverables will not infringe any third-party Intellectual Property Rights enforceable in the United Kingdom;
- 8.1.3. it has all Third-Party Licences necessary for the purposes of developing the Deliverables (if any); and
- 8.1.4. it will perform the Works in compliance with all applicable law and regulations.

8.2. The sole remedy for breach of the warranty under paragraph 8.1 shall be for Optum to use its reasonable endeavours to correct any Defects within a reasonable time from notification by the Customer of the Defect that constitutes such breach.

8.3. Optum specifically denies any implied or express representation that the Deliverables will:

- 8.3.1. operate in conjunction with any hardware items or software products; or
- 8.3.2. operate uninterrupted or error-free.

8.4. Any unauthorised modifications, use or improper installation of the Deliverables by, or on behalf of, the Customer shall render all Optum's warranties and obligations under this Schedule and / or relevant warranties and obligations under the Master Terms of the Agreement null and void.

8.5. Optum shall not be obliged to rectify any particular Defect if attempts to rectify such Defect, other than normal recovery or diagnostic procedures, have been made by the Customer's personnel or third parties without the permission of Optum.

9. Duration

9.1. The Deliverable Services shall be undertaken in accordance with the relevant Deliverable Annex.

9.2. If the relevant Order Form is terminated before the Deliverable Acceptance Date of the last Deliverable, the Customer will pay Optum:

- 9.2.1. the cost of all Work properly performed in respect of the Deliverable Services (whether or not all the Deliverables have been completed at the date of termination) to the date of termination;
- 9.2.2. any reasonable additional expenses in relation to such Work for which Optum has financial commitments evidenced as being in effect in writing as at the date of termination that cannot reasonably be avoided. This does not affect Optum's duty to mitigate its loss; and
- 9.2.3. Optum shall submit invoices for any Works that it has undertaken and/or supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices in accordance with the payment provisions herein.