

PHARMOUTCOMES PROVIDER PAYS AFFINITY GROUP AGREEMENT

PLEASE READ CAREFULLY BEFORE PROCEEDING:

This agreement is a legal agreement between you, the organisation signing up to become an Affinity Group (as defined below) ("**you**", "**your**" or "**Affinity Group**") and Egton Medical Information Systems Limited, a company incorporated in England and Wales (company number 02117205) whose registered office is at Fulford Grange, Mickelfield Lane, Leeds, LS19 6BA ("**Optum**", "**us**" or "**we**"). This Agreement relates to your payment of charges to us on behalf of mutual pharmacy customers who have signed up with you as their Affinity Group, and to whom we provide our PharmOutcomes IT system.

IMPORTANT NOTICE:

- BY CLICKING ON THE "ACCEPT" BUTTON YOU AGREE TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND YOU. ANY INDIVIDUAL WHO ACCEPTS THESE TERMS, IS CONFIRMING THAT THEY HAVE THE AUTHORITY TO DO SO ON BEHALF OF THEIR ORGANISATION. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 11 AND TERMS IN SCHEDULE 1 WHICH WILL APPLY CONCERNING YOUR USE OF OUR SYSTEM, AND TERMS WHICH WILL APPLY BETWEEN YOU AND A CUSTOMER IN SCHEDULE 3.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU WILL NOT BE APPOINTED AS AN AFFINITY GROUP.

You should print a copy of this Agreement for future reference.

1. DEFINITIONS

1.1. In this Agreement, the following words shall have the following meanings:

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.

Affinity Group means an organisation that manages payments in respect of Provider Pays Claims for its community pharmacy members through the System. For the avoidance of doubt, each Affinity Group entity within a wider Representative Body will need to separately sign up to this Agreement if it is to perform its obligations and receive the benefits pursuant to an AG Customer Agreement.

AG Customer Agreement means an agreement between you and a relevant Customer (which shall be on the standard terms set out at Schedule 3 of this Agreement), pursuant to which you will provide payment and invoicing related services and benefits to the Customer in respect of Provider Pays Claims.

Agreement means the clauses of this agreement as may be varied or amended from time to time in accordance with this agreement, including any Schedules attached hereto. For the avoidance of doubt, the copy of the AG Customer Agreement terms set out at Schedule 3 are included for information purposes only, and are a separate agreement to this Agreement.

API means an application programming interface which you may provide pursuant to this Agreement, which allows the automated exchange of data between the System and your software.

Applicable Law means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of the parties' respective obligations under this Agreement.

Charges means the amounts that you shall pay to Optum under this Agreement in accordance with clause 10.

Completed Follow Up means the Provider Pays Service performed by a Customer to a patient who attends the Customer's site and when the pharmacy service follow up stage has been saved successfully into PharmOutcomes.

Confidential Information means information (in any format) that falls within any of the following categories: (a) it relates to, includes or comprises terms and conditions of the Agreement; (b) it is Customer Data; (c) it is marked as "confidential" (or similar); (d) 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 customers and suppliers, finances, personnel, computer software, and algorithms; and (ii) similar information of third parties that a party maintains in confidence; or (e) any combination of the foregoing.

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 a community pharmacy or group of community pharmacies, who: (i) has signed up to Optum's PharmOutcomes Direct model pursuant to the terms of an Optum Customer Agreement; and (ii) who has an AG Customer Agreement in place with you.

Customer Data means the transaction data made available to Optum and you by the relevant Customer, via the System, in relation to Provider Pays Claims.

Data Protection Laws means: (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, including the 'UK GDPR'; (ii) the Privacy and Electronic Communications Regulations 2003; and (iii) any binding guidance or codes of practice issued by the ICO and/or European Data Protection Board from time to time.

Effective Date means the date upon which you accept the terms of this Agreement, by clicking on the 'Accept' button.

Extension Period has the meaning set out under clause 4.2.

Initial Term means an initial period of 12 months from the Effective Date.

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.

Month means a calendar month during the Term.

Optum Customer Agreement means the agreement between Optum and a Customer, pursuant to which Optum provides the System and related services within PharmOutcomes (which include submitting Provider Pays Claims), based on the PharmOutcomes Direct model.

Personal Data has the meaning set out under Data Protection Laws.

Pharmacy First Services means the community pharmacy advanced services set out in the specification, and as further described, at:
<https://www.england.nhs.uk/publication/communitypharmacy-advanced-service-specification-nhs-pharmacy-first-service/#heading-1>.

PharmOutcomes means Optum's primary operating system which is a web-based clinical and service management data collection and communications platform used by the Customers.

PharmOutcomes Direct means Optum's management solution based on the 'provider pays' model, whereby the community pharmacy manages its use of, and payment for, certain Provider Pays Services but will only be charged based on the number of Completed Follow Ups.

