

PHARMOUTCOMES (EULA) END-USER LICENCE AGREEMENT

PLEASE READ THESE LICENCE TERMS CAREFULLY

BY YOU OR ANY USER ACCESSING THE ENVIRONMENT, YOU AGREE TO THESE TERMS AND REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO ENTER INTO THE SAME.

In these terms:

- **'you'** means the Account Holder (as defined below) acting on behalf of itself and all of its Users (as defined below) and, where the context of this licence provides, your Primary Users (as defined below) (and references to **'your'** shall be construed accordingly);
- **'we'** or **'our'** or **'us'** refers to Egton Medical Information Systems Limited (T/A Optum) registered in England and Wales (registered number 02117205) whose registered office is at Fulford Grange, Mickelfield Lane, Leeds, LS19 6BA; and
- **"party"** refers to any one of you or us and **"parties"** shall mean each of you and us.

1. DEFINITIONS

"Account Holder" means the person (in the case of a sole trader) or entity that owns and/or operates Sites.

"Account Holder Commissioned Service" means any project or service commissioned in relation to the provision of clinical services, to be facilitated through the System, where the Account Holder is a Commissioner in accordance with a separate contract between us and the Account Holder.

"Affinity Group" means an organisation that manages payments in respect of Provider Pays Claims for its community pharmacy members, through PharmOutcomes Direct.

"agreement" means the agreement in effect between you and us under the provisions set out in these terms (which include any annexes attached hereto) governing access to and use of the System and associated services.

"Anonymised Data" means anonymised data created by us from your Information, including in respect of NHS England, anonymised data described in the following link: <https://www.england.nhs.uk/wp-content/uploads/2023/11/PRN00936-i-Communitypharmacy-advanced-service-specification-NHS-pharmacy-first-service-November-2023.pdf> (as may be updated by NHS England from time to time).

"Anonymised Data Purpose" means sharing the Anonymised Data with the Community Pharmacy England, NHS England and/or relevant Affinity Groups for the following purposes:

- (a) In the case of the Community Pharmacy England:
 - (i) using the Anonymised Data for such commercial or non-commercial purposes as the Community Pharmacy England determine would be for the benefit of the pharmacy industry as a whole; and/or
 - (ii) using the Anonymised Data as Community Pharmacy England may require to fulfil any legal and/or regulatory obligations; and/or

- (b) In the case of an Affinity Group - using the Anonymised Data as the Affinity Group may require to perform its obligations and/or exercise its rights, including under the AG Customer Agreement (as defined under Annex 2); and
- (c) In the case of NHS England, sharing Anonymised Data for reporting purposes.

“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 the agreement.

“Commissioner” means a third party who has commissioned a project or service in relation to the provision of clinical services by clinical service providers (such as pharmacists, general practitioners and opticians) and contracted with us (or otherwise mandated as part of Provider Pays Services) to facilitate the sharing of relevant information (including Patient Data) between you and the Commissioner via the System in connection with the relevant service.

“Community Pharmacy England” means Community Pharmacy England the operating name of the Pharmaceutical Services Negotiating Committee of 14 Hosier Lane, London, EC1A 9LQ operating as Community Pharmacy England.

“Completed Follow Up” means that a Provider Pays Service has been performed by you to a patient who attends your 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 is Your Information;
- (b) the System;
- (c) it is marked as “confidential” (or similar);
- (d) Patient Data; and/or
- (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.

“Data Controller” has the meaning as defined under the Data Protection Legislation.

“Data Processor” has the meaning as defined under the Data Protection Legislation.

“Data Protection Legislation” means 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)

“Data Subject” has the meaning as defined under the Data Protection Legislation.

“**Digital Gateway**” means Optum’s patient led screening service used for checking that gateway criteria is met for a clinical pathway, including the Provider Pays Services, before an appointment with the relevant patient takes place.

“**Environment**” means our primary operating system which is a web-based clinical and service management data collection and communications platform (known variously as Outcomes4Health, OcularOutcomes and/or PharmOutcomes) allowing us to provide services to Commissioners and Solutions to you.

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

“**Log-in Details**” means the relevant Primary Log-in Details and Secondary Log-in Details.

“**Medical Device**” has the meaning as set out under the MD Rules and Regulations.

“**MD Rules and Regulations**” means any medical device laws, rules or regulations applicable to the parties including: (i) the UK Medical Devices Regulations 2002 (SI 2002/618) as amended by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019; (ii) the EU Medical Device Regulation ((EU) 2017/745) and the EU In Vitro Diagnostic Medical Device Regulation ((EU) 2017/746) to the extent that they (or equivalent UK domestic legislation) are ever enacted into UK law; and (iii) any relevant guidance from the MHRA and/or other relevant UK approved body, in each case as amended, supplemented, superseded or replaced from time to time.

“**NHSE Services**” means NHS England’s (or its replacement body’s) services and APIs as listed here: [Operations - NHS England Digital](#) which allows the System provided under this Agreement to integrate with a national service where relevant (as updated from time to time by NHS England).

“**NHSE Service Terms**” means NHS England’s (or its replacement body’s) terms of service for use of the NHSE Services available here: [Operations - NHS England Digital](#) (see *Appendix 1A: End user organisation acceptable use policy to be shared with all end user organisations by the connecting party*) and as updated from time to time by NHS England.

“**Patient Data**” means any patient data you or any of your Users enter into the System, as required by the Solutions relevant to you, in delivering services on behalf of the relevant Commissioner(s) (including details of any consultations completed for the patient, prescriptions and courses of treatment).

“**Patient Group Direction(s)**” or “**PGD(s)**” has the meaning given to it in Annex 3.

“**Personal Data**” has the meaning as defined under the Data Protection Legislation.

“**PGD Supported Services**” means the ability to use and record private PGD supported service templates (and related functionality) we make available in PharmOutcomes.

“**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/community-pharmacy-advanced-servicespecification-nhs-pharmacy-first-service/#heading-1>.

“**PharmOutcomes Direct**” means our management solution used to manage Provider Pays Services.

“**PharmOutcomes Service(s)**” means the ability to receive and record Provider Pays Services, including inputting a Completed Follow Up and Provider Pays Claims being made on your behalf and use of the Digital Gateway in respect of Provider Pays Services.

“**PoC Vaccination Services**” means the Solutions provided by Optum to you through the Environment in relation to the NHSE Point of Care Community Pharmacy and/or PCN Vaccination Programme (including such vaccines made available as part of the NHSE Preventative Health services, from time to time).

“**Primary Log-in Details**” means the user ID, password, security code and, where relevant, hard key rescue card allocated by us to a Primary User to access the System in accordance with the agreement.

“**Primary User**” means the person or persons at each Site provided with Primary Log-in Details by us.

“**Provider Pays Claim**” means a claim made by us on your behalf through PharmOutcomes, to the NHS Business Services Authority, for you to be reimbursed for the cost of providing a Completed Follow Up.

“**Provider Pays Service**” means such services as are provided by you under the NHS “provider pays” model, including, the Pharmacy First Services, and as are specified, and selected by you, (from time to time) in PharmOutcomes Direct.

“**Purpose**” means to allow you (and your Users) to participate in, and share information via, the Solutions relevant to you / each of your Sites.

“**Secondary User**” means your officers, employees or locums (or such other persons as we may approve to the Primary User in writing, acting in our absolute discretion) granted access to the Environment by a Primary User.

“**Secondary Log-in Details**” means a user ID and password provided by a Primary User to a Secondary User to access the System in accordance with the agreement.

