

PATHWAY FOR CARE PROVIDER TERMS AND CONDITIONS

PATHWAY OVERVIEW

PLEASE NOTE – THE SUMMARY INFORMATION IN THIS BOX HAS BEEN INCLUDED FOR INFORMATION PURPOSES ONLY AND DOES NOT FORM PART OF THE BELOW AGREEMENT:

What is Pathway

The aim of Pathway is to help optimise how care pathways are managed. We will look to work closely with the NHS, the Life Sciences industry, and other partners to create Pathway Modules that achieve this aim. The purpose of these modules is to seek to identify cohorts of patients across GP practices that may benefit from care pathways, and provide actionable tools to support healthcare professionals in managing the populations. In addition, Pathway will provide insights to stakeholder organisations to support service evaluation and improvement.

How we display Modules in Pathway

Care Provider Users will have accounts created by Optum relevant to their organisation and role. They may to access Pathway via web application.

Agreeing to sign up to Pathway

The data You have access to in Pathway will have been shared with You by the relevant data controller organisation(s) (e.g. GP practice(s)) relevant to a Pathway Module. By accepting this agreement for Pathway You are authorising and instructing us to give You access to Pathway and use the data we hold for You in Pathway to identify and manage relevant patients within the Pathway Module. You are also agreeing to Optum sharing information You input into a Pathway Module in relation to patients back with their GP.

You should only accept this agreement if You agree to all our terms and conditions (full details below).

Sharing Data with GPs

Data You input into the Pathway Module(s) will be visible to only You and the relevant data controller organisation (i.e. GP) who originally shared the patient information with You. This will include data such as the audit trail of communications sent to a patient or the movement of a patient through different Pathway Module tabs.

Keeping Patient Data Safe, Secure and Confidential

Patient confidentiality is paramount. We will only share data with You where instructed to do so by the patient or the patient's GP (i.e. the relevant data controller). Pathway, is a secure platform constructed on Optum's secure data environment built and tested to keep patient data safe, secure and confidential so that it can be efficiently shared where appropriate to do so.

Communications from a Pathway Module

Certain Pathway Modules may allow You to contact patients identified in a Pathway Module. You may be able to communicate to one or multiple patients identified in the Pathway Module via the available communication methods such as SMS, email or by generating letters. You will be able to see a history of communications to a patient on the Individual Patient View from both Your communications and those from the relevant data controller organisation(s) who originally shared the patient information with You.

AGREEMENT FOR PATHWAY – CARE PROVIDER

PLEASE READ CAREFULLY BEFORE PROCEEDING WITH THIS SERVICE:

This agreement is a legal agreement between you, the organisation using this service (“**You**”, “**Your**” or “**Care Provider**”) and Egton Medical Information Systems Limited, trading as Optum, a company incorporated in England and Wales (company number 2117205) whose registered office is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA (“**Optum**”, “**us**” or “**we**”). This Agreement relates to Your sharing of certain patient data with us, which we will use in order to deliver the Service (as defined below) to You.

IMPORTANT NOTICE TO ALL CUSTOMERS:

- AS APPROPRIATE, YOU SHALL BE DEEMED TO HAVE ACCEPTED THE AGREEMENT UPON THE EARLIER OF: (A) CLICKING ON THE “ACCEPT” BUTTON (OR SIMILAR); (B) AGREEING IN WRITING (INCLUDING VIA EMAIL); AND/OR (C) USING THE SERVICES. THE USER ACCEPTING THE TERMS OF THIS AGREEMENT REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THE CARE PROVIDER AND THE CARE PROVIDER AGREES TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND THE CARE PROVIDER AND ALL OF ITS AUTHORISED USERS. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 8 AND YOUR RESPONSIBILITIES IN CLAUSE 6.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT RECEIVE THE SERVICE FROM US.

You should ensure you have a copy of the Agreement for future reference.

1 DEFINITIONS

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

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

Agreement means the clauses of this agreement as may be varied or amended from time to time in accordance with this agreement, including any Schedules attached hereto and any Appendices to such Schedules together with any relevant Pathway Module Summaries.

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.

Authorised Users means the individual users (whether employed by the Care Provider or not) that use the Service under the terms of the Agreement through the Care Provider’s account.

Care Provider Cause means anything which results directly or indirectly from Your: (a) breach of the Agreement; and/or (b) delay or failure in performing Your obligations under the Agreement (including those set out in clause 5), or in providing notices, arrangements, engagement, access, assistance or information to Optum in a sufficiently timely or accurate manner.

Care Provider Data means data (including Personal Data) obtained by You or on Your behalf (including Potential Participant Data shared with You by Referral GPs(s)) and shared with Optum (including Status Data) under the Agreement, as more particularly described in paragraph 2(a) of Schedule 1 and the Appendix to Schedule 2.

