

ADDITIONAL EMIS WEB SERVICE(S) TERMS AND CONDITIONS

PLEASE READ CAREFULLY BEFORE PROCEEDING WITH THIS SERVICE:

These terms and conditions govern the EMIS Web Service(s) (as defined) as provided by Egton Medical Information Systems Limited (“**Optum**”, “**us**” or “**we**”) to You, the organisation using this service (“**You**”, “**Your**” or “**Customer**”). These terms form the entire agreement between Optum and You in respect of the provision of the EMIS Web Service(s) (as defined) (the “**Agreement**”). The Agreement relates to Your use of the relevant EMIS Web Service(s).

IMPORTANT NOTICE TO ALL CUSTOMERS:

- THE CUSTOMER SHALL BE DEEMED TO HAVE ACCEPTED THE AGREEMENT UPON USING THE RELEVANT EMIS WEB SERVICE(S). THE USER ACCEPTING THE AGREEMENT IN ACCORDANCE WITH THE ABOVE, REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THE CUSTOMER AND THE CUSTOMER AGREES TO THE TERMS OF THE AGREEMENT WHICH WILL BIND THE CUSTOMER AND ALL OF ITS USERS.
- IF YOU DO NOT AGREE TO THE TERMS OF THE AGREEMENT, YOU MUST NOT USE THE RELEVANT EMIS WEB SERVICE(S).

RECITALS:

- (A) Optum is engaged in the business of creating, developing and supplying healthcare IT systems. The Customer already uses EMIS Web (as defined), the use of which is governed by a relevant EMIS Web Contract (as defined).
- (B) Optum has developed EMIS Web Service(s) which are made available via EMIS Web. These are additional pieces of functionality that sit outside of Your EMIS Web Contract. Optum may, from time to time, develop new EMIS Web Service(s), which may be made available to You via EMIS Web and shall be subject to the same terms as the terms of the Agreement (unless otherwise specified in a written agreement i.e. if it forms part of the core EMIS Web functionality).
- (C) Optum has agreed to deliver the EMIS Web Service(s) to You and You have agreed to use the EMIS Web Service(s) under the terms and conditions set out in the Agreement.

1. DEFINITIONS AND INTERPRETATION

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

Affiliate: 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.

Active: means where an Alert is marked as ‘active’ and You will therefore receive the relevant alerts without needing to take further action.

Alert(s): means clinical safety information, clinically valuable information and/or other information considered reasonably useful by Optum provided by Optum via alerts within EMIS Web. Alerts may be authored and implemented by Optum or provided on behalf of a third party (including, sponsors, clinical service providers, health authorities or other third parties).

Clinical Calculators: means a feature within EMIS Web that allows You to calculate clinical scores, and which qualify as “software as a medical device” (SaMD) and that are CE Marked (as set out in Schedule 1, and as may be updated from time to time).

Concepts: means a feature within EMIS Web that allows You to create logical queries that can be tested against a patient health record to return information about the presence or absence of queried data. Concepts may be combined to create complex logic statements.

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

- (a) the EMIS Web Service(s) and Documentation;
- (b) it is marked as “confidential” (or similar);
- (c) 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
- (d) any combination of the foregoing.

Control: 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 Resource: means any Resources created and/or published by You (including those that adapt or amend Resources provided by Optum to You within the relevant EMIS Web Service(s), as permitted by Optum for such Resource(s)), including Customer Templates, within Resource Publisher in accordance with the terms of the Agreement.

Customer Templates: means any templates created by You within Resource Publisher which support input of relevant data and clinical workflow.

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 and the General Data Protection Regulation (Regulation 2016/679) as incorporated into UK Law pursuant to the European Union (Withdrawal Act) 2018 (in each case as may be amended or superseded from time to time).

Documentation: all documents, information, manuals, user guides, schematics, drawings and other material provided or made available by Optum to You in relation to the relevant EMIS Web Service(s).

EMIS Search and Reports: means the module of EMIS Web in which You can interrogate patient data controlled by You by building searches and reports, or by using relevant EMIS Web Service items.

EMIS Templates: means any templates made available by Optum within EMIS Web that can be used by You to support input of relevant data and clinical workflow.

EMIS Web: means Optum’ proprietary electronic patient record operating system and software for the management of GP primary care, provided to GPs and sold under the mark “EMIS Web” (as such system (or branding) may be revised, updated and replaced from time to time).