“**Site**” means a site from which the Account Holder provides clinical services (such a pharmacy, general practitioners or optician) that needs to use the System in order to provide services on behalf of Commissioner(s).

“**Solutions**” means the relevant templates, including PharmOutcomes Direct and the PGD Supported Services, made available to you and your Users from time to time within the Environment in order to allow for the sharing of relevant information (including Patient Data) between you and a Commissioner. Such Solutions may be different at your different Sites depending upon what services a Commissioner has commissioned in the location of each Site.

“**System**” means, together, the Environment and the Solutions.

“**Term**” means the period between your acceptance of these terms and termination of your use of the System in accordance with the agreement.

“**User**” means either a Primary User and/or Secondary User and “**Users**” shall be interpreted accordingly.

“**Year**” means a calendar year.

“**Your Information**” means any information you or your Users enter into the System including pharmacist details (including Site details), prescriber details and Patient Data.

2. INTERPRETATION

2.1. Clause and annex headings shall not affect the interpretation of the agreement.

2.2. 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.

2.3. A reference to: (i) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (ii) words in the singular shall include the

plural and vice versa; (iii) one gender shall include a reference to the other genders; (iv) 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; (v) writing or written includes e-mail, but not faxes; and (vi) clauses are to the clauses of the agreement.

- 2.4. 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.

3. LICENCE

- 3.1. In consideration of your acceptance of, and on-going compliance with, the agreement, we hereby grant you (at each of your Sites), during the Term, a revocable, personal, nontransferable, non-exclusive licence for you and your Users to access and use the System strictly for the Purpose and subject to the terms of the agreement.
- 3.2. We will only make Solutions available to you, your Sites and your Users as instructed by relevant Commissioners and reserve the right withdraw access to a particular Solution at any time without notice and without any liability to you.
- 3.3. Log in Details to the Environment may be provided to you or your Primary Users by us or, where you are a Secondary User, by a Primary User. You shall be responsible for ensuring that Primary Users are appropriately authorised by you and we shall have no responsibility to verify the identity of Primary Users or any liability to you in this respect.
- 3.4. You agree to provide, and procure that your Users provide, us or our employees, agents or sub-contractors with: (i) up to date contact details for the Primary 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.
- 3.5. Where the System you use under this Agreement requires access to NHSE Services to provide the relevant clinical service to patients, you agree and acknowledge that that NHSE Service Terms shall apply to the use of such services.

4. WARRANTY

- 4.1. We warrant that we have the power and authority to enter into the agreement in our own right and grant the rights and licenses that we grant or purport to grant to you pursuant to the agreement.
- 4.2. We do not guarantee that the System will always be available or that its use will be uninterrupted. The System is provided by us 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.

5. ACCOUNT SECURITY

- 5.1. You shall:
- 5.1.1. maintain the confidentiality of passwords and the Log-in Details associated with your account;
- 5.1.2. take all necessary steps to ensure that Log-in Details are kept confidential, secure, used properly and not disclosed to unauthorised people; and
- 5.1.3. notify us immediately if any Primary User ceases to be employed by, or provide services for, you

at any Site.

- 5.2.** Accordingly, notwithstanding any obligations on Users contained within the agreement, 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:
 - 5.2.1.** that the terms of the agreement are brought to the attention of, and agreed by, each of your Users; and
 - 5.2.2.** that your Primary Users are aware of and comply with their obligations under clause 6 below (whose actions you shall ultimately remain liable to us for).
- 5.3.** If you or your Users lose, forget or wish to change your Log-in Details then Primary Users should contact us and Secondary Users should contact their Primary User.
- 5.4.** 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 and/or any of your Sites are, or may be being used, in an unauthorised way.
- 5.5.** We reserve the right to:
 - 5.5.1.** suspend your account or the System without notice in the event that we believe that there is, or is likely to be, a breach of security (including in relation to loss of Log-in Details) or misuse of the System by you or any of your Users. Where possible, we will use reasonable endeavours to give you prior notice of any such proposed suspension; and/or
 - 5.5.2.** 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.

6. PRIMARY USER OBLIGATIONS

- 6.1.** The terms of this clause 6 apply in respect of all Primary Users.
- 6.2.** You shall ensure that each Primary User is:
 - 6.2.1.** entitled, subject to the terms of the agreement, to provide Secondary Log-in Details to your Secondary Users; and
 - 6.2.2.** responsible for:
 - 6.2.2.1.** managing Secondary Log-in Details;
 - 6.2.2.2.** replacing Secondary Log-in Details where a Secondary User loses, forgets or wishes to change their Secondary Log-in Details;
 - 6.2.2.3.** changing Secondary Log-in Details on a regular basis;
 - 6.2.2.4.** deleting/withdrawing any Secondary Log-in Details if the Secondary User ceases to be employed or work for the Account Holder;
 - 6.2.2.5.** taking all necessary steps to ensure that their Primary Log-in Details and all Secondary Log-in Details granted by the Primary User are kept confidential and secure and are not

6.2.2.6. raising any queries, service or technical queries or issues to us.

7. LICENCE RESTRICTIONS

- 7.1. 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:
- 7.1.1. use the System for anything other than the Purpose;
 - 7.1.2. copy the System;
 - 7.1.3. take any action or make any omissions that imposes an unreasonable or disproportionately large load or burden on the System (as determined by us);
 - 7.1.4. 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;
 - 7.1.5. 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 the System to be combined with, or become incorporated in, any other programs;
 - 7.1.6. use or attempt to use any other party's Log-in Details to access the System;
 - 7.1.7. use any robot, spider, scraper or other automated means to access the System without our prior written consent;
 - 7.1.8. 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;
 - 7.1.9. 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
 - 7.1.10. 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.
- 7.2. We do not guarantee that access to and/or use of the Solutions and/or the Environment, will always be available or be uninterrupted. We will not be liable to you or any of your Users if for any reason the Solutions and/or the Environment are unavailable at any time or for any period.
- 7.3. 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.
- 7.4. You do not have the right to link to any of our websites without our prior express written permission.
- 7.5. 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).
- 7.6. We will use our reasonable endeavours to ensure that the System is free from bugs and/or viruses. However, without prejudice to clause 12.6.2, we do not guarantee that the System will be secure or that it will be free from bugs or viruses. You accept that you are responsible for ensuring that you have in place, on any device used to access the System adequate and appropriate protections against any computer software that contains any "timebombs", "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.

7.7. You and your Users must not:

7.7.1. misuse the System by knowingly introducing viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful;

7.7.2. 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

7.7.3. attack the System via a denial-of-service attack or a distributed denial-of service attack.

By breaching this provision, 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.

7.8. The services and/or System may facilitate use of algorithms, Medical Devices and other tools which may provide you with information intended to assist you and/or end users in delivery of medical care, however, these should not be viewed as prescriptive or authoritative on their own. Such materials are not a substitute for, and you shall ensure that each of your user applies in conjunction with the use thereof, independent professional medical judgment, and you must not use such materials in any system that provides medical care without the participation of properly trained personnel and/or the provision of clinical care to patients where personnel have not had appropriate training.

8. OUR OBLIGATIONS

8.1. We shall use reasonable endeavours to:

8.1.1. provide the System and any other services under the agreement with reasonable care and skill;

8.1.2. 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. In the event that any Solution (or the Environment) is unavailable, you and your Users are advised to securely keep alternative records of Your Information such that it can be inputted once the relevant Solution / Environment is available to you and your Users;

8.1.3. store Your Information within the System (using, where relevant, third party hosting services) to the extent necessary to deliver the relevant services to the Commissioners and fulfil any legal or regulatory obligations we may have; and

8.1.4. in relation PoC Vaccination Services, deliver those services to you in accordance with the service delivery and performance obligations (in respect of the service levels and key performance indicators, but not service credits) set out in the contract(s) between Optum and NHS England (or its replacement body).