Price List means the separate list provided by Optum to you via the System, prior to the Effective Date (and any updated list provided via the System by Optum from time to time), which sets out details of Optum's prices for each type of Completed Follow-Up.

Provider Pays Claim means a claim made by or on behalf of a Customer to NHS Business Services Authority, to be reimbursed for the cost of providing a Completed Follow Up.

Provider Pays Services means such services as are provided by a Customer under the NHS "provider pays" model, including, the Pharmacy First Services.

Purpose means: (i) in relation to both parties, the purpose of performing their respective obligations and exercising their respective rights under this Agreement; and (ii) in relation to you only, performing your obligations and exercising your rights under the relevant AG Customer Agreements; and (iii) in relation to Optum only, performing our obligations and exercising our rights under the relevant Optum Customer Agreements.

Representative Body means the representative body which, where indicated in the System, you are part of (this may be a Pharmacy group; National pharmacy membership organisation; local pharmacy committee; or other representative body).

Staff means in respect of either party, any staff engaged by such party (including employees as well as any agents and sub-contractors) in connection with this Agreement.

System means the Optum PharmOutcomes Direct portal, which you are permitted to access and use in accordance with the terms of this Agreement, and which is accessible at

<https://direct.pharmoutcomes.org/>

Term means the Initial Term and any Extension Period.

User means a member of your Staff whom you have appointed to be granted access rights, including a user name and password, in relation to using the System.

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

Working Days means any day between Monday and Friday (other than any public holiday in England and Wales).

Working Hours means 9am to 5pm local time on Working Days.

2. INTERPRETATION

- 2.1. Clause, attachment, schedule, appendix and paragraph headings shall not affect the interpretation of the Agreement.
- 2.2. 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 you 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.

- 2.3. 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.

3. PRECEDENCE

If there is any conflict or inconsistency between the terms in the various parts of this Agreement, the terms and conditions in the body of the Agreement will prevail over those in the Schedules.

4. TERM

- 4.1. This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with the terms and conditions of this Agreement, shall continue for the Initial Term.
- 4.2. At the end of the Initial Term (unless either party has served on the other a notice of termination, which must be served no less than 3 full Months' prior to the end of the Initial Term, in which case the Agreement will terminate on the final day of the relevant Month at the end of the Initial Term) the Agreement shall automatically renew on a rolling 12 Month basis thereafter (each 12 Month period being an "**Extension Period**"). During an Extension Period, either party may serve on the other a notice of termination, which must be served no less than 3 full Months' prior to the end of the then current Extension Period, in which case the Agreement will terminate on the final day of the relevant Month at the end of the relevant Extension Period.

5. OPTUM OBLIGATIONS

- 5.1. Subject to you fulfilling your obligations under this Agreement and all relevant AG Customer Agreements, Optum shall, during the Term:
- 5.1.1. provide the System and related services to the Customers, in accordance with the terms of the Optum Customer Agreement;
 - 5.1.2. display your charges and make your template AG Customer Agreement available for community pharmacies on the System;
 - 5.1.3. notify you of any community pharmacies who wish to appoint you as their Affinity Group, so that, subject to our agreement, you can agree to enter into an AG Customer Agreement with them at your discretion in accordance with clause 8.1; and
 - 5.1.4. provide you and your Users with access to and use of the System in accordance with clause 6 and Schedule 1.

6. THE SYSTEM

- 6.1. Optum shall use reasonable endeavours to:
- 6.1.1. provide you with access to Customer Data via the System;
 - 6.1.2. provide the System and any other services which we are required to deliver under this Agreement using reasonable care and skill; and
 - 6.1.3. ensure that the System is available to you and your Users between the hours of 8am and 11pm Monday to Saturday (excluding any public holidays). Any access outside of these hours may be interrupted / unavailable.
- 6.2. The System may from time to time, be unavailable due to planned maintenance activities. Optum shall, where practicable, communicate in advance the details of any planned maintenance of the System to you. However, in cases of emergency; this may not always be possible. We may restrict or suspend your access to, or use of, the System for these purposes (or if we identify any security or operational concerns or issues).

7. AFFINITY GROUP OBLIGATIONS

7.1. You shall:

- 7.1.1. pay Optum the Charges in accordance with clause 10; and
- 7.1.2. comply with the terms of each AG Customer Agreement during their respective terms.

8. AG CUSTOMER AGREEMENTS

8.1. You acknowledge that, community pharmacies may select you as their Affinity Group, by indicating this request on the System and confirming that they are happy to contract with you in accordance with the terms of the relevant AG Customer Agreement, which we will make available for acceptance in the System. We will notify you of every community pharmacy who requests to contract with you, whether this is their first request to contract with you, a subsequent request to switch to using you instead of another Affinity Group or a switch from using the System without an Affinity Group, following which you may either accept their offer, and enter into an AG Customer Agreement, or reject their offer. You will be able to manage acceptances and rejections either:

- 8.1.1. through your API (if any);
- 8.1.2. through your account in the System (as and when this option becomes available); and/or
- 8.1.3. where Optum acts as Your agent pursuant to clause 8.2.

