

AUTOMATED ARRIVALS (PAERS) LICENSE AND SUPPORT TERMS AND CONDITIONS

These terms and conditions ("**Conditions**") govern the Services (as defined) as provided by Egton Medical Information Systems Limited ("**Optum**") to you (the "**Customer**") and/or, where agreed by the parties in writing, for the benefit of any Service Recipients. These Conditions, together with any quotation or order form as may be provided by Optum, form the entire agreement between Optum and the Customer in respect of, the sale of Hardware (as defined), supply of Equipment (as defined) licence of Software and provision of the Services (the "**Agreement**").

BACKGROUND

Optum has agreed to grant the Customer a licence to use the Software on the Automated Arrivals Kiosk (as defined) and to provide software maintenance and support services in respect of the same. Optum will also facilitate the use of the Software (as defined) in relation to the Customer's Clinical System (as defined) (provided that this system is compatible with the Services).

As part of the Services, Optum will also provide Automated Arrivals Kiosk hardware maintenance and repair services, at the Customer's (and/or where applicable any Service Recipient's (as defined)) site or an external workshop, as appropriate.

AGREED TERMS

1. INTERPRETATION

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

Affiliates: means any business entity from time to time controlling, controlled by, or under common control with, either party, whereby a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Automated Arrivals Kiosk (or "**Hardware**"): means the 'Automated Arrivals Unit' supplied by Optum, comprising the system unit, internal components, the Touch Screen monitor and barcode scanner if applicable, but specifically excluding the housing of the Automated Arrivals Kiosk.

Clinical System: means the clinical health care record and information technology system used by the Customer pursuant to a separate agreement with the relevant licensor detailing the terms of use of such system.

Commencement Date: means the date from which Optum starts to perform its obligations under the Agreement.

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

Data Protection Legislation: means (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK including the Data Protection Act 2018 and then (ii) any successor legislation to the GDPR.

Documents: means any documentation in whatever format, including, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

EMIS Web: means Optum's clinical system.

Equipment: means collectively, the Hardware and the Software.

Initial Term: means a period of twelve (12) months commencing on the Commencement Date.

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

Location of Service: means the location at which Optum has installed the relevant Hardware.

Losses: means any claims, demands, actions, liabilities, costs and expenses, fines, monetary penalties, losses and/or damages.

Network Connection: means the Automated Arrivals Kiosk set-up and configuration enabling the unit to see, and be seen by, the local workgroup or domain computers.

Optum Materials: means any and all Documents, information and materials provided by Optum (or its subcontractors) in relation to the Services (including, any computer programs, data, reports and specifications (as the same may be updated from time to time)).



Repair Services: means the repair services to be provided by Optum as detailed at clause 8.

Service Charge: means the charges payable by the Customer to Optum under the Agreement, as detailed in Optum's written quote or as otherwise agreed in writing with Optum (as may be modified from time to time by Optum pursuant to clause 11.4).

Service Recipient(s): means, where the Customer is contracting for delivery of the Services to one or more third parties (for example GP practices), those third parties as identified in Optum's written quote or as otherwise agreed in writing with Optum.

Services: means the services to be provided by Optum to the Customer as referred to in clause 3.1.

Software: means: (i) Optum's proprietary software including any operating system, installed on Automated Arrivals Kiosk; and (ii) any applicable third party software, including the anti-virus software, installed on Automated Arrivals Kiosk; including any associated Documents or materials provided by Optum to the Customer.

Software Maintenance Services: means the repair services to be provided by Optum as detailed at clause 6.

Term: means the term of the Agreement, being (subject to any earlier termination in accordance with the terms of the Agreement) the Initial Term together with any extensions pursuant to clause 16.1).

Touch Screen: means the touch screen hardware used by the Customer to present information to their staff, clients or any other person.

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

1.2 Clause, annex, attachment and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A reference to: (i) 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; (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 shall include communications sent by email (save as provided for in clause 25).

1.4 References to clauses and Annexes are to the clauses and annexes of the Agreement; references to paragraphs are to paragraphs of the relevant Annex.