8.2. The System may from time to time, be unavailable due to planned maintenance activities. We 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).

9. INTELLECTUAL PROPERTY RIGHTS

9.1. You acknowledge that any and all Intellectual Property Rights subsisting in the System, including all configurations and enhancements thereof created by (or on behalf of) us, all documentation and manuals relating thereto, are and shall remain our property (and/or our third party licensor(s))

as appropriate).

- 9.2. Except as expressly stated herein, these terms do not grant you any rights to, or in, any Intellectual Property Rights subsisting in the System.
- 9.3. In the event a claim, relating to the infringement of any third party rights, is made, or in our reasonable opinion is likely to be made, against you in relation to the System, we may, at our 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 the 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 the agreement immediately by notice in writing to you.

10. LIMITATION ON LIABILITY

10.1. To the extent not prohibited by law, we shall under no circumstances whatever be liable to the you, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

- 10.1.1. loss (whether direct or indirect) of revenue or profits;
- 10.1.2. loss (whether direct or indirect) of business opportunity;
- 10.1.3. loss (whether direct or indirect) of goodwill;
- 10.1.4. loss (whether direct or indirect) of anticipated savings;
- 10.1.5. loss (whether direct or indirect) of, or corruption to, any data; or
- 10.1.6. indirect, consequential or special loss or damage,

arising out of or related to your (or your Users) use of, or inability to use, the Solutions or access the Environment, however caused, regardless of the theory of liability (contract, tort, or otherwise) and even if you have been advised of the possibility of such damages.

10.2. Save as set out in Annex 2, our total aggregate liability to you in each Year arising out of, or in connection with, the agreement, whether arising from contract, tort, negligence or otherwise, shall be limited to the amount of one thousand pounds (£1,000.00) per Year.

11. YOUR INFORMATION

11.1. By entering into the agreement you agree that we (and any appointed sub-contractors) shall be entitled to use Your Information for the purposes of delivering the Solutions and Environment and as otherwise set out in the agreement. Any such use of Your Information shall not therefore, be deemed to be in breach of our confidentiality obligations under the agreement. Any of Your Information that is determined to be Personal Data shall also be subject to the provisions of clause 12 (Data Protection).

11.2. You agree that we shall be entitled to create the Anonymised Data and you hereby grant us the right provide the Anonymised Data to Community Pharmacy England and Affinity Groups for their respective use of the Anonymised Data for their respective Anonymised Data Purpose.

11.3. You are responsible for ensuring the accuracy of Your Information and shall make sure that Your

Information:

- 11.3.1. is not fraudulent, false, inaccurate or misleading;
- 11.3.2. does not infringe any third party's Intellectual Property Rights; and
- 11.3.3. does not breach any laws, rules or regulations.

12. DATA PROTECTION

- 12.1. Information and data (including any Personal Data) collected by us about your business (including any Users' details) will be treated in accordance with our Privacy Policy referred to in the 'Legal' section of the Optum website located at [https:// www.optum.co.uk/tech-enabled-services/legal/](https://www.optum.co.uk/tech-enabled-services/legal/) (as may be updated from time to time).
- 12.2. All parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 12.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Account Holder is a Data Controller and we are a Data Processor.
- 12.4. Annex 1 sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of Personal Data and categories of Personal Data.
- 12.5. Without prejudice to the generality of clause 12.2, you will ensure that you have all necessary rights and notices in place to enable the lawful transfer of the Personal Data to us for the duration and purposes of the agreement.
- 12.6. We shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under the agreement:
 - 12.6.1. process that Personal Data on the written instructions of the Account Holder (unless otherwise required by law, under which circumstances we will notify you before processing such data, where the law permits such notice) and immediately notify the Account Holder if, in our opinion, such instruction(s) infringes Data Protection Legislation. In this respect, the Account Holder authorises each of its Primary Users to provide us with instructions in respect of the relevant Site to which they are associated;
 - 12.6.2. ensure that we have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 12.6.3. ensure the reliability and integrity of personnel who have access to and/or process Personal Data;
 - 12.6.4. not transfer any Personal Data outside of the UK without the prior written consent of the Account Holder and the following conditions are fulfilled:
 - 12.6.4.1. you or we have provided appropriate safeguards in relation to the transfer;
 - 12.6.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 12.6.4.3. we comply with our obligations under the Data Protection Legislation by providing an

adequate level of protection to any Personal Data that is transferred; and

- 12.6.4.4. we comply with reasonable instructions notified to us in advance by the Account Holder with respect to the processing of the Personal Data;
- 12.6.5.** assist the Account Holder, at the Account Holder's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. In compliance with this obligation, we will notify you as soon as reasonably practicable in relation to any requests or complaints from Data Subjects, relevant to you, exercising their rights under the Data Protection Legislation;
- 12.6.6.** notify the Account Holder without undue delay on becoming aware of a Personal Data Breach (as defined in the Data Protection Legislation) and, where feasible, not later than 48 hours after becoming aware of it;
- 12.6.7.** at the written direction of the Account Holder, delete or return Personal Data and copies thereof to the Account Holder on termination of the agreement unless required by law to store the Personal Data; and
- 12.6.8.** allow for audits by the Account Holder or the Account Holder's designated auditor in respect of our data processing activities under the agreement.
- 12.7.** A list of our material sub-processors is set out here: [https:// www.optum.co.uk/tech-enabled-services/legal/](https://www.optum.co.uk/tech-enabled-services/legal/) ("Sub-Processors"). You hereby expressly authorise us to (i) appoint the Sub-Processors; and (ii) appoint any other replacement or additional third party Sub-Processors from time to time in relation to performing our obligations under the agreement (provided that we give you reasonable prior written notice of our intention to do so, including updating the Sub-Processors on the webpage set out above). If you object to the change, you are entitled to terminate your use of the System in accordance with clause 17.2. We shall remain responsible for ensuring that we impose on any such sub-processor obligations equivalent to the agreement and we will remain liable for any acts or omissions of any such sub-processor.
- 12.8.** The Account Holder shall ensure that, throughout the term of the agreement, it has all necessary rights, consents and permissions (including from any Data Subjects) such that our processing of any Patient Data or Personal Data contained within Your Information in accordance with the terms of the agreement will not breach any third party rights or relevant law.
- 12.9.** In the event of any loss of, or damage to, any Patient Data or Your Information (to the extent it contains Personal Data), we shall use our reasonable endeavours to restore the lost or damaged data from the latest backup version of the data available to us. If the loss or damage was caused by us then we shall undertake such restoration at our own cost and expense and in any other circumstances we shall be entitled to charge the Account Holder in respect of any time spent at our then standard rates.
- 12.10.** You acknowledge that once Your Information has been submitted into the System:
- 12.10.1.** Your Information will be accessible in the System to the relevant Commissioner of the clinical service you are delivering (at your relevant Sites and by your relevant Users). The exact information that is made available to a Commissioner will be dependent upon the relevant service being delivered on behalf of such Commissioner by You. It is Your responsibility to ensure that You understand exactly what data will be shared in each instance and comply with clause 12.8; and
- 12.10.2.** Where appropriate Patient Data may be sent to the relevant individual's healthcare provider to allow the clinical service, delivered by you to the individual, to be filed to the patient's medical

record and/or to ensure the continuation of the individual's health care.