Confidential Information means information (in any format) that falls within any of the following categories: (a) it relates to, includes or comprises terms and conditions of the Agreement; (b) it is Care Provider Data; (c) it is marked as “confidential” (or similar); (d) it is of a nature that a reasonable person would (in all the circumstances) consider confidential, including: (i) information concerning a party’s business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, products, processes, techniques, equipment, marketing, market

opportunities, plans, intentions, relationships with customers and suppliers, finances, personnel, computer software, and algorithms; and (ii) similar information of third parties that a party maintains in confidence; or I any combination of the foregoing.

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

Controller has the meaning given under the Data Protection Laws.

Data Protection Laws means: (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) (“**GDPR**”) as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 (the “**UK GDPR**”); (ii) the Privacy and Electronic Communications Regulations 2003; and (iii) any binding guidance or codes of conduct issued by the Data Protection Regulator from time to time.

Data Protection Regulator means (as appropriate) the Information Commissioner's Office and any successor body from time to time.

Data Subject has the meaning given under the Data Protection Laws.

Disclosing Party has the meaning set out in clause 15.1.

Dispute has the meaning set out in clause 16.11.

Effective Date means the date of the Agreement.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Medical Device has the meaning set out in the Medical Device Law 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.

Notice has the meaning set out in clause 16.11.

Optum Materials means Pathway, each Pathway Module and any other materials provided by Optum pursuant to the Agreement or otherwise generated by Optum under the Agreement (but excluding the Potential Participant Data, Care Provider Data and Status Data).

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

Potential Participant(s) means patients who have been identified by Referral GPs using a Pathway Module and whose Potential Participant Data is shared with You, through Pathway, by such Referral GPs.

Potential Participant Data has the meaning set out in paragraph 1 of Schedule 1.

Privacy Notice means the notice containing the information required to be provided to a Data Subject by the Data Protection Laws.

Process has the meaning set out under Data Protection Laws (and “**Processes**” and “**Processing**” shall be construed accordingly).

Processor has the meaning given under the Data Protection Laws.

Pathway means the software application or feature which enables Referral GPs to use Pathway Modules to identify Potential Participants and to share Potential Participant Data with the Care Provider and for the Care Provider to access Potential Participant Data and input Status Data to share back with the relevant Referral GP(s) and to track the Potential Participants’ journey through the relevant Pathway Module.

Pathway Module(s) means an algorithm, search or similar functionality that allows Referral GPs to identify relevant patient cohorts who have, or who may be at risk of, a particular medical condition or who may benefit from some form of treatment or intervention in each case as more particularly described in the relevant Pathway Module Summary. These algorithms and searches rely upon the structured (or coded) data in a person’s electronic health record. As a Care Provider, each Pathway Module will allow You to access the relevant Potential Participant Data that the Referral GP(s) agree to share with You.

Pathway Module Summary has the meaning set out in clause 3.

Recipient Party has the meaning set out in clause 15.1.

Referral GP(s) means a GP practice that has signed up to use Pathway and agrees to make Potential Participant Data available to the Care Provider through Pathway.

Services means the services to be delivered by Optum pursuant to the Agreement and as set out in Schedule 1 (Services Description).

Sponsor means the sponsor of a Pathway Module (if any).

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

Status Data means information that can be added and/or amended (as determined by the relevant Pathway Module) to the Potential Participant Data shared with You / Care Provider Data within the relevant Pathway Module in relation to the Potential Participant’s ‘journey’ through the Pathway Module. By way of example only, Status Data may include:

- i. Potential Participant status: a) awaiting contact, b) contacted, c) added to pathway for investigation / treatment or, d) no further action required;
- ii. Potential Participant preferred contact method: a) SMS, b) phone, c) Letter, d) face to face or, e) other;
- iii. details of screenings, consultations or treatments provided to the Potential Participant; and/or
- iv. potential reason for not proceeding to pathway for investigation / treatment: a) not eligible, b) Potential Participant declined, c) unable to contact or, d) other.

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

2 INTERPRETATION

- 2.1 Clause, attachment, schedule, appendix and paragraph headings shall not affect the interpretation of the Agreement.
- 2.2 A reference to: (i) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; and (v) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and (vi) writing or written includes e-mail, (provided that, in respect of correspondence sent from the Care Provider to Optum, that the same is sent to uk.contracts@optum.com) but not faxes; and (vii) clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 2.3 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3 PATHWAY MODULE SUMMARIES

- 3.1 From time to time, Optum may either send to You (including via email) and/or display to You within Pathway, details of available Pathway Modules which are taking place that You have been identified as a Care Provider for, including (as appropriate) details of the Sponsor, a summary of what the Pathway Module relates to and details of what Potential Participant Data may be shared by Referral GP with You (each, collectively, a **"Pathway Module Summary"**). If You wish to use the particular Pathway Module, You must accept the terms of the relevant Pathway Module Summary, by confirming to Optum either in writing (including via email) or through acceptance within Pathway, following which the parties will have entered into a Pathway Module Summary.
- 3.2 Each Pathway Module Summary which You accept from time to time in accordance with clause 3.1, forms part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to the Agreement includes any agreed Pathway Module Summary (as amended in writing from time to time).
- 3.3 If there is any conflict or inconsistency between the terms in the various parts of the Agreement, the following order of priority shall prevail (unless explicitly stated otherwise in any agreed Pathway Module Summary):
 - (a) these clauses;
 - (b) the Schedules; and
 - (c) any agreed Pathway Module Summary.
- 3.4 The clauses and the Schedules of the Agreement shall apply to any Pathway Module Summary agreed between the parties from time to time.
- 3.5 Each agreed and signed Pathway Module Summary shall be part of the Agreement (in respect of the relevant Pathway Module) and shall not form a separate contract to it.