8.2. You may appoint Optum as Your agent from time to time (as confirmed by You in writing), to enter into AG Customer Agreements on Your behalf – in particular, where You exercise this right You:

- 8.2.1. shall, promptly following the Commencement Date, provide Optum with an initial list of relevant community pharmacies who are members of Your Affinity Group (and/or, where relevant, pharmacies you are prepared to contract with under an AG Customer Agreement), and at monthly (or such other period as agreed with you) intervals thereafter, notify Optum of any changes to such list ("**Community Pharmacy List**"). Optum shall ensure that any changes to the Community Pharmacy List are included in the System from at least the 1st of each Month;
- 8.2.2. authorise us to enter into AG Customer Agreements on your behalf with community pharmacies on Your Community Pharmacy List who: (i) are not yet party to an AG Customer Agreement with You; and (ii) who have made an offer to You to contract on such terms through PharmOutcomes Direct; and
- 8.2.3. warrant that the Community Pharmacy List (as updated) is complete, accurate and may be relied upon by Optum when acting as Your agent pursuant to this clause.

8.3. Where you terminate an AG Customer Agreement for convenience:

- 8.3.1. You shall provide us with not less than 2 Working Days' notice in writing of such termination prior to the end of the relevant Month in which notice has been properly served by You (in accordance with the terms of the AG Customer Agreement). Where we are acting as your agent in accordance with clause 8.2, it is agreed that the provision of an updated Community Pharmacy List shall be deemed to be notice in writing for the purposes of this clause 8.3.1);
- 8.3.2. subject to receipt of such notice in accordance with clause 8.3.1, we shall remove the relevant Customer(s) from your Affinity Group (for the purposes of Provider Pays Services) within PharmOutcomes Direct at the end of the relevant Month. The parties agree that if any expiry or termination dates set out in the Community Pharmacy List fall part way through a Month, we will not remove the Customer from your Affinity Group until the end of the Month in which the relevant date falls; or
- 8.3.3. if you fail to provide us with such notice on time, then such termination will not take effect until the end of the following Month; and

8.3.4. You agree that you shall be liable to pay all Charges to us in respect of such Customers until the end of the relevant Month.

8.4. Where you terminate an AG Customer Agreement for cause:

8.4.1. You shall notify us as soon as reasonably practicable;

8.4.2. we shall remove the relevant Customer(s) from your Affinity Group (for the purposes of Provider Pays Services), within PharmOutcomes Direct, as soon as reasonably practicable; and

8.4.3. You agree that you shall be liable to pay all Charges to us in respect of such Customer(s) until you have notified us of termination.

8.5. You agree and acknowledge that it is Your responsibility to ensure that you terminate AG Customer Agreements in accordance with their terms.

8.6. You shall indemnify and hold us and (as applicable) our Affiliates, officers, agents, sub-contractors and employees, harmless from any loss, claim, damage, liability or demand (including reasonable legal fees, charges and expenses) which we or any such persons may incur arising out of or in connection of Your failure to comply with clauses 8.3 to 8.5 (inclusive).

8.7. The AG Customer Agreement with each Customer must contain the terms set out in the template AG Customer Agreement at Schedule 3 of this Agreement. By signing this Agreement, you are agreeing to enter into AG Customer Contracts on the terms which are set out in Schedule 3. In the event that there is no AG Customer Agreement in place between you and a community pharmacy, then you will not be able to, nor will you be authorised to, provide your services to such community pharmacies or act as their Affinity Group.

8.8. You agree and acknowledge that:

8.8.1. a Customer is free to switch between Affinity Groups (or to not use an Affinity Group) at will, on a monthly basis, and the terms of an AG Customer Agreement will therefore apply only whilst you are selected as that Customer's particular Affinity Group;

8.8.2. You shall provide your services to the Customer under the terms of this Agreement and the applicable AG Customer Agreement in respect of all of the Provider Pays Services provided by that Customer (from time to time), until such time as the Customer switches to another Affinity Group (or ceases to use an Affinity Group) or you terminate the relevant AG Customer Agreement in accordance with its terms.

8.9. By entering into this Agreement You agree to act as an Affinity Group for Customers in relation to all Provider Pays Services whether present or future. A breach of this clause shall be determined to be an irremediable material breach of this Agreement for the purposes of clause 14.1.3.

9. INTELLECTUAL PROPERTY RIGHTS

System

9.1. In relation to the System, including all configurations, updates, upgrades, modifications and enhancements thereto created by (or on behalf of) us and all documentation and manuals relating thereto, the parties acknowledge that Optum and/or our licensors, shall own all Intellectual Property Rights in and to the same and you shall have no rights in or to the same other than the right to use the same in accordance with the terms of this Agreement.