12.11. As such, you agree and acknowledge that:

12.11.1. the Commissioner and/or the relevant healthcare provider may (subject to the relevant arrangements in place) become a Data Controller in respect of the relevant Personal Data you or your Users submit into the System (which may include downloading this information out of the System); and

12.11.2. we, as a Data Processor may receive conflicting instructions from you and the relevant Commissioner, both of whom are a Data Controller of Personal Data held in the System (in circumstances where we are processing on behalf of both parties in our capacity as a Data Processor).

12.12. In the event that you and any Commissioner provide conflicting instructions in relation to any Personal Data entered into the System by you or your Users, we will, where possible, seek to comply with your instructions in priority to the Commissioner's instructions (and we will inform the Commissioners accordingly). However, you agree and acknowledge that this may have implications with regard to your relationship (contractual or otherwise) with the Commissioner and we shall have no liability to you in this respect.

13. PHARMOUTCOMES DIRECT, PHARMOUTCOMES SERVICES AND AFFINITY GROUPS

13.1. Where we provide PharmOutcomes Direct and PharmOutcomes Services to you Annex 2 shall apply.

13.2. Where you do not select an Affinity Group to manage payments in respect of your Provider Pays Services, the terms set out in Part A of Annex 2 shall apply.

13.3. Where you select an Affinity Group to manage payments in respect of your Provider Pays Services, the terms set out in Parts A and B of Annex 2 shall apply.

13.4. You acknowledge and agree that, save for the Provider Pays Claims, neither us nor any Affinity Group (as relevant) will manage any other claim or payment on your behalf, and you are responsible for understanding and complying with any funding rules applicable to the Provider Pays Services.

14. DIGITAL GATEWAY

14.1. Where you use Digital Gateway services (whether as part of PharmOutcomes Services or otherwise), the terms of this clause 14 shall apply.

14.2. Digital Gateway, or elements thereof, constitutes a Medical Device and is displayed with appropriate UKCA marking. You must not modify or amend any such Medical Devices (or remove or amend any relevant marking). Optum may remove such Medical Devices from availability, or modify such Medical Devices, from time to time and at its sole discretion.

14.3. The Digital Gateway is intended to assist you and/or your users in delivery of medical care, however, it should not be viewed as prescriptive or authoritative on its own. It is your responsibility to ensure that any information submitted by a patient is validated directly with the patient before providing medical care. The Digital Gateway is not a substitute for, and you shall ensure that each of your user applies in conjunction with the use thereof, independent professional medical judgment, and you must not use such materials in any system that provides medical care without the participation of properly trained personnel and/or the provision of clinical care to patients where personnel have not had appropriate training.

14.4. The Digital Gateway service will automatically be made available to your pharmacy/pharmacies

for use. The services available to each pharmacy may depend upon the associated underlying service that pharmacy delivers to its patients (for example, which Pharmacy First services it is authorised to deliver). Each pharmacy will receive a unique QR code which can be displayed to patients in the formats made available by Optum from time to time (this may include being made available for download on posters, via electronic communication methods and/or for placement on your website(s). Each pharmacy may choose whether to use the Digital Gateway service or not.

14.5. You can deactivate the Digital Gateway service at any time within PharmOutcomes Direct at an individual pharmacy level (only). Once deactivated the associated QR code(s) will cease to work for the Digital Gateway services (unless reactivated, under which circumstances the same QR code(s) will work again).

14.6. You shall only use Digital Gateway in line with the intended purpose and applicable instructions for use of Digital Gateway. You agree and acknowledge that Digital Gateway qualifying as a Medical Device does not absolve you from your obligations under the agreement and that Optum shall have no liability to you (or any other party) whatsoever in the event that you use Digital Gateway in breach of, or otherwise not in accordance with, the terms of the agreement.

15. PGD SUPPORTED SERVICES

15.1. Where you use the PGD Supported Services, the terms of Annex 3 shall apply.

16. CONFIDENTIALITY

16.1. Each party may be given access to Confidential Information belonging to the other party in connection with the agreement. A party's Confidential Information shall not be deemed to include information that:

16.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

16.1.2. was in the receiving party's lawful possession before the relevant disclosure;

16.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

16.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

16.2. Save as expressly provided for under the agreement, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation and performance of the agreement.

16.3. Each party may disclose the other party's Confidential Information (for the purposes set out in clause 16.2):

16.3.1. to its employees, officers, affiliates, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the agreement. Each party shall ensure that its employees, officers, affiliates, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 16;

16.3.2. in respect of Patient Data, as may be required to comply with its obligations under the agreement; and

16.3.3. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.4. Each party shall take reasonable steps to ensure that the other's Confidential Information to

which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the agreement.

- 16.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (save where that third party is an affiliate, representative, subcontractor or adviser of the relevant party).

17. TERMINATION AND SUSPENSION

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

17.1.1. you materially breach the terms of the agreement;

17.1.2. we reasonably believe that your (or your Users') actions or omissions may cause us financial loss or legal liability or may give rise to a breach of the Data Protection Legislation, the confidentiality obligations set out in the agreement or may infringe our, or a third party's, Intellectual Property Rights; and/or

17.1.3. for clinical safety purposes;

we may terminate the agreement (and so your and your Users' right to use System) at any time acting in our absolute discretion.

17.2. You may terminate the agreement immediately at any time by giving us notice in writing.

17.3. On termination:

17.3.1. all licences granted under these terms shall immediately terminate; and

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

17.4. Termination of the agreement for any reason will:

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

17.4.2. not affect any provision of these terms which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination.

18. VARIATION

18.1. We may, from time to time and without notice, make changes to the System (and any elements thereof).

18.2. We may, from time to time, amend these terms, including any annexes, by giving you notice in writing either by email to you (if we have a valid email address) or by posting the amended terms to one or more of our websites. If you continue to use the System following notification of any such variation or update then you will be deemed to have accepted the same (and the agreement is varied accordingly).

19. FORCE MAJEURE

We shall have no liability to you under the agreement if we are prevented from, or delayed in performing, our obligations under the agreement or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving our workforce 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.

20. WAIVER

20.1. A waiver of any right under these terms 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 us in exercising any right or remedy under these terms 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.

20.2. Unless specifically provided otherwise, rights arising under these terms are cumulative and do not exclude rights provided by law.

21. SEVERANCE

21.1. If any provision of these terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these terms, and the validity and enforceability of the other provisions of these terms shall not be affected.

21.2. If a provision of these terms (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

22. NOTICES

22.1. Any notice required to be given under the agreement to us must be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to us to Egton Medical Information Systems Limited at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA or by email to uk.contracts@optum.com and marked for the attention of Legal Counsel.

22.2. A notice delivered by hand or by email shall be deemed to have been received when delivered (or if delivery is not during our 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.

23. ENTIRE AGREEMENT

23.1. Subject to clause 23.2, the agreement constitutes the whole agreement between the parties in relation to use of the System and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter.

23.2. In the event that the Account Holder is also a Commissioner, then:

23.2.1. the agreement shall apply in relation to any access to, or use of, the System:

23.2.1.1. by the Account Holder's Users in relation to any Account Holder Commissioned Service; and/or

23.2.1.2. by the Account Holder or its Users in relation to any other Commissioner's commissioned services that uses the System; and

23.2.2. the contract with the Account Holder (in its capacity as a Commissioner) shall apply to any

access or use of the System in relation to the service we are providing under that contract.

24. ASSIGNMENT

24.1. We may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the agreement and may subcontract or delegate in any manner any or all of your obligations under the agreement to any third party or agent.

24.2. You shall not, without our prior written consent, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the agreement.

25. THIRD PARTY RIGHTS

The agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the agreement.