4 SERVICES

- 4.1 Subject to the Care Provider's compliance with the Agreement, Optum shall provide the Services in accordance with the terms of the Agreement.
- 4.2 Optum shall provide the Services with reasonable care and skill.

5 SERVICE ACTIVATION AND AUTHORISED USER(S)

- 5.1 For each Authorised User, You will need to provide the following information to Optum:
- (a) full name; and
 - (b) e-mail address (this will be set as their username).
- 5.2 Once Optum has received the relevant information for an Authorised User, it will use its reasonable endeavours to create an account for the relevant Authorised User. Optum reserves the right to limit the number of Authorised Users that You can register as it deems fit.
- 5.3 In relation to the Authorised Users, You:
- (a) are and shall at all times remain responsible for the acts and omissions of all Authorised Users as if they were Your acts and/or omissions;
 - (b) will ensure that each Authorised User keeps a secure and unique password for their use of Pathway, that such password is changed reasonably frequently and that each Authorised User keeps their password confidential;
 - (c) acknowledges that if any Authorised User does not log in for any continuous period of 30 days or more, Optum may (at its discretion) prompt such user to change their password before allowing any further access to Pathway (for that user only);
 - (d) shall maintain a written, up to date list of current Authorised Users and provide such list Optum within 5 Working Days of Optum's written request and shall otherwise notify Optum as soon as reasonably practicable when any Authorised Users ceases to be employed by the Care Provider or otherwise needs to be removed as an Authorised User; and
 - (e) will not permit any Authorised User account to be used by anyone but the account holder.
- 5.4 Without prejudice to any other rights Optum may have under the Agreement, if an Authorised User breaches any term of the Agreement, Optum shall be entitled to suspend such Authorised User's access to and/or use of the Service. Any suspension shall continue until a resolution to the relevant breach(es) has been achieved or as otherwise agreed with Optum.

6 CARE PROVIDER RESPONSIBILITIES

- 6.1 Without prejudice to the Care Provider's other obligations set out under the Agreement and save in respect of Optum's obligations under the Agreement to obtain an instruction from the relevant Referral GPs to share Potential Participant Data with the Care Provider, the Care Provider shall ensure that it has all relevant consents, permissions and approvals (including ensuring it has appropriate contractual or other arrangement(s) (such as a relevant authorisation to delivery care to patients on behalf of the Referral GPs/NHS and/or Privacy Notice(s) in place)) from the Referral GPs, the Potential Participants and/or such other relevant parties, such as the NHS, to:
- (a) receive any Potential Participant Data;
 - (b) provide any Status Data and share it with the relevant Referral GP(s); and
 - (c) undertake any investigations and/or deliver any medical care or treatments to Potential Participants.
- 6.2 The Care Provider shall not:
- (a) use the Optum Materials for anything other than for the purpose of performing its obligations and exercising its rights under the Agreement;

- (b) use the Optum Materials in a manner which (in our reasonable opinion) is excessive, puts any undue strain on the Optum Materials or which is in excess of any agreed usage allowance (however that has been quantified);
- (c) rent, lease, sub-license, assign, sell, transfer, loan, charge or otherwise deal in or encumber any element of the Optum Materials or use the Optum Materials on behalf of any third party or make available the same to any third party;
- (d) translate, merge, adapt or otherwise make alterations to, or modifications of, the whole or any part of the Optum Materials, nor permit the Optum Materials or any part thereof to be combined with, or become incorporated in, any other programs;
- (e) disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Optum Materials nor attempt to do any such things;
- (f) provide, or otherwise make available, the Optum Materials in any form, in whole or in part (including, program listings, object and source program listings, object code and source code) to any person; and/or
- (g) use the Optum Materials 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 INTELLECTUAL PROPERTY RIGHTS

Optum Materials

- 7.1 In relation to the Optum Materials, the parties acknowledge that Optum owns all Intellectual Property Rights in the same and the Care Provider 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.
- 7.2 Optum hereby grants the Care Provider a non-exclusive, royalty-free, licence for the duration of the Agreement, to use the Optum Materials to the extent necessary for the Care Provider to perform its obligations and exercise its rights under the Agreement.
- 7.3 Neither party shall do, or authorise any party to do, any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the other party, and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 7.4 Each party shall, for the duration of the Agreement, at the other party's expense, take all such steps as the other party may reasonably require to assist the other party in maintaining the validity and enforceability of any Intellectual Property Rights licensed and/or created by the other party under the Agreement.