9.2. Optum grants to you a licence to use the System, in accordance with the terms of Schedule 1. You shall provide a copy of the software licence terms set out in Schedule 1 to each User and shall ensure that they comply with its terms.

9.3. In the event that a claim, relating to the infringement of any third parties' Intellectual Property Rights, is made, or in Optum's reasonable opinion is likely to be made, against you in relation to your use of the System, Optum may, at its sole option and as your sole remedy:

- 9.3.1. procure for you the right to continue to use the relevant part of the System in accordance with the terms of this Agreement;
- 9.3.2. modify the relevant part of the System so that it ceases to be infringing;
- 9.3.3. replace the relevant part of the System with non-infringing materials; and/or
- 9.3.4. terminate this Agreement immediately by notice in writing to you.

Your API

- 9.4. Where agreed between the parties in writing that you will be providing an API in relation to your use of the System, you shall grant Optum, or shall procure the grant to Optum of, a non-exclusive, royalty-free, licence for the Term, to use the API for the Purpose.
- 9.5. In relation to the API, including all configurations, updates, upgrades, modifications and enhancements thereto created by (or on behalf of) you, all documentation and manuals relating thereto, the parties acknowledge that you shall own all Intellectual Property Rights in and to the same and we shall have no rights in or to the same other than the right to use the same in accordance with the terms of this Agreement.
- 9.6. Neither party shall do, or authorise any party to do, any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the other party, 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.
- 9.7. Each party shall, during the Term, at the other party's expense, take all such steps as the other party may reasonably require to assist the other party in maintaining the validity and enforceability of any Intellectual Property Rights licensed by the other party under this Agreement.

10. CHARGES AND PAYMENT

- 10.1. The Charges are payable in accordance with this clause 10, with the process relating to how Charges arise, being summarised as follows:
 - 10.1.1. each Completed Follow Up is automatically logged in PharmOutcomes;
 - 10.1.2. as soon as reasonably practicable after each Completed Follow-Up is logged in PharmOutcomes, Optum shall, on behalf of the Customer, use reasonable endeavours to submit a Provider Pays Claim via PharmOutcomes to NHS BSA in respect of that Completed Follow-Up. A record of each Completed Follow-Up and submitted Provider Pays Claim is held in the System, against the relevant Affinity Group and Customer;
 - 10.1.3. NHS BSA should, usually each month, reimburse the Customer in respect of all successful Provider Pays Claims approved during that month (although we offer no guarantee that they will do so, nor do we accept any liability for their failure to do so); and
 - 10.1.4. at the end of each Month (or otherwise such other frequency as agreed between the parties in writing), Optum shall send to you a single invoice in respect of all Completed Follow Ups submitted by Optum during that Month (in respect of the relevant Customers who are recorded against your name in the System), in accordance with clause 10.6.
- 10.2. You shall pay the Charges to Optum, which shall be calculated by reference to the prices set out in our Price List (which are based on a price per Completed Follow-Up) multiplied by the number of relevant Completed Follow Ups in the relevant Month. For the avoidance of doubt, subject to clause 10.3, unless agreed otherwise in writing, we will not increase our Prices beyond those set out in the Price List.

10.3. Optum may increase the Prices:

- 10.3.1. from time to time, to reflect changes in functionality of the System or due to other business purposes, by giving you no less than 90 days' notice in writing of changes to our Price List; and
 - 10.3.2. on an annual basis with effect from each anniversary of the Effective Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the Effective Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 10.4. You hereby agree that the prices which you charge to a Customer will not, at any time, exceed the prices which Optum charges directly to a Customer, as notified by Optum in the System from time to time (and as updated from time to time).
- 10.5. For the avoidance of doubt all Charges are payable in GBP and are exclusive of VAT, which Optum shall add to Optum's invoices at the appropriate rate.
- 10.6. At the end of each Month during the Term, we will make available to you via the System, a single invoice, in respect of all Completed Follow-Ups in that Month by all Customers who were signed up with you as their Affinity Group in that Month. Each invoice will be accompanied by a report setting out all Completed Follow-Ups undertaken by the relevant Customer(s) in that Month. A copy of the invoice and report can be downloaded by you as a pdf.
- 10.7. You shall pay each invoice in full and in cleared funds, within thirty (30) days of the date of such invoice to a bank account nominated in writing by Optum.
- 10.8. Where an AG Customer Contract terminates or expires for any reason whatsoever part way through a Month, you will nonetheless be responsible for paying our Charges due in respect of the whole of that Month.
- 10.9. If you fail to pay Optum on the due date, this constitutes a material breach and without prejudice to Optum's other rights and remedies, Optum may:
- 10.9.1. suspend your access to the System until such payment is received in full; and/or
 - 10.9.2. charge and you shall pay, 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 Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. You acknowledge that where you do not pay Optum by the due date, Optum reserves the right to charge the relevant Customer directly and such Customer may subsequently pursue you for the debt and/or offset or deduct such sum from any amount owed by the Customer to you.