1.5 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar

CONFIDENTIAL

expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 To the extent Optum sells Hardware, supplies Equipment, and/or licenses Software and/or performs Services for the benefit of any Service Recipients, the Customer shall:

1.6.1 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to the Hardware sold to, Equipment supplied to, Software licensed to and/or Services received by the Service Recipients (other than the obligation to pay the Service Charges) or that are otherwise stated in the Agreement to apply to such Service Recipients (including pursuant to clause 1.7) (collectively the "**Service Recipient Obligations**"); and

1.6.2 be liable to Optum for the acts and omissions of such Service Recipients to the extent they breach the Customer's or the Service Recipient Obligations, as if they were acts or omissions of the Customer.

1.7 In the Agreement, unless the context requires otherwise:

1.7.1 references to the Customer receiving the Hardware, Equipment, licensed Software and/or Services shall include, to the extent that they are receiving the Hardware, Equipment, licensed Software and/or Services, the Service Recipients;

1.7.2 references to the Customer's:

1.7.2.1 assets, systems, business, operations and the like; and

1.7.2.2 customers, contractors, advisors and other similar third parties,

shall include, to the extent that they are receiving the Hardware, Equipment, licensed Software and/or Services, those of the Service Recipients; and

1.7.3 other references to the Customer shall be deemed to include the Service Recipients where such reference relates to a right of the Customer which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Hardware, Equipment, licensed Software and/or Services under the Agreement.

Without prejudice to the generality of this clause 1.7, a number of clauses refer specifically to both the Customer and/or the Service Recipients for the sake of clarity.

2. APPLICATION OF TERMS

2.1 These Conditions shall apply to the provision of all goods and Services hereunder and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or



specification or other Documents supplied by the Customer (and/or any Service Recipient), or implied by law, trade custom, practice or course of dealing.

2.2 The Agreement shall come into effect upon the Commencement Date.

2.3 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or any other Document issued by or on behalf of the Customer shall not form part of the Agreement.

2.4 Quotations are given by Optum on the basis that no contract shall come into existence except in accordance with this clause 2. Any quotation is valid for a period of thirty (30) days from its date, provided that Optum has not previously withdrawn it.

3. SERVICES

3.1 Optum shall use its reasonable endeavours to provide the Customer with:

3.1.1 the Software licence detailed at clause 4;

3.1.2 the Services comprising:

3.1.2.1 the Software Maintenance Services; and

3.1.2.2 the Repair Services.

4. LICENCE GRANT

4.1 Subject to the terms of the Agreement, Optum grants to the Customer during the Term, a limited, non-exclusive, non-transferable licence to use the Software for the purpose of operating the Hardware.

4.2 Other than as necessary for the purpose of operating the Hardware, the Customer shall not use the Software (over a network or otherwise) or transfer it electronically from one computer to another.

4.3 The Customer acknowledges that the Software is not free or shareware (and that its use is subject to these Conditions).

5. USE WITH CLINICAL SYSTEM

5.1 If the Customer wishes to use the Software in conjunction with a Clinical System then:

5.1.1 it shall first contact Optum to check that the relevant Clinical System is compatible. Optum shall be under no obligation to provide the Services in respect of any Clinical System which it does not believe to be compatible.

5.1.2 Optum may (in respect of any compatible system) need to provide the Customer with configuration guidance which could include Documents, telephone support or contact information for the relevant licensor(s) of the Clinical System.

5.2 If the Customer wishes to use the Software in conjunction with EMIS Web then, in order for the

CONFIDENTIAL

Equipment to fully function, Optum shall log in to the system configuration section of the Clinical System and:

5.2.1 activate the link between EMIS Web and the Hardware;

5.2.2 add users to the Clinical System to allow API access; and

5.2.3 add API access to any of the Customer's user accounts which require access to the Hardware.

5.3 The Customer, by entering into the Agreement, gives Optum permission to undertake the activities set out in this clause 5.

6. SALE OF HARDWARE

6.1 Optum shall sell and supply the Hardware to the Customer on the terms set out in this clause 6.

6.2 Optum reserves the right to amend the specification in respect of the Hardware, as detailed in Optum's written quote or as otherwise agreed in writing with Optum, to reflect any changes made by the relevant manufacturer(s) or if required by any applicable statutory or regulatory requirements.