8 LIMITATION OF LIABILITY

- 8.1 Nothing in the Agreement excludes or limits the liability of either party in respect of:
 - (a) death or personal injury caused by its negligence;
 - (b) any indemnity given in the Agreement;
 - (c) fraud or fraudulent misrepresentation; and/or
 - (d) any other liability which may not otherwise be limited or excluded under Applicable Law.

- 8.2 Subject to clause 8.1, neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:
- (a) loss (whether direct or indirect) of revenue or profits;
 - (b) loss (whether direct or indirect) of business opportunity;
 - (c) loss (whether direct or indirect) of goodwill or injury to reputation;
 - (d) loss (whether direct or indirect) of anticipated savings; and/or
 - (e) indirect, consequential or special loss or damage,
- in each case arising out of or in connection with the Agreement.
- 8.3 Subject to clause 8.1 and clause 8.2, the aggregate liability of each party to the other arising out of or in connection with the Agreement whether arising from contract, tort (including negligence or breach of statutory duty) or otherwise shall be limited to £10,000 (ten thousand pounds).
- 8.4 Optum does not guarantee that access to and use of the Optum Materials will always be available or be uninterrupted. Optum will not be liable to the Care Provider if for any reason the Optum Materials are unavailable at any time or for any period.
- 8.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement (including, any terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982).
- 8.6 Optum will not be in breach and will not be liable to the Care Provider (and the Care Provider shall not be entitled to terminate for breach or to exercise any other remedy under the Agreement) to the extent that Optum's performance of its obligations under the Agreement is delayed, prevented, impacted or otherwise affected by a Care Provider Cause.
- 8.7 The Care Provider shall indemnify Optum, keep Optum indemnified and hold Optum harmless, against all claims, fines, actions and proceedings (to include, legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) incurred by Optum due to a breach by the Care Provider of its obligations under the following provisions of the Agreement: clause 9 (Clinical use of the Services), clause 10 (Warranties and compliance with Applicable Law), clause 11 (Data Sharing) and/or clause 15 (Confidentiality).

9 CLINICAL USE OF THE SERVICES

- 9.1 The Care Provider agrees and acknowledges that:
- (a) the Optum Materials are provided by Optum on an "as is" and "as available" basis, with any and all faults as may be present;
 - (b) the Care Provider (or such other relevant NHS body or organisation) is responsible for all decisions, acts, and omissions of any persons in connection with the delivery of any medical investigations, care or other services to any Potential Participants;
 - (c) the Services provide the Care Provider with information intended to assist the Care Provider in receiving a list of Potential Participants that may have, or be at risk of, the relevant subject matter of the Pathway Module (and, where relevant, based on a search criteria agreed with, or algorithm provided by, the associated Sponsor) which may in turn be used to support the delivery of medical care. However, for the avoidance of any doubt, You acknowledge and agree that these referrals are not to be viewed as prescriptive or authoritative on their own. Referrals of Potential Participants to You under the Agreement are not a substitute for, independent professional medical judgment, and the You must not use such referrals without the participation of properly trained medical personnel;

- (d) the Potential Participant Data shared with the Care Provider is reliant upon the Referral GP ensuring that information regarding its patients in EMIS Web is accurate and up to date, including in respect of relevant clinical codes (including deceased), contact consents and opt outs. As such, Optum shall have no liability to the Care Provider in the event that any Potential Participant Data is shared with the Care Provider that is out of date or incorrect due to (i) the Referral GP's failure or omission to update such information and/or (ii) any delay in the Referral GP being informed of relevant information that may impact the Potential Participant Data (for example, a delay between a patient dying and their GP being informed and recording the same). In each case, this includes where such updated information may render the patient ineligible for the Pathway Module;
- (e) it is Your and/or relevant the Referral GPs' responsibility to ensure that any information relating to the care of Potential Participants is properly and appropriately recorded within such persons' medical records (noting that Pathway is not a clinical or document management system); and
- (f) neither Optum (nor any of its third party licensors) shall have any liability whatsoever to the Care Provider, any of Potential Participants, any Referral GPs or any other party in respect of any decision or action taken (including the provision of medical care) by the Care Provider or any other parties as a consequence of a referral under the Agreement.

9.2 In the event that any Pathway Module qualifies as a Medical Device:

- (a) Optum shall comply with its obligations under the relevant Medical Device Laws in respect of such Medical Device; and
- (b) You shall ensure that You only use such Pathway Module(s) in line with the intended purpose and instructions for use for that Pathway Module (to the extent relevant). You agree and acknowledge that a Pathway Module qualifying as a Medical Device does not absolve You from Your obligations under clause 9.1 and that Optum shall have no liability to You whatsoever in the event that You use the relevant Pathway Module in breach of this clause 9.2(b).