26. NO PARTNERSHIP

Nothing in the agreement is intended to, or shall operate to, create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. GOVERNING LAW, COMPLIANCE AND JURISDICTION

27.1. All parties shall, in performing their respective obligations under the agreement, comply with Applicable Law.

27.2. This 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.

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

Annex 1

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

Duration of the Processing: for the term of the agreement (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the relevant services and fulfilment of our legal and regulatory obligations).

Nature: such processing as is necessary to enable us to provide the services and solutions provided for under the agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).

Types of Personal Data: data which may be processed under the agreement includes: names, addresses, dates of birth, NHS numbers, telephone numbers, email addresses and other contact details. In particular it will include special category personal data relating to health (including, medical records, images and biometric data as required by the relevant Solution).

Categories of Data Subject: data subjects may include: Users, patients and members of the public with whom you and your Users are interacting.

PharmOutcomes Direct and Affinity Groups

PharmOutcomes Direct is a management tool through which you can manage the delivery of Provider Pays Services. You must comply with all relevant terms in the agreement including this Annex 2 to be able to use the PharmOutcomes Services.

Where we provide PharmOutcomes Direct to you under the agreement (but with no Affinity Group involved), the terms set out in paragraphs 1-4 and Part A of this Annex 2 shall apply (unless expressly stated otherwise).

Furthermore, where you select an Affinity Group to manage payments in respect of Provider Pays Claims made using PharmOutcomes Direct, paragraphs 1-4 and the following terms set out in this Annex 2 will apply:

- Part A; and
- Part B.

1. Definitions

In this Annex 2, the following definitions shall apply (capitalised terms which are not defined in this Annex 2 shall have the meaning given to them in the agreement):

AG Customer Agreement: means an agreement between you and an Affinity Group, pursuant to which the Affinity Group will provide payment and invoicing related services and benefits to you in respect of Provider Pays Claims.

Charges: means any charges paid or payable to us under the agreement, in return for your use of PharmOutcomes Direct and the PharmOutcomes Services.

2. Application of this Annex 2

The terms of this Annex 2 shall apply from the date upon which you first use PharmOutcomes Direct and, unless agreed otherwise in writing between the parties, shall thereafter continue for the duration of the agreement.

3. Initial Selection and Initial Request

- 3.1. Upon accepting these terms, and in any event as soon as reasonably possible prior to the end of the relevant month, you must indicate within the System whether you intend to use an Affinity Group or not.
- 3.2. Where you intend to pay us directly for receiving PharmOutcomes Services, you shall promptly set up a direct debit mandate in accordance with paragraph 5.3. You acknowledge that you may not be able to go live with PharmOutcomes Services until this direct debit has been set up.
- 3.3. Where you wish to use an Affinity Group, you must request this within the System ("**Initial Request**") and we (and the Affinity Group) will review any Initial Request, and subject to our (and the Affinity Group's) acceptance of an Initial Request (which will be entirely within our and the Affinity Group's discretion) your AG Customer Agreement with that Affinity Group will commence immediately. You acknowledge that you will not be able to use the PharmOutcomes Services unless and until such Initial Request has been accepted in accordance with this paragraph.
- 3.4. Where we and/or the Affinity Group rejects an Initial Request, you may either:
 - 3.4.1. sign a direct debit mandate and pay us directly to receive PharmOutcomes Services in accordance with Part A; or

- 3.4.2. submit an Initial Request to an alternative Affinity Group, who would also review such Initial Request in accordance with paragraph 3.3.
- 3.5. You acknowledge that, at any one time, you may only have one Affinity Group manage your Provider Pays Claims and that such Affinity Group shall manager your Provider Pays Claims in respect of all of your Provider Pays Services.
4. Summary
 - 4.1. The PharmOutcomes Service model can be summarised as follows:
 - 4.1.1. you should log each Completed Follow-Up in PharmOutcomes;
 - 4.1.2. as soon as reasonably practicable after each Completed Follow-Up is logged in PharmOutcomes, we shall, on your behalf, use reasonable endeavours to submit a Provider Pays Claim to the NHS BSA, details of which will be available from the PharmOutcomes Direct portal in respect of that Completed Follow-Up;
 - 4.1.3. a record of each Completed Follow-Up, each associated Provider Pays Claim, and the relevant Affinity Group (where applicable), is stored in PharmOutcomes Direct; and
 - 4.1.4. NHS BSA should, irrespective of whether or not you have appointed an Affinity Group, reimburse you (although we offer no guarantee that they will do so, nor do we accept any liability for their failure to do so), in arrears, in respect of all successful Provider Pays Claims made within a relevant month (or other relevant period). You acknowledge that a 'cap' may apply from time to time to the number of Completed Follow-Ups for which the NHS BSA will reimburse you under your Provider Pays Claims ("**Consultation Cap**"). You are responsible for ensuring your Completed Follow-Ups remain within any such cap and we accept no liability for the NHS BSA's failure to pay any Provider Pays Claim where such Consultation Cap has been reached or exceeded.

Part A – No Affinity Group involved

5. Charges
 - 5.1. Subject to paragraph 7.2 below, you shall pay us our Charges in accordance with this paragraph 5.
 - 5.2. In consideration of the provision of PharmOutcomes Services to you, you shall pay us the Charges, details of which will be provided to you in the PharmOutcomes Direct portal. Charges for all PharmOutcomes Services (including use of the Digital Gateway) are payable in relation to each Completed Follow Up. For the avoidance of doubt, if the Digital Gateway is used by your patient but this does not result in a Completed Follow Up, no charges are applicable in respect of the use of the Digital Gateway.
 - 5.3. In order to receive the PharmOutcomes Services under this paragraph, you must set up (by no later than the end of the first month) and maintain at all times whenever this Part A applies, a direct debit mandate to pay us (or any third party as we notify to you from time to time) the Charges. The set-up of your direct debit will be facilitated by our nominated third party payment services provider, details of whom will be notified to you in writing from time to time. If you do not set up a direct debit or, once set up, cancel your direct debit, or if for any other reason we do not receive payment of our Charges via direct debit due to your act or omission, you accept and acknowledge that, without prejudice to our other rights and remedies under this Annex 2:
 - 5.3.1. we may immediately suspend your access to the PharmOutcomes Services for such period that the direct debit arrangements are cancelled / payments remain outstanding; and
 - 5.3.2. you shall immediately pay our Charges via BACS or other similar direct payment method stipulated by us.

- 5.4. We will generally only raise an invoice at the end of a month, where there have been a minimum of 10 Completed Follow Ups performed in that month, or otherwise during the period since our last invoice (and you acknowledge that we may carry over Completed Follow Ups into a subsequent month where this minimum amount has not been achieved in a given month(s)). For example, if in April there are 5 Completed Follow Ups and 3 in May, then 12 in June, then we will invoice for 20 Completed Follow Ups at the end of June. Otherwise, all Charges are payable monthly in arrears, following receipt of our invoice. However, notwithstanding the aforementioned terms of this paragraph 5.4, we reserve the right to invoice you for any and all outstanding Completed Follow Ups at the end of any month (in our absolute discretion). Such an invoice is likely to be raised if you start using an Affinity Group pursuant to Part B of this Annex 2 or if more than 6 months have elapsed since our last invoice or if the agreement is terminated or expires, in whole or in part.
- 5.5. You shall pay each invoice in full and in cleared funds, within thirty (30) days of the date of such invoice, in accordance with the direct debit arrangements described in paragraph 5.3.
- 5.6. We may adjust the Charges on an annual basis during the Term. We will notify you in writing (which shall include, for the avoidance of doubt, updating the charges within the PharmOutcomes Direct portal) of any change in the Charges. Your continued use of the PharmOutcomes Services shall be deemed as acceptance of any updated Charges.
- 5.7. For the avoidance of doubt all Charges are exclusive of VAT, which we will add to our invoices at the appropriate rate.
- 5.8. Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date, this shall constitute a material breach and we may:
- 5.8.1. suspend your access to the PharmOutcomes Services until such payment is received in full; and/or
 - 5.8.2. 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 you shall pay the interest immediately on demand (or, we may in the alternative and at our option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998).
- 5.9. Notwithstanding any provision in the agreement to the contrary, all sums payable to us under this Annex 2 shall become due immediately on termination of this Annex 2 or the agreement. This paragraph 5.9 is without prejudice to any right to claim for interest under the law, or any such right under the agreement.
- 5.10. We may, without prejudice to any other rights we may have, set off any liability of yours to us against any liability of us to you.