EMIS Web Contract: means the relevant contract between You and Optum entered into for the provision of EMIS Web including any such contract entered into under a central NHS IT framework (or replacement thereof).

EMIS Web Service(s): means the provision of any Resource by Optum to You.

EMIS-X Leaflets: means the functionality within EMIS Web that allows Information Leaflets to be made available to Your end users and for such end users to easily share such resources with their patients.

Health Check App: means an application provided to You by Optum designed to help check and identify certain potential issues with Your hardware and/or software that may be preventing You from utilising EMIS Web (and associated services / functionality including the EMIS Web Services).

Inactive: means an Alert that is marked as ‘inactive’. You will need to switch on the relevant alerts within EMIS Web, or have confirmed a relevant opt in in accordance with clause 5.1, in order to receive

them.

Information Leaflets: means existing, and/or newly created professional and/or patient information leaflets.

Intellectual Property Rights: 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 rights, 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.

Losses: means any claims, demands, actions, proceedings, liabilities, costs (including, court costs and reasonable legal fees), expenses, fines, monetary penalties, losses and/or damages.

Medical Device: has the meaning set out in the Medical Device Laws i.e. any functionality intended to diagnose, treat, prevent, predict, monitor, prognose or alleviate disease. This particularly applies where the software is intended to provide information, which is used to make decisions with diagnostic or therapeutic purposes.

Medical Device Laws: 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.

party: refers to any one of You or Optum and “**parties**” shall mean each of You and Optum.

Protocols: means the functionality within EMIS Web that allows the display of Alerts and Templates, powered by Concepts.

Publishing Organisation: means an organisation that creates and publishes a Customer Resource in Resource Publisher in accordance with the terms of the Agreement and specifically clauses 5.4 to 5.10 (inclusive).

Recipient Organisation: means an organisation that receives a Customer Resource from a Publishing Organisation via Resource Publisher in accordance with the terms of the Agreement and specifically clauses 5.4 to 5.10 (inclusive).

Resources: means any of the following (as defined):

- (i) Alerts;
- (ii) EMIS Templates;
- (iii) Protocols;
- (iv) Resource Publisher;
- (v) EMIS-X Leaflets;
- (vi) Concepts;
- (vii) EMIS Web Searches and Reports; and/or
- (viii) any other services made available by Optum within or ancillary to EMIS Web to You from time to time not governed by Your EMIS Web Contract or any other contract between Us and You.

Resource Publisher: means the module within EMIS Web within which Templates, Concepts, Protocols and Alerts are built, controlled and shared. For those users still using the legacy service Template Manager, references in the Agreement to Resource Publisher shall mean Template Manager.

Templates: means, as relevant, either an EMIS Template and/or a Customer Template.

Template Manager: means the module within EMIS Web within which Templates, Concepts, Protocols and Alerts are built, controlled and shared.

Terms Folder: means the folder displayed within EMIS Web, that contains a copy of the Agreement, any relevant Documentation, or any other relevant terms.

Usage Data: means anonymised analytics data created through the use of any of the EMIS Web Service(s) by You. This may include information such as about how often a Resource appears, how many practices switch on an Inactive Alert and/or have 'opted in' in accordance with clause 5.1, how often a Resource is accessed/downloaded/used, and any actions taken by You following use of such EMIS Web Service(s). Usage Data shall not contain any Personal Data nor will Your GP Practice, users or patients be identifiable.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3 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.
- 1.4 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, (provided that, in respect of correspondence sent from You to Optum, that the same is sent to contracts@emisgroupplc.com) but not faxes; and (vi) clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 1.5 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. INTRODUCTION

- 2.1 The terms of the Agreement apply in relation to Your use of the EMIS Web Service(s). The parties agree and acknowledge that the use of EMIS Web is governed in accordance with the relevant EMIS Web Contract. For the avoidance of doubt, any service level agreements and/or service credits or other remedies set out in Your EMIS Web Contract do not apply to the provision of the EMIS Web Service(s).
- 2.2 The Agreement shall apply to the exclusion of any other standard terms and conditions which You seek to impose, whether in a purchase order or otherwise.