10 WARRANTIES AND COMPLIANCE WITH APPLICABLE LAW

- 10.1 Each party warrants that as of the Effective Date it has, and throughout the duration of the Agreement, shall continue to hold, all relevant approvals, rights, consents, permits and licences in relation to it performing its obligations and exercising its rights under the Agreement.
- 10.2 Both parties shall, in performing their respective obligations under the Agreement, comply with Applicable Law.

11 DATA SHARING

The parties acknowledge and agree that Schedules 1 (Services) and 2 (Data Processing) shall apply in relation to any Personal Data shared between the parties or otherwise Processed by a party under or in relation to the Agreement.

12 META DATA USAGE

- 12.1 The Care Provider agrees that Optum can track usage information in respect of its use of the Services and use such meta or other anonymous data as it deems appropriate (including providing the same to the Sponsor(s) and/or NHS England and/or Referral GP(s)). All personal data tracked (if any) is presented in a fully anonymised form and is combined with the same data from all or some of the other participating Care Providers (if any) before being used and/or shared. Information that Optum may track includes:
 - (a) name of the Care Provider;
 - (b) number of times the Pathway Module is accessed by the Care Provider;
 - (c) number of Potential Participants shared with the Care Provider;

- (d) Status Data in terms of the number of Potential Participants marked at each stage of a Pathway Module;
- (e) the above broken down by relevant patient demographics (i.e. age ranges of Potential Participants and/or regional location providing always that no patients can be identified by such data) and user information; and
- (f) such other usage information as Optum deems relevant and appropriate.

13 TERMINATION

- 13.1 The Agreement shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this clause 13. Each Pathway Module shall commence on the date upon which the Care Provider has agreed to use a particular Pathway Module and shall expire upon the removal of the relevant Pathway Module by Optum.
- 13.2 The Care Provider may terminate the Agreement and/or any Pathway Module for convenience, at any time, by giving Optum not less than 2 weeks' written notice in accordance with clause 16.8, such termination to take effect at the end of the relevant notice. You may also be able to terminate a Pathway Module by switching it off within Pathway (subject to available functionality) which will be deemed notice to immediately terminate the relevant Pathway Module.
- 13.3 This Agreement may be terminated with immediate effect by either party (the "**first party**") by written notice to the other party in the event of one or more of the following scenarios:
- (a) if the other party ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation the terms of which have been approved in advance by the first party in writing) or is dissolved or struck off;
 - (b) if the other party is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator (or any similar official or process under the law of its domicile or place of incorporation) of the whole or any part of its assets or is the subject of any bankruptcy proceedings; and/or
 - (c) if the other party is in material breach of any provisions of the Agreement and fails to remedy such breach (where it is capable of being remedied) within 30 days of notice from the first party specifying such breach.
- 13.4 Optum may, without prejudice to its other rights and remedies, suspend or terminate the Agreement and/or any Pathway Module without liability to the Care Provider at any time by giving notice to the Care Provider. Examples of instances where Optum may choose to exercise this right include where the pilot of the Pathway Module has finished, Optum identifies a clinical or data protection issue/risk and/or where Optum, acting reasonably considers it is suffering or at risk of suffering reputational damage and/or where an associated Sponsor suspends or terminates the Pathway Module.
- 13.5 Upon termination or expiry of the Agreement, all relevant Pathway Modules and Pathway Module Summaries shall also terminate with immediate effect. Suspension, termination or expiry of a Research Study Summary will not, unless the parties expressly agree otherwise in writing, result in the termination or expiry of the remainder of the Agreement.

14 EFFECT OF TERMINATION

- 14.1 Termination or expiry of the Agreement shall be without prejudice to any rights of either party which may have accrued up to the date of such termination.
- 14.2 Termination or expiry of the Agreement shall not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination or expiry.
- 14.3 Without prejudice to the generality of clause 14.2, the provisions of clauses 1, 2, 5, 7, 8, 9, 11, 14, 15 and 16 shall survive any termination or expiry of the Agreement, howsoever arising.

14.4 Upon expiry or termination of the Agreement, howsoever caused:

- (a) all licences granted hereunder shall automatically terminate and the Care Provider will no longer be able to use the Services; and
- (b) each party shall, at the option of the other party, return or securely destroy all Confidential Information of the other party.

15 CONFIDENTIALITY

15.1 Subject to clauses 15.2 and 15.3 and save as otherwise expressly provided in the Agreement, neither party shall during the term of the Agreement or thereafter for a period of 2 years, disclose to any person or use for any purpose any Confidential Information obtained by it (the "**Recipient Party**") from the other (the "**Disclosing Party**") in connection with the Agreement but the Recipient Party may:

- (a) 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
- (b) use Confidential Information in the proper exercise of its rights and the performance of its obligations under the Agreement.

15.2 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.

15.3 The restrictions on use and disclosure of Confidential Information under clause 15.1 shall not apply to any Confidential Information which:

- (a) was already known to the Recipient Party prior to its receipt thereof from the Disclosing Party;
- (b) 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;
- (c) 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 15 or any obligations of confidence owed by the Recipient Party to the Disclosing Party; and/or
- (d) is required to be disclosed by law, regulation, order or regulators.