6.3 The Hardware is described in Optum's written quote or as otherwise agreed in writing with Optum.

6.4 Optum shall deliver the Hardware to the location as detailed in Optum's written quote or as otherwise agreed in writing with Optum (the "**Delivery Location**") at any time after Optum notifies the Customer that the Hardware is ready. Delivery of the Hardware shall be completed on the Hardware's arrival at the Delivery Location.

6.5 Any dates quoted for delivery of the Hardware are approximate only, and the time of delivery is not of the essence. Optum shall not be liable for any delay (or failure) in delivery of the Hardware that is caused by the Customer's failure to provide Optum with adequate delivery instructions or any other instructions that are relevant to the supply of the Hardware.

6.6 If the Customer fails to accept or take delivery of the Hardware, then (except where such failure or delay is caused by Optum's failure to comply with its obligations under the Agreement) in respect of the Hardware:

6.6.1 delivery of the Hardware shall be deemed to have been completed at 9.00 am on the first business day following the day on which Optum notified the Customer that the Hardware was ready; and

6.6.2 Optum shall store the Hardware until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6.7 If ten (10) business days after Optum notified the Customer that the Hardware was ready for delivery the Customer has not accepted delivery, Optum may (without prejudice to any other rights or remedies) resell or otherwise dispose of part or all of the Hardware.

6.8 The Customer shall not be entitled to reject the Hardware if Optum delivers up to and including five (5) per cent more or less than the quantity of Hardware



ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from the Customer that the wrong quantity of Hardware was delivered.

6.9 Optum may deliver the Hardware by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.10 Optum shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer's warranty regarding the relevant Hardware.

6.11 Optum warrants that on delivery, the Hardware shall:

6.11.1 conform in all material respects with the relevant specification (if any) set out in Optum's written quote or as otherwise agreed in writing with Optum; and

6.11.2 be free from material defects in design, material and workmanship.

6.12 Subject to clause 6.13, if:

6.12.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Hardware items do not comply with the warranty set out in clause 6.11;

6.12.2 Optum is given a reasonable opportunity of examining such Hardware; and

6.12.3 the Customer (if asked to do so by Optum) returns such Hardware to Optum's place of business at the Customer's cost,

then Optum shall, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full.

6.13 Optum shall not be liable for the Hardware's failure to comply with the warranty in clause 6.11 if:

6.13.1 the Customer makes any further use of such Hardware after giving a notice in accordance with clause 6.12;

6.13.2 the defect arises because the Customer failed to follow Optum's instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;

6.13.3 the Customer alters or repairs such Hardware without the written consent of Optum;

6.13.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or

6.13.5 the Hardware differs from the relevant Hardware specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.14 Except as provided in this clause 6, Optum shall have no liability to the Customer in respect of the Hardware's failure to comply with the warranty set out in clause 6.11.

CONFIDENTIAL

6.15 The terms of the Agreement shall apply to any repaired or replacement Hardware items supplied by Optum under clause 6.12.

6.16 The risk in the Hardware shall pass to the Customer on completion of delivery.

6.17 Title to the Hardware shall not pass to the Customer until Optum receives payment in full (in cash or cleared funds) for the Hardware and any other goods that Optum has supplied to the Customer in respect of which payment has become due, in which case title to the Hardware shall pass at the time of payment of all such sums. For the avoidance of doubt, title relates only to the physical Hardware and not to any Software (and/or any software as may be embedded within the Hardware) provided by Optum, or any third party licensor, as it is only ever licensed to the Customer in accordance with the terms of the Agreement.

6.18 Until title to the Hardware has passed to the Customer, the Customer shall:

6.18.1 store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Optum's property;

6.18.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;

6.18.3 maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on Optum's behalf from the date of delivery;

6.18.4 notify Optum immediately if it becomes subject to any of the events listed in clause 16.4.3; and

6.18.5 give Optum such information relating to the Hardware items as Optum may require from time to time.