Part B – Affinity Groups

6. Your relationship with Affinity Groups

- 6.1. Where you are paying us directly for PharmOutcomes Services pursuant to Part A, but subsequently wish to appoint an Affinity Group, you must request this within the System (“**AG Request**”) and we (and the relevant Affinity Group) will review any AG Request, and subject to our (and the Affinity Group’s) acceptance of an AG Request (which will be entirely in our and the Affinity Group’s discretion):
- 6.1.1. your AG Customer Agreement with that Affinity Group will commence on the 1st day of the following month; or
 - 6.1.2. if you fail to submit an AG Request sufficiently in advance of the end of the relevant calendar month, we (and the Affinity Group) reserve the right to allow the AG Customer Agreement to only commence on the 1st day of the second calendar month following our receipt of such AG Request, and you acknowledge that your receipt of the PharmOutcomes Services will remain subject to Part A unless and until such AG Request has been accepted in accordance with this

paragraph 6.1.

- 6.2. Where you make an AG Request pursuant to paragraph 6.1 and this is accepted, your direct debit arrangement will be cancelled once any outstanding payments owed to us pursuant to Part A have been made in full, and you acknowledge that you will continue to be liable to us for any outstanding payments due under Part A notwithstanding the commencement of your AG Customer Agreement. Where you make an AG Request and this is refused, then you may make an alternative AG Request in respect of another Affinity Group or continue to pay to receive PharmOutcomes Services from us pursuant to Part A.
- 6.3. The minimum term of an AG Customer Agreement is 1 whole calendar month (so if you entered into an AG Customer Agreement part-way through a calendar month, the minimum term would be the remainder of that month, plus the whole of the following calendar month).
- 6.4. You shall pay to the relevant Affinity Group its fees, in accordance with the terms of the AG Customer Agreement.
- 6.5. Once signed up to an AG Customer Agreement with an Affinity Group you may at any time either:
 - 6.5.1. select a new Affinity Group; or
 - 6.5.2. select to terminate the AG Customer Agreement with your current Affinity Group.
- 6.6. Where you wish to make a change pursuant to paragraph 6.5, you must, as soon as reasonably possible prior to the end of the relevant month, via settings in PharmOutcomes Direct
 - 6.6.1. request that your existing AG Customer Agreement is terminated ("**AG Termination Request**"); or
 - 6.6.2. request to enter into a new AG Customer Agreement with a different Affinity Group ("**Switch Request**").
- 6.7. In the event that you make an AG Termination Request:
 - 6.7.1. your AG Customer Agreement shall be terminated and such termination shall take effect either:
 - 6.7.1.1. from the 1st day of the following month; or
 - 6.7.1.2. if you fail to submit an AG Termination Request sufficiently in advance of the end of the relevant calendar month, we (and where relevant the Affinity Group) reserve the right to effect such change from the 1st day of the second calendar month following our receipt of such AG Termination Request;
 - 6.7.2. upon termination of the relevant AG Customer Agreement, you will revert to paying us directly, in accordance with Part A above and you must set up a new direct debit, in accordance with paragraph 5.3; and
 - 6.7.3. for the avoidance of doubt, until termination of your AG Customer Agreement has taken place, you shall continue to be liable to pay the relevant Affinity Group its fees in accordance with the relevant AG Customer Agreement and you acknowledge that you will continue to be liable to the Affinity Group for any outstanding payments due to it under the AG Customer Agreement, notwithstanding the termination of the AG Customer Agreement.
- 6.8. In the event that you make a Switch Request:
 - 6.8.1. we (and where applicable the new Affinity Group) will review any Switch Request, and subject to our (and where applicable the new Affinity Group's) acceptance of a Switch Request (which will be entirely in our and where applicable, the new Affinity Group's discretion), such change

will take effect either:

- 6.8.1.1. from the 1st day of the following month; or
 - 6.8.1.2. if you fail to submit a Switch Request sufficiently in advance of the end of the relevant calendar month, we (and where relevant the new Affinity Group) reserve the right to effect such change from the 1st day of the second calendar month following our receipt of such Switch Request;
 - 6.8.2. upon acceptance of your Switch Request, and therefore commencement of your new AG Customer Agreement, your existing AG Customer Agreement will automatically terminate; and
 - 6.8.3. for the avoidance of doubt, until your Switch Request and therefore termination of your previous AG Customer Agreement has taken place, you shall continue to be liable to pay the 'old' Affinity Group its fees in accordance with your AG Customer Agreement with that Affinity Group and you acknowledge that you will continue to be liable to the old Affinity Group for any outstanding payments due to it under the old AG Customer Agreement, notwithstanding the termination of the old AG Customer Agreement and/or commencement of the new AG Customer Agreement.
- 6.9. You may switch Affinity Groups as frequently as you wish but you may only receive services from 1 Affinity Group at any one time. Accordingly, upon commencement of a new AG Customer Agreement, your existing AG Customer Agreement will automatically terminate (save for any provisions which expressly or by implication are intended to survive, including in respect of any outstanding payment obligations).
- 6.10. If we are notified by a relevant Affinity Group that your AG Customer Agreement with them is due to terminate or expire, you agree and acknowledge that we are entitled to remove you from that Affinity Group at the end of the relevant Month or, in the case of immediate termination, immediately. Where possible, we will use reasonable endeavours to give you notice within the System of when your AG Customer Agreement is due to expire / terminate. Should you dispute such termination or expiry, you must contact the relevant Affinity Group. We shall have no liability to you whatsoever in the event that we remove you from an Affinity Group on the instruction of that Affinity Group.
- 6.11. For the avoidance of doubt, where you appoint an Affinity Group, that Affinity Group is appointed in respect of all Provider Pays Services you provide to patients, you are not able to select different Affinity Groups for different Provider Pays Services (or pay for some direct to us).

7. Charges (Affinity Group involved)

- 7.1. Where you have appointed an Affinity Group in respect of your Provider Pays Services, then the parties acknowledge that, subject to paragraph 7.2:
- 7.1.1. any charges due to us in respect of our provision of PharmOutcomes Services shall be payable to us by the relevant Affinity Group, pursuant to separate terms between us and the relevant Affinity Group; and
 - 7.1.2. paragraph 5 of Part A above shall not apply.
- 7.2. You acknowledge that the default direct charging arrangement under paragraph 5 of Part A shall apply if:
- 7.2.1. the Agreement between us and your Affinity Group expires or terminates for any reason whatsoever;
 - 7.2.2. an AG Customer Agreement terminates or expires, and you do not subsequently enter into another AG Customer Agreement immediately thereafter (including where we or the new Affinity Group do not accept a Switch Request) – in which case paragraph 5 of Part A shall apply automatically and you will be required to set up a new direct debit arrangement in accordance with paragraph 5.3; or

7.2.3. the relevant Affinity Group does not pay us by the relevant due date, in which case we may, in our discretion, apply paragraph 5 of Part A on demand, and you will be required to set up a new direct debit arrangement in accordance with paragraph 5.3.