15.4 Confidential Information shall be subject to the obligations of confidence in this clause 15, 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.

15.5 Confidential Information shall not be exempted under clause 15.3 above from restriction under the Agreement by reason only that:

- (a) 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 15.3; or
- (b) 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 15.3 if so to obtain or derive it would require substantial skill, labour or expense.

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

16 GENERAL TERMS

16.1 Publicity

The Care Provider hereby agrees that Optum shall both be permitted to publicise their respective involvement with the Care Provider in relation to the Agreement / any Pathway Module. The Care Provider will have the right to review any proposed statement or release from Optum.

16.2 Waiver

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

16.3 Force Majeure

Neither party shall have any liability to the other under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of either party 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.

16.4 Relationship

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

16.5 Assignment and Sub-Contracting

- (a) Optum may assign or sub-contract any of its rights and/or obligations under the Agreement to any of its Affiliates or any other third parties. Optum will use reasonable endeavours to give the Care Provider notice in writing in respect of any assignment.
- (b) Subject to clause 16.5(a), neither party may assign or sub-contract any of its rights or obligations under the Agreement to any other third party without first obtaining the express written consent of the other party (such consent not to be unreasonably withheld or delayed).

16.6 Severability

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

16.7 Variations

- (a) We reserve the right to amend the terms of the Agreement from time to time by giving You notice in writing either in accordance with clause 16.8, by updating the Agreement online and/or by posting an update on Optum Help Centre.
- (b) If any change to the Agreement would have a material effect on You, we will give not less than thirty days' notice in writing (in accordance with clause 16.8 and/or by posting an update to Optum

Help Centre) of the relevant amendment. Where You do not accept such amendment to the Agreement, You may terminate the Agreement, at any time up to the expiry of the notice, by giving Optum not less than two weeks written notice in accordance with clause 16.8, such termination to take effect at the end of the relevant notice.

- (c) If You continue to use the Service(s) following notification (or, as relevant, expiry of such notification) of any amendments made pursuant this clause 16.7, then You will be deemed to have accepted the same (and the Agreement is varied accordingly).

16.8 Notices

- (a) Subject to clause 16.7, any notice required under the Agreement shall be given in writing and in the English language and sent to the address of the party for which it is intended to be given, or such other address as shall have been notified to the other party in accordance with this clause and be sent by registered post or equivalent, courier or other electronic transmission; and
 - i. if posted, shall be deemed to have been received three Working Days after the date of posting or, in the case of a notice to an addressee not in the country of the sender, ten Working Days after the date of posting; or
 - ii. in the case of email, upon confirmation of complete receipt being given by the intended recipient party (which in the case of Optum shall be sent to uk.contracts@optum.com marked for the attention of Legal Counsel); or
 - iii. if couriered, on delivery.

16.9 Third Party Rights

Save for any rights conferred on the Sponsor and or any of Optum' Affiliates, the Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).

16.10 Entire Agreement

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

16.11 Dispute Resolution

- (a) Subject to clause 16.11(d), any dispute arising out of or in connection with the Agreement (each a **"Dispute"**) shall be referred by either party first to the authorised representatives of each of the parties for resolution.
- (b) If the Dispute cannot be resolved by the authorised representatives of the parties within ten (10) Working Days after the Dispute has arisen, either party may give notice to the other party in writing (each a **"Notice"**) that a Dispute has arisen.
- (c) Within ten (10) Working Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Optum and the Care Provider for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Working Days after the date of the Notice, then each party shall be entitled to pursue such remedies as may be available to it under the Agreement or otherwise at law or in equity.
- (d) This clause 16.11 is without prejudice to either party's right to seek interim relief against the other party (such as injunction) through local courts, as defined herein, to protect its rights and interests.

16.12 Applicable Law and Jurisdiction

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

16.13 Counterparts

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

Schedule 1

Services Description

Subject always to the Care Provider providing the necessary instructions, approvals and consents and otherwise fulfilling its obligations set out in the Agreement, Optum shall perform the following Services.

1. Potential Participant Data and making it available to You

In accordance with the instructions Optum receives from participating Referral GPs, Optum shall use its reasonable endeavours to share relevant information (including personal data) regarding Potential Participants that are identified by a Pathway Module (the “**Potential Participant Data**”). The exact data to be shared will be determined in each Pathway Module however, examples of data that might be shared may include:

- a) personal information: full name, sex, age, date of birth, ethnicity, primary language (inc. whether interpreter required), language preferred;
- b) NHS number;
- c) contact information: full address, home phone number, mobile phone number, email address;
- d) name of GP practice;
- e) name of usual GP for the relevant Potential Participant;
- f) search category (also known as risk category) for the Pathway Module; and
- g) any Status Data provided by the Referral GP.