3. LICENCE

- 3.1 Optum hereby grants to You (and where applicable, shall procure a grant to You of), strictly for Your own internal business purposes, a non-exclusive, non-transferable, limited and revocable licence to use the EMIS Web Service(s), in the manner contemplated under, and for the duration of, the Agreement.
- 3.2 Subject to Your compliance with the Agreement, Optum shall use its reasonable endeavours to provide and support the EMIS Web Service(s) to You with reasonable care and skill in accordance with the Agreement.

4. LICENCE RESTRICTIONS

- 4.1 You shall, and You shall procure that all end users of the EMIS Web Service(s) shall, unless expressly permitted herein:
 - 4.1.1 only use the EMIS Web Service(s) on or in connection with EMIS Web, and not use the EMIS Web Service(s) for any purpose beyond those permitted under the Agreement;
 - 4.1.2 not merge or incorporate any of the relevant EMIS Web Service(s) (or any part thereof) with or into any other software nor (subject to any rights under any applicable law that cannot be excluded) attempt to disassemble, decompile, modify, adapt or reverse engineer the relevant EMIS Web Service(s);
 - 4.1.3 not translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license, create derivative works from, or otherwise deal or encumber the relevant EMIS Web Service(s);
 - 4.1.4 not use EMIS Web Service(s) or any portion thereof as a component of, or a base for, products or services prepared for sale, sublicense, lease, or access;

- 4.1.5 supervise and control use of the relevant EMIS Web Service(s) in accordance with the terms of the limited rights granted under the Agreement;
- 4.1.6 use the EMIS Web Service(s) in accordance with the Documentation (and any other reasonable instructions issued by Optum from time to time);
- 4.1.7 not use the relevant EMIS Web Service(s) in order to provide a bureau service (or any similar service) on behalf of any third party or for any commercial purpose and/or gain (whether monetary or otherwise);
- 4.1.8 not display the relevant EMIS Web Service(s) on a public bulletin board, ftp site, worldwide web site, chat room or by any other unauthorised means; and/or
- 4.1.9 not use the relevant EMIS Web Service(s) for any immoral or illegal purpose or for any other purpose which may be determined by Optum (acting reasonably) to be damaging to its reputation, threatening, abusive or harmful.

5. SERVICE SPECIFIC TERMS

Alerts

- 5.1 Subject to clause 5.2, the nature of scope of Alerts that You will receive will be determined by the permissions / configuration of Your preferences regarding Alerts set by You in Your EMIS Web account. Within this EMIS Web folder, You can switch all Alerts between being Active and Inactive. In addition, You can activate the "All Subscribed Resources" folder so that all Alerts, including sponsored Alerts that are deployed as Inactive, (current and future) are automatically deployed to You (and Your practice) as Active. You can deactivate the All Subscribed Resources folder at any time and/or make certain Alerts within the sub-folders Inactive. If you deactivate the All Subscribed Resources folder, You will still receive Alerts that are deployed by Optum as Active but You will no longer automatically receive Inactive Alerts unless You amend Your preferences.
- 5.2 Under the following circumstances, Optum may choose to make an Alert Active within Your EMIS Web account (and therefore to You and Your users) without receiving prior permission and regardless of Your Alert preferences:
 - 5.2.1 if Optum determines, that an Alert is, in Optum's reasonable opinion, of significant clinical benefit and/or value and/or clinical urgency; and/or
 - 5.2.2 if requested to do so by:
 - 5.2.2.1 a national health service body within the United Kingdom (i.e. NHS England, Public Health Wales, NHS Scotland, Department of Health (Northern Ireland)); and/or
 - 5.2.2.2 the Secretary of State for Health and Social Welfare (or his/her department).

You can however still make such Alerts Inactive by managing Your preferences within EMIS Web.
- 5.3 You agree and acknowledge that Alerts may be sponsored by third parties and, in such instances, the contents and any guidance or advice provided in such Alerts, although reviewed by Optum, are provided by such third parties and not Optum. Optum shall use its reasonable endeavours to ensure that any such sponsored Alerts meet the criteria set out in clause 5.25.2.1 but does not guarantee this will always be the case.

Resource Publisher

- 5.4 Subject always to clause 6, Resource Publisher can be used by You to create Customer Resources, use Resources and publish (to Recipient Organisations) certain Customer Resources i.e. Templates or Protocols (as determined by the functionality available within Resource Publisher from time to time). You can publish such Customer Resources to Recipient Organisations by raising a ticket in EMISNow to Optum's support desk and providing relevant details regarding the relevant Recipient Organisation(s) You wish to publish to. Where You do this, You are a "**Publishing Organisation**".
- 5.5 When publishing Customer Resources in accordance with clause 5.4 You can determine whether such Customer Resources are published as (a) active, i.e. available for use immediately to all Recipient Organisations, or (b) inactive, i.e. the Recipient Organisations have the choice whether to activate the

particular Customer Resource or not.