11. LIMITATION OF LIABILITY

- 11.1. Nothing in this Agreement excludes or limits the liability of either party in respect of:
- 11.1.1. death or personal injury caused by its negligence;
 - 11.1.2. any sum paid or payable under this Agreement;
 - 11.1.3. any indemnity given in this Agreement;
 - 11.1.4. fraudulent misrepresentation; and/or
 - 11.1.5. liability which may not otherwise be limited or excluded under Applicable Law.
- 11.2. Subject to clause 11.1, neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:
- 11.2.1. loss (whether direct or indirect) of revenue or profits;

- 11.2.2. loss (whether direct or indirect) of business opportunity;
 - 11.2.3. loss (whether direct or indirect) of, or corruption to, any data;
 - 11.2.4. loss (whether direct or indirect) of goodwill or injury to reputation;
 - 11.2.5. loss (whether direct or indirect) of anticipated savings; and/or
 - 11.2.6. indirect, consequential or special loss or damage, in each case arising out of or in connection with the Agreement.
- 11.3. Subject to clause 11.1 and clause 11.2, the annual liability of each party to the other arising out of or in connection with this Agreement whether arising from contract, tort, negligence or otherwise shall be limited to the lower of the sum of £100,000 or 100% of the Charges paid or payable by you during the previous 12 month period.
- 11.4. For the avoidance of doubt, where you use an API (or otherwise provide information to Optum for the purposes of manually validating membership of your Affinity Group) under this Agreement, provided Optum uses your API (or where relevant information provided) in accordance with this Agreement, Optum shall not under any circumstances whatsoever be liable for any losses, damages, costs, expenses or any other liability which arises out of or in relation to your API (or use of your information provided), including in relation to accepting or rejecting new Customers or exchanges of Customer Data via the API.
- 11.5. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement (including, any terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982).

12. WARRANTIES AND COMPLIANCE WITH APPLICABLE LAW

- 12.1. You hereby warrant, represent and undertake that as of the Effective Date you have, and throughout the Term shall continue to hold, all relevant approvals, rights, consents, permits and licences in relation to performing your obligations and exercising your rights under this Agreement and under the AG Customer Agreements.
- 12.2. Both parties shall, in performing their respective obligations under this Agreement, comply with Applicable Law.

13. DATA PROTECTION

- 13.1. The parties acknowledge that in the context of processing of any Personal Data of your Users under this Agreement ("**your Personal Data**"), you are a Data Controller and Optum is a Data Processor, acting under your instructions.
- 13.2. The table in Schedule 2 sets out the particulars of Processing by Optum.
- 13.3. You will ensure that you:
- 13.3.1. collect all of your Personal Data fairly and transparently; and
 - 13.3.2. have all necessary rights, permissions, consents and notices in place with Data Subjects to enable the lawful transfer of your Personal Data to Optum for the duration of this Agreement and to enable Optum to fully comply with its obligations under the Agreement, including providing the System to Users.
- 13.4. Optum shall, in relation to your Personal Data processed in connection with the performance by Optum of its obligations under the Agreement:
- 13.4.1. process your Personal Data on your written instructions (unless otherwise required by law) and only for the purpose of performing Optum's obligations and exercising our rights under this Agreement and any relevant Optum Customer Agreement;

- 13.4.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of your Personal Data and against accidental loss or destruction of, or damage to, your 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;
 - 13.4.3. take all reasonable steps to ensure the reliability and integrity of Staff who have access to and/or process your Personal Data;
 - 13.4.4. inform you immediately upon becoming aware of any instruction issued by you under this Agreement that breaches the Data Protection Laws;
 - 13.4.5. not transfer your Personal Data outside of the United Kingdom;
 - 13.4.6. assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 13.4.7. notify you without undue delay on becoming aware of a Personal Data Breach affecting your Personal Data;
 - 13.4.8. at your written direction, delete or return your Personal Data and copies thereof to you on termination or expiry of this Agreement unless required by law to retain your Personal Data, in which case we shall inform you of such legal requirement; and
 - 13.4.9. allow for audits by you or your designated auditor in respect of Optum's data processing activities under this Agreement.
- 13.5. You hereby expressly authorise Optum to appoint the following third parties as its sub-processors in relation to your Personal Data: (i) Memset Limited, of Building 87, Dunsfold Park, Stovolds Hill, Cranleigh, GU6 8TB; and (ii) Amazon Web Services UK Limited of 1 Principal Place, Worship Street, London, EC2A 2FA, as its hosting services providers; and (iii) any other replacement or additional third party hosting services providers which Optum may appoint from time to time in relation to performing its obligations under this Agreement (provided that Optum gives you reasonable prior written notice of its intention to do so, giving you the opportunity to object).
- 13.6. In the event of any loss of, or damage to, your Personal Data, Optum shall use its reasonable endeavours to restore the lost or damaged your Personal Data from the latest backup version of your Personal Data available to us. If the loss or damage was caused by Optum then we shall undertake such restoration at our own cost and expense and in any other circumstances we shall be entitled to charge you in respect of any time spent at our then standard rates.
- 13.7. For the avoidance of doubt:
 - 13.7.1. where you or Optum Processes Personal Data of Customers, such Processing shall be subject to relevant terms set out in the AG Customer Agreement and/or Optum Customer Agreements, as applicable; and
 - 13.7.2. you will not receive any Personal Data from Customers via the System or otherwise under this Agreement, with all Customer Data which you do receive, being fully anonymised.