While a Referral GP is participating in the relevant Pathway Module, Optum shall use its reasonable endeavours (subject always to the relevant Referral GP(s) instructions) to provide You with any updates the Referral GP makes to the Potential Participant Data for Potential Participants that have been shared by the Referral GP with You. Such updates may determine that a Potential Participant no longer meets the relevant Pathway Module inclusion / exclusion criteria (including if the patient has been marked as deceased since the Potential Participant Data was originally shared with You). In these circumstances, Optum shall use its reasonable endeavours to mark the Potential Participant as ‘ineligible’ in Your Pathway Module and remove Your ability to communicate with such Potential Participants through Pathway. You agree and acknowledge that the reason for the Potential Participant being marked as ineligible may not be noted. You are responsible for ensuring that any copies of the Potential Participant Data (and/or Care Provider Data) taken out of the Pathway Module are updated and, in accordance with clause 9, remain fully responsible for determining what contact/communications You choose to have with ineligible Potential Participants (if any).

In the event that a Referral GP terminates a Pathway Module or Pathway as a whole, no further updates will be available to You in relation to the particular Potential Participants. Optum may (where reasonably practicable) flag to You any Potential Participants in Pathway where the Potential Participant Data is no longer being made available.

2. Use of Potential Participant(s) Data by You

- a) Once the Care Provider has received Potential Participant Data within the relevant Pathway Module, the Care Provider will be able to access this data and add Status Data (this data together, the “**Care Provider Data**”).
- b) Regarding the use of Potential Participant Data, the Care Provider shall be subject to such agreement as exist between the Care Provider and the relevant Referral GP(s) (or other relevant NHS body)

and/or such privacy policy as the Care Provider puts in place with the relevant Potential Participants. The Care Provider agrees and acknowledges that:

- i. Optum has no control over such agreements and/or arrangements; and
- ii. Optum shall have no liability or responsibility to the Care Provider or any Referral GP(s) in relation to use of the Potential Participant Data by the Care Provider or any actions (including the delivery of any medical testing and/or care) or omissions of the Care Provider.

3. Status Data

- a) Once received by You, You will be able to add and amend Status Data (as prescribed by the relevant Pathway Module) to the relevant Potential Participant Data within Your instance of Pathway.
- b) You hereby instruct Optum to share any Status Data inputted by You into a Pathway Module with the relevant Referral GP(s) (unless agreed otherwise). Once shared, the relevant Referral GP will become the Controller of their instance of that Status Data in Pathway (but You remain Controller of Your copy of this data).

4. Communicating with Potential Participants

- a) Optum may in relation to a particular Pathway Module, via functionality within Pathway, enable You (either in Your own capacity or acting on behalf of Referral GP(s), as determined by the relevant Pathway Module) to select all or individual Potential Participants from within Your list of Potential Participants and to send them an SMS, e-mail and/or letters.
- b) The text and context of any such communications, including whether they can be sent by You in Your own capacity and/or on behalf of Referral GP(s), will be set out in the relevant Pathway Module Summary and/or when You select to send communications to Potential Participants.
- c) You may also be able to schedule reminder communications to be sent to the Potential Participant(s). We will show You the text of the reminder and confirm with You when the reminder will be sent. If You don't want to schedule a reminder, you will need to toggle the reminder off before proceeding.
- d) If a Potential Participant has opted out of receiving SMS and/or e-mail correspondence, this will be flagged in Pathway against the relevant patient. However, You can still select to send communications to such patients at Your discretion and subject always to Your compliance with the Agreement.
- e) You agree and acknowledge that any opt outs or communication preferences contained with the Potential Participant Data shared with You by Referral GPs is subject to the relevant Referral GPs ensuring that their patient records and codes are up to date and accurate, which Optum cannot guarantee. Optum shall have no liability to You in the event that such information has not been properly recorded by the Referral GP and therefore You do not have the correct or most up to date information.

5. Terminating a Pathway Module or Pathway

- a) In the event that You terminate a Pathway Module or Pathway, You hereby instruct Optum to:
 - i. create a 'snapshot', in a readable format (as determined by Optum from time to time) of the Care Provider Data (including any Status Data recorded by You or a Referral GP (and shared with You)) relating to the relevant Pathway Module(s), as at the time that You switched off the relevant Pathway Module / Pathway (the "Snapshot");
 - ii. make the Snapshot available to You for download upon request through the Optum Help Centre service desk either: (a) within Pathway (providing You have only switched off a Pathway Module, not Pathway as a whole) or (b) such other secure location or means as Optum may determine from time to time. The ability to download Snapshots will be available for a period of up to 6 months; and

- iii. at the expiry of the 6 month period referred to above, delete the Snapshot (subject to Optum's legal obligations of retention under the Data Protection Laws).
- b) You are responsible for ensuring that You request and access the Snapshot and download it to be kept for Your own records including ensuring that any relevant information / data is recorded against the Potential Participant's medical records (if required).
- c) If you switched off a Pathway Module or Pathway in error and wish to switch the same back on, You will need to contact Optum's support team.