- 5.6 Each Publishing Organisation and Recipient Organisation shall ensure that they have an appropriate agreement or arrangement in place that governs the basis upon which Customer Resources are shared between the parties. Such agreement must:
- 56.1 comply with clause 5.9 and clause 6; and
 - 56.2 determine the basis of the sharing of Resources including in relation to any support, maintenance, version control, updates, new Resources etc (if any).
- 5.7 In order to receive any Customer Resource published via Resource Publisher, the Recipient Organisation must be on the same, or higher patch versions, of EMIS Web as the Publishing Organisation and both parties must accept the relevant sharing agreement within EMIS Web.
- 5.8 You (whether You are a Publishing Organisation or a Recipient Organisation) agree and acknowledged that Optum shall have no liability to You in relation to any Customer Resources created and/or published by a Publishing Organisation or used by a Recipient Organisation.
- 5.9 You must not use Resource Publisher for any direct or indirect commercial purposes or gain or to provide any paid for service to any Recipient Organisation (or any other party). A breach of this clause shall constitute an irremediable material breach of the Agreement and You shall pay Optum (without prejudice to any other rights under the Agreement), by way of liquidated damages, as sum equal to any profit or commercial gain (whether direct or indirect) received by You as a consequence of such breach.
- 5.10 You shall indemnify and hold Optum harmless against any Losses suffered by Optum arising from or in connection with use of any Customer Resource, including any breach of clause 6.

Health Check App

- 5.11 The results of a check using the Health Check App may be displayed in a technical format that requires appropriate expertise to understand. As such, we advise that You discuss the results with Optum's support team and/or Your IT department to determine next actions / resolutions required.

6. MEDICAL DEVICES

- 6.1 Certain Resources, or elements thereof, may constitute a Medical Device including those Resources that contain Clinical Calculators. Where a Resource constitutes a Medical Device, it will be displayed with appropriate CE marking and Optum shall be responsible for ensuring its compliance with the Medical Device Laws. You may use such Resources strictly for the purposes for which it has been registered as a Medical Device and You shall not incorporate, amend or distribute any such Resources within Resource Publisher or otherwise.
- 6.2 In relation to any Customer Resources, You agree in the event that such Customer Resource qualifies, or could potentially qualify, as a Medical Device, You shall:
- 62.1 ensure that it, at all times, complies with the Medical Device Laws;
 - 62.2 be deemed the manufacturer of such Medical Device; and
 - 62.3 be responsible for registering and maintaining the registration of any such Medical Devices.

7. DATA PROTECTION

- 7.1 Any processing of personal data (as defined under the Data Protection Legislation) required for the purposes of delivering and/or using the EMIS Web Service(s) shall (as appropriate) be governed by the terms of Your relevant EMIS Web Contract.
- 7.2 In the unlikely event the processing of personal data is not covered by Your EMIS Web Contract, the parties agree to promptly enter into appropriate data processing terms in accordance with Data Protection Legislation.
- 7.3 Notwithstanding the rest of this clause, each party shall comply with its relevant obligations under the Data Protection Legislation.

8. USAGE DATA

- 8.1 Optum may, from time to time, extract Usage Data in respect of Your use of the EMIS Web Service(s)

and it may use that Usage Data (either alone or amalgamated with data extracted from other customers) for its own internal business purposes, to improve the EMIS Web Service(s) and/or it may make the same available to third parties (including, to regulators and manufacturers). For the avoidance of doubt, the Usage Data shall not include any Personal Data.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 In relation to the Optum Materials, and any other materials generated by Optum in the performance of its obligations under the Agreement, the parties acknowledge that Optum (or its third-party licensors) owns all Intellectual Property Rights in 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 the Agreement.
- 9.2 Subject to clause 9.3, in relation to Customer Resources, the parties agree that, to the extent that any Intellectual Property Rights exist in such materials You shall own such rights.
- 9.3 You hereby grant a perpetual, irrevocable, royalty free licence to Your Customer Resources to:
- 9.3.1 Optum to use such Customer Resources as Optum deems appropriate including to modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license and/or create derivative works; and
- 9.3.2 any Recipient Organisation(s) to use and/or modify the Customer Resources within the relevant EMIS Web Services / EMIS Web (to the extent that such Customer Resources have been published or made available to Recipient Organisations by You or by Optum).
- 9.4 You shall not do, or authorise any party to do, any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Optum, 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.
- 9.5 You shall, for the duration of the Agreement, at Optum's expense, take all such steps as the Optum may reasonably require to assist Optum in maintaining the validity and enforceability of any Intellectual Property Rights licensed and/or created by Optum under the Agreement.