14. TERMINATION AND SUSPENSION

- 14.1. This Agreement may be terminated with immediate effect by either party (the "**first party**") by written notice to the other in the event of one or more of the following:
 - 14.1.1. if the other ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the first party in writing) or is dissolved or struck off;

14.1.2. if the other is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings; and/or

14.1.3. if the other is in material breach of any provisions of this Agreement and fails to remedy such breach (where it is capable of being remedied) within 30 days of notice from the first party specifying such breach.

14.2. Optum may, without prejudice to its other rights and remedies, terminate this Agreement without liability to you: (i) where you materially breach the terms of any AG Customer Agreement; or (ii) where you are repeatedly late in paying our Charges.

14.3. Without prejudice to any other rights and remedies set out in the Agreement, Optum may suspend your access to the System at any time in the event that:

14.3.1. you materially breach the terms of this Agreement;

14.3.2. Optum reasonably believes that your (or your Users') actions or omissions may cause Optum financial loss or legal liability or may give rise to a breach of Applicable Law or may infringe Optum's, or a third party's, Intellectual Property Rights or cause Optum or its Affiliates reputational damage; and/or

14.3.3. for clinical safety purposes.

Where possible, we will use reasonable endeavours to give you prior notice of any such proposed suspension.

15. EFFECT OF TERMINATION

15.1. Termination or expiry of this Agreement shall be without prejudice to any rights of either party which may have accrued up to the date of such termination.

15.2. The provisions of clauses 1, 2, 3, 0, 10, 11, 12, 13, 15, 16 and 17 shall survive any termination or expiry of this Agreement, howsoever arising.

15.3. Upon expiry or termination of this Agreement, howsoever caused:

15.3.1. all licences granted hereunder shall automatically terminate;

15.3.2. all existing AG Customer Agreements to which you are a party shall also terminate with immediate effect (please also note the terms of the AG Customer Agreement relating to the consequences of its termination);

15.3.3. you and your Users shall immediately cease to access and use the System;

15.3.4. each party shall, at the option of the other party, return or securely destroy all Confidential Information of the other party; and

15.3.5. any outstanding Charges or other sums due shall be payable immediately.

16. CONFIDENTIALITY

16.1. Subject to clauses 16.2 and 16.3 and save as otherwise expressly provided in this Agreement, neither party shall during the term of this Agreement or thereafter for a period of 2 years, disclose to any person or use for any purpose any Confidential Information obtained by it (the "**Recipient Party**") from the other (the "**Disclosing Party**") in connection with this Agreement but the Recipient Party may:

16.1.1. disclose Confidential Information to such of its Staff or professional advisers (which shall include, lawyers, accountants and auditors) who require such disclosure where legitimately necessary for the proper performance of their duties; and/or

16.1.2. use Confidential Information in the proper exercise of its rights and the performance of its obligations under this Agreement.

16.2. The Recipient Party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use and undertakes to take proper care and all reasonable measures to protect the confidentiality of the Confidential Information using not less than the standard of care as it applies to its own Confidential Information.

16.3. The restrictions on use and disclosure of Confidential Information under clause 16.1 shall not apply to any Confidential Information which:

16.3.1. was already known to the Recipient Party prior to its receipt thereof from the Disclosing Party; or

16.3.2. was subsequently disclosed to the Recipient Party lawfully by a third party who did not obtain the same (whether directly or indirectly) from the Disclosing Party; or

16.3.3. was in the public domain at the time of receipt by the Recipient Party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause 16 or any obligations of confidence owed by the Recipient Party to the Disclosing Party; or

16.3.4. is required to be disclosed by law, regulation, order or regulators.

16.4. Confidential Information shall be subject to the obligations of confidence in this clause 16, irrespective of whether communicated orally or in writing by the Disclosing Party or its representatives or obtained through observations made by representatives of the Recipient Party at the premises of the Disclosing Party.