8. Liability

8.1. Subject to clause 10.1 and notwithstanding clause 10.2, our total aggregate liability to you in each Year arising out of, or in connection with, the provision of the PharmOutcomes Services (only), whether arising from contract, tort, negligence or otherwise shall be limited to the greater of a) £1,000 or b) 100% of the charges paid or payable by you to us, pursuant to paragraph 5 of this Annex 2, during the relevant Year.

Patient Group Directions in PharmOutcomes

Patient Group Directions (PGDs) are a legal framework and directions (written by the multidisciplinary team of our appointed Patient Group Direction provider) that allows registered healthcare professionals (including pharmacists), to supply and/or administer specified medicines to pre-defined groups of patients at a Pharmacy (as defined below), or other premises where an appropriate assessment has successfully been completed, without a prescription (such PGDs as are available through PharmOutcomes being the “**Patient Group Direction(s)**” or ““**Patient Group Direction(s)**” or “**PGD(s)**”).

The team at PharmOutcomes have created a series of templates based on our PGD provider’s PGDs; the provision and use of these templates makes up the PGD Supported Service that we provide. Our PGD Supported Service can be used whilst a Healthcare Professional (as defined below) is patient-facing, to record private service interventions.

The PGDs (and the PGD Supported Service) must only be used by suitably qualified Healthcare Professionals, who must use their own professional judgment and expertise when supplying or administering medicines using PGDs and the PGD Supported Service.

1. Definitions

1.1. In this Annex 3, the following definitions shall apply (capitalised terms which are not defined in this Annex 3 shall have the meaning given to them in the agreement):

“**CQC**” means the Care Quality Commission.

“**Critical Incident**” means an incident in respect of a PGD or the PGD Supported Service that either carries a perceived high risk of patient harm (in the Healthcare Professional’s reasonable and professional opinion) or that has resulted in patient harm of any sort.

“**Data**” means one or more of the following: (a) any personal data in respect of which you are a Data Controller; (b) any data controlled by, provided by or in the possession of you; (c) any data in relation to the use of the PGD Supported Services and PharmOutcomes.

“**Eligible**” means when: (1) you have used a PGD as part of the PGD Supported Services in accordance with this agreement; (2) you have undertaken a PPC in relation to a patient; and (3) it has been confirmed that the relevant patient is eligible for supply or administration of the medication or solution specific to the relevant PGD.

“**GPhC**” means the General Pharmaceutical Council.

“**GP**” means a general practitioner surgery.

“**Healthcare Professional**” means a Pharmacist or Superintendent Pharmacist (or other healthcare professional registered with the relevant body who is specifically identified as permitted to administer the relevant medication in the relevant PGD).

“**PGD Patient Consultation**” or “**PPC**” refers to the series of questions asked of the patient by the Healthcare Professional to determine a patient’s eligibility for supply or administration of the medication specific to the relevant PGD.

“**PGD Services Charges**” means the charges for use of the PGD Supported Service which are as set out in the private PGD service sign up online form(s) you complete.

“**Pharmacist**” refers to an individual holding a valid registration with GPhC or PSNI. This includes, but

is not limited to, the employed pharmacists, locum pharmacists and relief pharmacists to whom you have granted access to the PGD Supported Services.

“**Pharmacy**” or “**Pharmacies**” means GPhC/PSNI registered premises providing pharmaceutical and dispensing services.

“**PGD Patient Consultation**” or “**PPC**” refers to the series of questions asked of the patient by the Healthcare Professional to determine a patient’s eligibility for supply or administration of the medication specific to the relevant PGD.

“**PSNI**” means the Pharmaceutical Society of Northern Ireland.

“**Regulatory Body**” means each of the CQC, PSNI, GPhC, Regulation and Quality Improvement Authority (Northern Ireland), and the Care Inspectorate (Scotland).

“**Superintendent Pharmacist**” means a Pharmacist having overall responsibility and control of the management of a Pharmacy or group of Pharmacies owned by a corporate body.

“**Working Day**” means any days upon which the relevant Pharmacy is open for business.

- 1.2. References to “**quarter**” and “**quarterly**” shall mean, in each calendar year: (a) for influenza vaccination PGDs: September to November (inclusive), and December to March (inclusive); and (b) for other PGDs: January to March (inclusive), April to June (inclusive), July to September (inclusive), and October to December (inclusive).

2. Application of this Annex 3 and Use of the PGDs and PGD Supported Services

The terms of this Annex 3, and your rights to use the PGDs and PGD Supported Services, shall apply from the date upon which you first use the relevant PGD through the PGD Supported Services and, unless agreed otherwise in writing between the parties, shall continue until the expiry date displayed on the relevant PGD (subject to earlier termination of the agreement, or your use of the PGDs, PGD Supported Services).

3. Our Obligations and Rights

We shall:

- 3.1. Following the dispensing/administration of medicine after the successful use of the PGD Supported Services and where possible, use reasonable endeavours to send (subject to patient consent being obtained) an electronic summary of the PGD consultation, including drug dispensed/administered to the patient’s GP to confirm the treatment provided. Please note that in order for the notice to be added to the patient’s medical records:

3.1.1.the information regarding the patient’s GP supplied by you in accordance with paragraph 4.17 below must be accurate;

3.1.2.the GP will need to have enabled the relevant functionality; and

3.1.3.the GP surgery must process the notice and append it to the patient’s records as per each surgery’s standard operating procedure.

If the GP does not have the relevant functionality enabled to receive our electronic message, we will notify you that the electronic message could not be delivered and you will then need to inform the patient’s GP manually of the treatment provided.

We accept no liability whatsoever for any instance where the patient’s records are not updated in respect of their use of the PGD, PGD Supported Services, or medicine prescribed including any instances where this is caused by a technical outage or issue on our part.

- 3.2. Inform you via PharmOutcomes of any amendments made to the PGDs in the PGD Supported Services and make the revised PGDs available in the PGD Supported Services.

- 3.3. Notify you via PharmOutcomes of any serious clinical incidents regarding the PGDs in the PGD Supported Services that require amendments to, and/or suspension or termination of, the relevant PGD or PGD Supported Services. Such notification shall be given within an appropriate timescale (having regard to the seriousness of the incident) and may include details of:
 - 3.3.1.the incident;
 - 3.3.2.any proposed resolution to the incident;
 - 3.3.3.any action required by you;
 - 3.3.4.the timetable for implementation (along with confirmation of any required re-accreditation in respect of the PGD); and
 - 3.3.5.details of any suspension or termination of a PGD or PGD Supported Services.
- 3.4. Use reasonable endeavours to provide support, either directly or via our PGD provider, in relation to any clinical or technical issues with the PGD Supported Services. In order to provide support for particular clinical or technical issues, you acknowledge and agree that we may refer you directly to our PGD provider (including by providing your Users' details, and relevant information about your business, to our PGD provider). In such event, your information and data (including any Personal Data) collected or used by the PGD provider about your business (including any Users' details) will be treated in accordance with the PGD provider's privacy presented to you by the PGD provider.