10. CONFIDENTIALITY

- 10.1 Subject to clauses 10.2 and 10.3 and save as otherwise expressly provided in the Agreement, neither party shall during the term of the Agreement or thereafter for a period of five (5) 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 the Agreement, save that the Recipient Party may:
- 10.1.1 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
- 10.1.2 use Confidential Information in the proper exercise of its rights and the performance of its obligations under the Agreement.
- 10.2 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.
- 10.3 The restrictions on use and disclosure of Confidential Information under clause 10.1 shall not apply to any Confidential Information which:
- 10.3.1 was already known to the Recipient Party prior to its receipt thereof from the Disclosing Party;
- 10.3.2 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;
- 10.3.3 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 9 or any obligations of confidence owed by the Recipient Party to the Disclosing Party; and/or
- 10.3.4 is required to be disclosed by law, regulation, order or regulators.
- 10.4 Confidential Information shall be subject to the obligations of confidence in this clause 8, 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.

10.5 Confidential Information shall not be exempted under clause 10.3 from restriction under the Agreement by reason only that:

105.1 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 10.3; or

105.2 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 10.3 if so to obtain or derive it would require substantial skill, labour or expense.

11. NO WARRANTY

11.1 Optum does not warrant or represent to You that the EMIS Web Service(s) will be free from faults or defects, or that otherwise access to or use of the EMIS Web Service(s) and/or the Documentation will be uninterrupted or error-free or will meet Your requirements.

11.2 You agree and acknowledge:

112.1 that the EMIS Web Service(s) and/or the Documentation, and otherwise access to the EMIS Web Service(s) are provided on an "as-is" and "as available" basis and no representations, conditions, warranties or other terms of any kind are given in respect of them; and

112.2 use of the EMIS Web Service(s) is at Your own risk and in no event shall Optum be liable to You for any loss or damage of any kind arising from Your use of, or inability to use, the EMIS Web Service(s) or the Documentation or from faults, defects, or errors in the same whether caused by negligence or otherwise.

11.3 To the extent permitted by applicable law any and all implied or statutory statement, representation, condition, warranty or other term as to the quality, merchantability, suitability or fitness for any particular purpose of the EMIS Web Service(s) is hereby excluded.

12. LIMITATIONS OF LIABILITY

12.1 This clause 12 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, third party licensor(s) and subcontractors) to You, including in respect of:

12.1.1 any breach of the Agreement;

12.1.2 any use made by You of the EMIS Web Service(s); and/or

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

12.2 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).

12.3 Nothing in the Agreement limits or excludes the liability of Optum for:

12.3.1 death or personal injury resulting from negligence;

12.3.2 any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or

12.3.3 any liability which cannot be excluded or limited pursuant to applicable law.

12.4 Subject to clause 12.3, Optum shall under no circumstances whatsoever be liable to You, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

12.4.1 loss (whether direct or indirect) of revenue or profits;

12.4.2 loss (whether direct or indirect) of business opportunity;

- 124.3 loss (whether direct or indirect) of goodwill or injury to reputation;
 - 124.4 loss (whether direct or indirect) of anticipated savings;
 - 124.5 loss (whether direct or indirect) of, or corruption to, any data; or
 - 124.6 indirect, consequential or special loss or damage,
 - 124.7 in each case arising out of or in connection with the Agreement.
- 12.5 Subject to clause 12.3 and clause 12.4, Optum's (and its Affiliates and sub-contractors) total aggregate liability (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise) arising out of or in connection with the Agreement will be limited to £10,000 (ten thousand pounds).
- 12.6 You acknowledge and agree that:
- 126.1 You are at all times responsible for all decisions, acts, and omissions of any persons in connection with the delivery of medical care or other EMIS Web Service(s) to any patients in connection with the use of the EMIS Web Service(s);
 - 126.2 the EMIS Web Service(s) may contain tools, including information intended to assist You and/or end users in the delivery of medical care, but should not be viewed as prescriptive or authoritative on their own, such materials are not a substitute for, and You shall ensure that each 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 training recommended by Optum in respect of the same; and
 - 126.3 Optum shall have no liability whatsoever to You or any of Your patients in respect of any decision or action taken (including the provision of medical care), or inaction by You or any of Your end users as a consequence of Your use of the EMIS Web Service(s).