16.5. Confidential Information shall not be exempted under clause 16.3 from restriction under this Agreement by reason only that:

16.5.1. some or all of its features (but not the combination and/or principle thereof) are or become public knowledge or are in the possession of or become available to the Recipient Party as mentioned in clause 16.3; or

16.5.2. such information could be derived or obtained from information which is or becomes public knowledge or is in the possession of or becomes available to the Recipient Party as mentioned in clause 16.3 if so to obtain or derive it would require substantial skill, labour or expense.

16.6. Nothing in this clause 16 shall prevent the Recipient Party from using any techniques, ideas or knowhow 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.

17. GENERAL TERMS

17.1. Publicity

Neither party shall be permitted to publicise its involvement with the other in relation to this Agreement, without the prior written consent of the other party, not to be unreasonably withheld or delayed.

17.2. Waiver

17.2.1. 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.

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

17.3. Force Majeure

Optum shall have no liability to you 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 our suppliers or subcontractors.

17.4. Relationship

Nothing in this Agreement creates a joint venture, relationship of partnership or agency between the parties. Accordingly, except as expressly authorised under this Agreement neither party has authority to pledge the credit of or make any representation or give any authority to contract on behalf of another party. No Staff of Optum shall be construed as being an employee of yours by virtue only of this Agreement or the performance of Optum's obligations under this Agreement.

17.5. Assignment and Sub-Contracting

17.5.1. Optum may: (i) appoint third party hosting services providers as its sub-contractors and subprocessors pursuant to clause 13.5; and (ii) may freely assign this Agreement or its rights and obligations under this Agreement to any of its Affiliates; and (iii) may freely sub-contract any of its obligations under this Agreement. Optum shall use its reasonable endeavours to provide you with notice of any assignment of this Agreement.

17.5.2. Subject to clause 17.5.1, neither party may assign or sub-contract any of its rights or obligations under this Agreement to any other third party without first obtaining the express written consent of the other party (such consent not to be unreasonably withheld or delayed).

17.6. Severability

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

17.7. Variations

We reserve the right to amend the terms of this Agreement from time to time. Where we do so: (i) we will notify you in the System or in accordance with 17.8, and will require you to re-accept this Agreement (as amended) before continuing to use the System; and (ii) will require you, where applicable, to flow through such changes to your Customers, in relation to corresponding changes in your relevant AG Customer Agreements (which we will make available to you as necessary in the System). Where you and/or a Customer does not accept such amended terms, you acknowledge that this Agreement and/or the relevant AG Customer Agreement, as applicable, will terminate with immediate effect.

17.8. Notices

17.8.1. Addresses for notices or other communications under this Agreement are set out in the System.

17.8.2. Any notice required under this Agreement shall be given in writing and in the English language and sent to the address of the party for which it is intended to be given, or such other address as shall have been notified to the other party in accordance with this clause and be sent by registered post or equivalent, courier or other electronic transmission; and

17.8.2.1. if posted, shall be deemed to have been received three Working Days after the date of posting or, in the case of a notice to an addressee not in the country of the sender, ten Working Days after the date of posting; or

17.8.2.2. in the case of email, upon confirmation of complete receipt being given by the intended recipient party; or

17.8.2.3. if couriered, on delivery.

17.9. Third Party Rights

Save for any rights granted to an Affiliate hereunder, this Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).

17.10. Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter. Except as may be expressly stated in this Agreement, it supersedes and cancels all prior agreements, statements, representations, understandings, negotiations and discussions, whether oral or written, between the parties. Each of the parties acknowledges and agrees that in entering into this Agreement it has not relied on (or has been induced to enter into this Agreement by) any statement, representation, warranty or understanding made prior to this Agreement. Nothing in this clause shall exclude any liability in respect of any misrepresentations made fraudulently.

17.11. Dispute Resolution

- 17.11.1. Any dispute arising out of or in connection with the Agreement (each a **"Dispute"**) shall be referred by either party first to the authorised representatives of each of the parties for resolution.
- 17.11.2. If the Dispute cannot be resolved by the authorised representatives of the parties within ten (10) Working 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.
- 17.11.3. Within ten (10) Working Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Optum and Affinity Group for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Working 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 17.11 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.

17.12. Applicable Law and Jurisdiction

- 17.12.1. This Agreement and any matters (whether contractual or non-contractual) arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of England.
- 17.12.2. The parties submit and agree to the exclusive jurisdiction of the English Courts.

17.13. Counterparts

This Agreement may be executed in counterparts, all of which shall constitute one agreement between the parties.

Schedule 1

Software Licence terms

1. LICENCE

- 1.1. In consideration of your acceptance of, and on-going compliance with, this Agreement, we hereby grant you, during the Term, a revocable, personal, non-transferable, non-exclusive licence for you and your Users to access and use the System strictly for the Purpose and subject to the terms of this Schedule 1. In this Schedule 1, reference to “you” where applicable, will also include your API (where you provide an API under this Agreement), insofar as it interoperates with the System.
- 1.2. You agree to provide, and procure that your Users provide, us or our employees, agents or subcontractors with: (i) up to date contact details for the Users; and (ii) such reasonable assistance as we may require from time to time in connection with the provision of the System to you and your Users.