Schedule 2

Data Processing

1 CARE PROVIDER DATA

- 1.1 The parties acknowledge that in the context of processing of any:
 - 1.1.1 Care Provider Data which comprises Personal Data under the Agreement, You are a Controller and Optum is a Processor, acting under Your instructions; and
 - 1.1.2 Status Data that has been shared by You with a Referral GP in accordance with the terms of the Agreement, in respect of the copy of such data shared, the relevant Referral GP is a Controller and Optum is a Processor, acting under the relevant Referral GP's instructions (such instructions will not affect Your copy of the Status Data, which forms part of the Care Provider Data, within Pathway over which You remain a Controller).
- 1.2 The table in the Appendix to this Schedule sets out the particulars of Processing by Optum.
- 1.3 Subject to Optum ensuring that it has received an instruction from the relevant Referral GP(s) to share Potential Participant Data with You, You will ensure that:
 - 1.3.1 You collect all of the Care Provider Data fairly and transparently;
 - 1.3.2 Your Privacy Notice is presented to Potential Participant, is fully compliant with Data Protection Laws and has been updated to reflect the use of Personal Data as contemplated under the Agreement; and
 - 1.3.3 You have all necessary rights, permissions, consents and notices in place with Data Subjects to enable the lawful transfer of Care Provider Data to Optum for the duration of the Agreement and to enable Optum to fully comply with its obligations under the Agreement, including performance of the Services, such that the performance of the Services is compliant with the Data Protection Laws.
- 1.4 Optum shall, in relation to any Care Provider Data which comprises Personal Data and which is processed in connection with the performance by Optum of its obligations under the Agreement:
 - 1.4.1 Process that Care Provider Data only in accordance with Your written instructions, including those set out in the Agreement (unless otherwise required by law) and only for the purpose of performing Optum's obligations and exercising its rights under the Agreement;
 - 1.4.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Care Provider Data and against accidental loss or destruction of, or damage to, Care Provider 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;
 - 1.4.3 take all reasonable steps to ensure the reliability and integrity of Staff who have access to and/or process Care Provider Data;
 - 1.4.4 inform You promptly upon becoming aware of any instruction issued by You under the Agreement that breaches the Data Protection Laws;
 - 1.4.5 not transfer any Care Provider Data outside of the United Kingdom (although You acknowledge that Care Provider Data may however be transferred outside of the United Kingdom by a Care Provider with the explicit consent and agreement between the relevant Care Provider and the Potential Participant, which Optum cannot control);
 - 1.4.6 assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with Your obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Data Protection

Regulator;

- 1.4.7 notify You without undue delay on becoming aware of a Personal Data Breach;
- 1.4.8 at Your written direction, delete or return Care Provider Data and copies thereof to You on termination or expiry of the Agreement unless required by law to retain Care Provider Data, in which case Optum shall inform You of such legal requirement; and
- 1.4.9 allow for audits by You or Your designated auditor in respect of Optum's data processing activities under this Schedule 3.

- 1.5 You hereby expressly authorise Optum to appoint third parties as its sub-processors in relation to processing Care Provider Data from time to time. A list of Optum's material sub-processors (as updated by Optum from time to time) as at the date of the Agreement is set out here: www.optum.co.uk/tech-enabled-services/legal/ (in respect of which for the avoidance of doubt, You hereby give Your written authorisation) and You should review this list regularly to see if there are any changes to the sub-processors. Any objection to an amendment to the list of sub-processors may be escalated for discussion within 10 days after receipt of a notification of any change, or otherwise upon You becoming aware of, (such notification to include the list of material sub-processors being updated on the webpage provided above). If the parties are (acting reasonably) unable to resolve the objection and Optum informs You that it nevertheless intends to appoint the relevant sub-processor then You may either: (i) accept the change; or (ii) terminate the Agreement upon written notice within one month of raising the objection (and as Your sole and exclusive remedy, Optum will refund any unused prepaid Fees).
- 1.6 In the event of any loss of, or damage to, any Care Provider Data, Optum shall use its reasonable endeavours to restore the lost or damaged Care Provider Data from the latest backup version of Care Provider Data available to it. If the loss or damage was caused by Optum then it shall undertake such restoration at its own cost and expense and in any other circumstances it shall be entitled to charge You in respect of any time spent at its then standard rates.

Appendix

Particulars of Data Processing

Purpose of processing:	Performing the Services, as further described in Schedule 1.
Duration of the processing:	For the term of the Agreement and where require to meet any post-termination obligations.
Nature of processing:	Generating fully anonymised datasets in accordance with the permissions set out in the Agreement. Recording Status Data in Pathway and sharing Status Data of Potential Participants with Referral GPs in accordance with Your instructions under the Agreement.
Types of Personal Data (including any Special Category Data):	Medical record information including: Name, email address, contact no, NHS no, practice name, GP name, title, first name, last name, age, DOB, gender, home address, prescribed medicines and conditions, observations, vaccinations, Status Data (and such other personal data which You instruct Optum to process from time to time).
Categories of Data Subject:	Patients and GPs
Source of Personal Data:	Pathway