13. TERM AND TERMINATION

- 13.1 Without prejudice to any other rights and remedies set out in the Agreement, Optum may suspend or terminate Your access to the EMIS Web Service(s) (in whole or in part) at any time in the event that:
- 13.1.1 You materially breach the terms of the Agreement;
 - 13.1.2 Optum reasonably believes 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
 - 13.1.3 for clinical safety purposes,
- and Optum will give You prompt notice of any such suspension or termination.
- 13.2 Optum may terminate the Agreement (and so Your and Your users' right to use EMIS Web Service(s)) at any time acting in its absolute discretion (including by switching off the EMIS Web Service(s) in whole or in part at any time without notice to You).
- 13.3 You may terminate the Agreement at any time by giving us notice in writing and ceasing to use the EMIS Web Services.
- 13.4 On termination of the Agreement for any reason:
- 13.4.1 You shall immediately cease using the EMIS Web Service(s); and
 - 13.4.2 each party shall, at the other party's option, securely return or destroy all confidential information of the other party.
- 13.5 Termination of the Agreement for any reason will:
- 13.5.1 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);
 - 13.5.2 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; and

- 13.5.3 not terminate the relevant EMIS Web Contract (unless such termination is in accordance with the terms of such contract).

14. VARIATION

- 14.1 Optum may, from time to time and without notice, make changes to the EMIS Web Service(s) (and any elements thereof).
- 14.2 Optum reserves the right to amend the terms of the Agreement from time to time by posting the amended terms to one or more of Optum' websites or by updating the Terms Folder within EMIS Web (as relevant).
- 14.3 If You continue to use the EMIS Web Service(s) following any such amendments, then You will be deemed to have accepted the same (and the Agreement is varied accordingly).

15. WAIVER

- 15.1 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.
- 15.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (an "**Ineffective Provision**"), such Ineffective Provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provisions or the remaining provisions of the Agreement. The parties agree to attempt to substitute for any Ineffective Provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the Ineffective Provision.

17. ENTIRE AGREEMENT

- 17.1 The Agreement constitutes the whole agreement between the parties relating to the licence of the EMIS Web Service(s) and supersedes all previous agreements between the parties relating to its subject matter.
- 17.2 Each party represents and agrees that in entering the Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of the Agreement.
- 17.3 Nothing in this clause 17 shall limit or exclude any liability for fraud.

18. FORCE MAJEURE

- 18.1 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 or default of suppliers or subcontractors.

19. NOTICES

- 19.1 Any notice required under the Agreement shall be given in writing and in the English language and sent to the email address of the party for which it is intended to be given, (which in the case of Optum shall

be sent to contracts@emisgroupplc.com marked for the attention of Legal Counsel).

20. ASSIGNMENT AND THIRD PARTY RIGHTS

- 20.1 Optum 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.
- 20.2 You shall not, without Optum' 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.

21. GOVERNING LAW AND JURISDICTION

- 21.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 – Clinical Calculators

Calculator name	Calculates the risk of:
QRISK2®-2017 calculator	Developing cardiovascular disease in the next 10 years.
QFracture®-2017 calculator	Developing an osteoporotic fracture in the next 10 years.
QDiabetes®-2017 calculator	Developing type 2 diabetes in the next 10 years.
QStroke®-2017 calculator	Suffering a stroke in the next 10 years.
QCancer®-2017 calculator	Having a current, undiagnosed, cancer.
QAdmissions®-2017 calculator	Emergency admission to hospital in the next one or two years.
CHA2DS2-VASc®-2015 calculator	Suffering a stroke for patients with atrial fibrillation.
QFrailty®-2017 calculator	Developing frailty. This calculator gives your patients a frailty score (severe, moderate, mild or fit).
NEWS2® calculator	Used for assessment and response to acute illness.