2. NO WARRANTY

- 2.1. You expressly acknowledge and agree that access to the System is at your sole risk.
- 2.2. The System and any services performed or provided by us is/are provided on an “as is” and “as available” basis, with any and all faults as may be present. To the extent permitted by 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 System (and any related services) is hereby excluded.

3. ACCOUNT SECURITY

- 3.1. You shall:
 - 3.1.1. maintain the confidentiality of passwords and the log-in details associated with your account;
 - 3.1.2. take all necessary steps to ensure that log-in details are kept confidential, secure, used properly and not disclosed to unauthorised people; and iii. notify us immediately if any User ceases to be employed by, or provide services for, you.
- 3.2. Accordingly, notwithstanding any obligations on Users contained within this Schedule, you are responsible, and liable to us, for all your Users’ use of the System and all activities that occur under your account. In this respect, you shall ensure:
 - 3.2.1. that the terms of this Schedule 1 are brought to the attention of, and agreed by, each of your Users; and
 - 3.2.2. if you or your Users lose, forget or wish to change their log-in details then Users should contact us.
- 3.3. You shall notify us immediately if you become aware of any unauthorised use of your account, if suspect someone else may know any of your Users’ log-in details and/or believe that any log-in details associated with your account, or may be being used, in an unauthorised way.
- 3.4. We reserve the right to require you to change any or all of the relevant log-in details where we believe it is reasonably necessary to do so in order to preserve the security of the System.
- 3.5. You shall indemnify and hold us and (as applicable) our Affiliates, officers, agents, subcontractors and employees, harmless from any loss, claim, damage, liability or demand (including reasonable legal fees, charges and expenses) which we or any such persons may incur arising out of or in connection with any

act or omission by you or your Users in breach of this Agreement, or your violation of any law or the rights of a third party.

4. LICENCE RESTRICTIONS

- 4.1. Except as expressly set out in these terms or as permitted by any Applicable Law which cannot be excluded, you shall not, and you shall not permit any of your Users or any third party to:
 - 4.1.1. use the System for anything other than the Purpose;
 - 4.1.2. copy the System;
 - 4.1.3. take any action or make any omissions that imposes an unreasonable or disproportionately large load or burden on the System (as determined by us);
 - 4.1.4. rent, lease, sub-license, assign, sell, transfer, loan, charge or otherwise deal in or encumber any element of the System or use the System or access the System on behalf of any third party or make available the same to any third party;
 - 4.1.5. translate, merge, adapt or otherwise make alterations to, or modifications of, the whole or any part of the System, nor permit the System or any part of them to be combined with, or become incorporated in, any other programs; vi. use or attempt to use any other party's log-in details to access the System;
 - 4.1.6. use any robot, spider, scraper or other automated means to access the System without our prior written consent;
 - 4.1.7. disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the System nor attempt to do any such things;
 - 4.1.8. provide, or otherwise make available, the System in any form, in whole or in part (including, program listings, object and source program listings, object code and source code) to any unauthorised person; and/or
 - 4.1.9. use the System in relation to any immoral, fraudulent or illegal purpose or for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to our reputation.
- 4.2. We do not guarantee that access to and/or use of the System, will always be available or be uninterrupted. We will not be liable to you or any of your Users if for any reason the System is unavailable at any time or for any period.
- 4.3. You must comply with any acceptable use policies that we may provide to you from time to time in relation to the use of the System.
- 4.4. You do not have the right to link to any of our websites without our prior express written permission.
- 4.5. You are responsible for making all arrangements necessary for you and your Users to access the System (including, having access to an internet connection and an appropriate browser).
- 4.6. We do not guarantee that the System will be secure or that it will be free from bugs or viruses and you must use your own virus protection software to ensure that the System is protected from known viruses.
- 4.7. You and your Users must not:
 - 4.7.1. misuse the System by knowingly introducing viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; or
 - 4.7.2. attempt to gain unauthorised access to the System or, the server(s) on which the System is hosted or any server, computer or database connected to the System; or iii. attack the System via a denial-of-service attack or a distributed denial-of service attack.

4.7.3. By breaching paragraph 4(g), you and/or your Users may be committing a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your and any relevant Users identity to them. In the event of such a breach, your and your Users' right to use the System will cease immediately.

Schedule 2

Particulars of Data Processing

Purpose of processing:	Providing the System to you and Users.
Duration of the processing:	For the term of the Agreement.
Nature of processing:	Making the System available to Users, protecting their user name and password.
Types of Personal Data (including any Special Category Data):	Name, email address, user name and password of your Users. No Special Category Data.
Categories of Data Subject:	Users / your Staff.



CONFIDENTIAL

Schedule 3

Template AG Customer Contract