4. Your Obligations

You must:

- 4.1. Maintain a valid agreement with us to use PharmOutcomes.
- 4.2. Ensure that only Healthcare Professionals use the PGD Supported Services, and that each such Healthcare Professional has the necessary training, accreditation, competencies and expertise (including those specified within the relevant PGD) to use the PGDs and dispense medication using them (including any required CQC or other accreditation). A person without such competencies, training and expertise shall not be entitled to use the relevant PGD or the PGD Supported Services.
- 4.3. Provide services to patients pursuant to your rights to use the PGDs and PGD Provided Services in compliance with this agreement, strictly in accordance with the clinical guidance set out for each individual PGD. In particular, you shall ensure that medication is supplied, labelled and recorded in accordance with the relevant PGD instructions.
- 4.4. Ensure that the Superintendent Pharmacist and all other Healthcare Professionals using the PGD Supported Services undertake all necessary pre-requisite training required prior to the use of each PGD (including all training that the PGD requires them to confirm that they have undertaken).
- 4.5. Ensure that all Healthcare Professionals use professional judgment, to at least the level reasonably expected of a Healthcare Professional, in relation to the use of the PGD Supported Services. The PGD Supported Services are not a substitute for independent professional medical judgment, and you shall ensure that in using the PGD Supported Services, each Healthcare Professional applies independent professional medical judgment.
- 4.6. Only use the PGDs and PGD Supported Services in GPhC/PSNI registered premises except in the case of vaccine PGDs which may be performed off site (by a suitably qualified person) if an appropriate premises assessment is successfully completed.
- 4.7. Ensure that the Pharmacy premises, including consultation room(s) comply with the standards set out by the GPhC/PSNI.
- 4.8. Put in place adequate liability insurance with a reputable insurer to cover all work carried out by

you and/or your users using the PGD Supported Services. You will provide a copy of this insurance policy to us upon demand.

- 4.9. Ensure that the relevant Healthcare Professionals complete a PGD Patient Consultation form for each patient consultation in PharmOutcomes (whether the PGD consultation is completed on or off site).
- 4.10. Allow us to access and use Data in accordance with the agreement and our Privacy Policy (as referenced in Clause 12.1).
- 4.11. (Without prejudice to your responsibility to report Critical Incidents to any Regulatory Body) inform us as soon as reasonably practicable and, in any event, no later than 1 Working Day of any Critical Incident arising through the use of the PGDs (or the PGD Supported Services) by reporting the Critical Incident through Optum support from the help page in PharmOutcomes.
- 4.12. Provide such assistance as we, or our PGD provider, require in relation to dealing with any clinical incidents regarding the PGDs and PGD Supported Services notified to you in accordance with clause 2(d) or in respect of a PGD (or the PGD Supported Services) generally.
- 4.13. Ensure that the Superintendent Pharmacist has overall responsibility for the use of PGDs and the PGD Supported Services within your organisation and has the responsibility to authorise and sign PGDs for use within your organisation. Only authorised and signed PGDs shall be used by the Healthcare Professionals.
- 4.14. Ensure that the Superintendent Pharmacist chooses suitable Healthcare Professionals to use PharmOutcomes to allow for the delivery of the PGDs and provision of the PGD Supported Services.
- 4.15. Ensure that each Healthcare Professional (and the Superintendent Pharmacist) keeps and maintains email addresses for each Healthcare Professional, and makes sure that each Healthcare Professional's name, GPHC/PSNI (or other relevant professional body) registration, and any other professional details required to use the PGDs in PharmOutcomes are complete, up to date and accurate.
- 4.16. Ensure that, if you (or any Healthcare Professional) wish to no longer use the PGDs and PGD Supported Services, you will promptly inform us (and we will be entitled to terminate and/or deactivate your (or the Healthcare Professional's, as applicable) access to the PGD Supported Services and PGDs.
- 4.17. Ensure that the patient's GP details and patient details contained within PharmOutcomes are complete, up to date and accurate.

5. Audit Rights

Upon reasonable notice, you shall allow us, and any of our auditors or other advisers, to access any of your premises, personnel, system and records (including those contained within PharmOutcomes) as may be reasonably required in order to:

- 5.1. fulfil any legally enforceable request by any Regulatory Body;
- 5.2. comply with any audit by a Regulatory Body;
- 5.3. comply with our legal and/or contractual obligations;
- 5.4. check the accuracy of the PGD Services Charges or identify any suspected fraud or misuse of the PGDs or PGD Supported Services; and/or
- 5.5. to verify your compliance with this Annex 3.

6. Responsibility

- 6.1. We shall not be liable to you in respect of any claims or losses suffered by you (whether directly or indirectly) arising from your failure to comply with the terms of this Annex 3 including any failure to properly use the PGDs, PGD Supported Services or PharmOutcomes, or where a Healthcare

Professional's use of their professional medical judgment or expertise would have avoided the claim or loss.

7. Suspension and Termination

- 7.1. We shall be entitled to terminate or suspend all or any part of the PGD Supported Services (and your, or one or more Healthcare Professional's access to them), by deactivating use and/or access within PharmOutcomes, at any time and acting in our absolute discretion. Wherever possible, we shall use reasonable endeavours to notify you of any termination or suspension of the PGD Supported Services prior to such termination or suspension coming into effect, but will otherwise use our reasonable endeavours to notify you as soon as reasonably practicable thereafter.
- 7.2. We shall also be entitled to immediately suspend (for whatever period we deem necessary) and/or terminate your (and/or any one or more Healthcare Professional's) use of, and/or access to, all or any part of the PGD Supported Services in the event that:
 - 7.2.1. you are in breach of any of this Annex 3;
 - 7.2.2. you or any of your Healthcare Professionals repeatedly fail to achieve accreditation for one or more PGDs;
 - 7.2.3. we no longer have the right(s) to offer all or certain PGDs or the PGD Supported Services; and/or
 - 7.2.4. you fail to pay any PGD Services Charges under this Annex 3 or any other part of the agreement.
- 7.3. If we terminate and/or suspend your (or any one or more Healthcare Professional's) use of all or any part of the PGD Supported Services (or a PGD) you (or the relevant Healthcare Professional, as applicable) shall immediately cease to use the relevant PGD Supported Services, PGD(s). In the event of permanent suspension or termination of certain or all of the PGD Supported Services or PGDs (or termination of this agreement), all PGD Services Charges shall become immediately due and payable.

8. Payment Terms

- 8.1. In consideration of the provision of the PGD Supported Services, by us, you shall pay the PGD Services Charges. The PGD Services Charges shall be payable in respect of the use of the PGD Supported Services where you save a record (recording the administration of the medication or similar) as part of the PGD Supported Services.
- 8.2. All PGD Services Charges are payable quarterly in arrears. We will invoice you within 14 days of the end of each quarter and the PGD Services Charges shall be payable within 30 days of the date of the invoice to a bank account nominated in writing by us.
- 8.3. Subject to any fixed pricing we agree separately in writing with you, we may change the PGD Services Charges of all or any of the PGD Supported Services at any time by specifying the updated pricing through a system announcement within PharmOutcomes and/or banner within the PGD Supported Services at least 30 days in advance. The revised PGD Services Charges shall apply from the date specified in the notice in relation to any patients deemed Eligible after that date.
- 8.4. For the avoidance of doubt, all PGD Services Charges are exclusive of VAT, which we shall add to our invoices at the appropriate rate.
- 8.5. Without prejudice to any other right or remedy that we may have, if you fail to pay any PGD Services Charges to us on the due date, we 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 you shall pay the interest immediately on demand (or, we may in the alternative and at our option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998).



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- 8.6. Notwithstanding any provision in this agreement to the contrary, all sums payable to us under this agreement shall become due immediately on its termination. This paragraph 8.6 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 8.7. We may, without prejudice to any other rights we may have, set off any liability of you to us against any liability of us to you.