6.19 If, before title to the Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clause 16.4.3, then, without limiting any other right or remedy Optum may have:

6.19.1 the Customer's right to use them in the ordinary course of its business ceases immediately; and

6.19.2 Optum may at any time: (i) require the Customer to deliver up all Hardware in its possession; and (ii) if the Customer fails to do so promptly, enter any sites where the Hardware are stored in order to recover them.

7. SOFTWARE MAINTENANCE SERVICES

7.1 The Customer acknowledges that the nature of the Software is such that it may require updating and revising from time to time. It is agreed that no-one other than Optum (or an Optum approved person) may support, amend, maintain or otherwise interfere with the Software. The Customer shall therefore take Software Maintenance Services from Optum during the Term and accepts that it is reasonable in all circumstances to do so.

7.2 During the Term, Optum shall use its reasonable endeavours to provide to the Customer the following



services (collectively, the “**Software Maintenance Services**”):

7.2.1 technical advice, including by telephone, facsimile transmission, email or mail, as shall be reasonably necessary to respond to the Customer’s difficulties;

7.2.2 at Optum’s sole discretion, the provision of updates and new functions and facilities in respect of the Software; and

7.2.3 if virus checking software is procured by Optum for the Customer, then Optum will also make updates for such software available to the Customer.

7.3 The Software Maintenance Services shall not include:

7.3.1 training of staff or installation of the Software;

7.3.2 rectification or reconstitution of any lost or corrupted data;

7.3.3 resolving any fault in the Hardware or in any software (including operating systems and any Clinical System) used in conjunction with the Software;

7.3.4 responding to any defects or errors resulting from any alterations, adaptations or modifications of the Software made by any person other than Optum;

7.3.5 any version of the Software that has not been upgraded and updated in accordance with Optum’s reasonable instructions or requirements;

7.3.6 incorrect use of the Software or operator error; or

7.3.7 defects or errors caused by use of the Software at any location other than the Location of Service or on or with any equipment (other than the Equipment) or software not supplied, or approved in writing, by Optum.

7.4 Optum shall make an additional charge in accordance with its standard rates (from time to time in force) for any Software maintenance and support services provided by Optum at the request of the Customer which:

7.4.1 do not fall under clause 7.2 (including, those excluded from the scope of the Services by virtue of any of the exclusions referred to in clause 7.3); or

7.4.2 Optum finds are not necessary and thus should not have been requested by the Customer,

and Optum shall notify the Customer of any such incident and provide the Customer with an invoice for such additional charge(s).

For the avoidance of doubt, nothing in the Agreement shall impose any obligation on Optum to provide services in respect of any of the exclusions referred to in clause 7.3 (or which are otherwise outside of the scope of clause 7.2).

CONFIDENTIAL

8. REPAIR SERVICES

8.1 During the Term, Optum shall use reasonable endeavours to:

8.1.1 provide, in respect of the Equipment, technical advice by telephone as reasonably necessary with a view to resolving the Customer’s difficulties or diagnose a fault requiring a workshop repair;

8.1.2 conduct the repair (where practicable) of defective Hardware at the Location of Service;

8.1.3 conduct (where necessary) the repair of defective Equipment away from the Location of Service; and

8.1.4 replace any defective parts of the Equipment.

8.2 Optum shall replace defective parts (pursuant to clause 8.1.4) using replacement parts that are either new or used (where, in Optum’s reasonable opinion, such used parts will perform in an equivalent manner). Replaced parts will become the property of Optum. Exchanges may not be possible for Hardware with permanent security markings.

8.3 A repair by Optum, pursuant to clauses 8.1.2 and/or 8.1.3, may include:

8.3.1 reloading of the operating system;

8.3.2 reloading of other elements of the Software;

8.3.3 configuring the Automated Arrivals Kiosk; and/or

8.3.4 re-establishing a Network Connection.

8.4 Optum shall aim to respond (following receipt of notification of a defect) to the Customer by the next working day (but such timescales are targets only and time of response shall not be of the essence of the Agreement).

8.5 The Repair Services shall not include:

8.5.1 any Equipment which is outside its manufacturer’s warranty period (as reasonably determined by Optum);

8.5.2 repair or replacement of exchangeable media or consumable supplies;

8.5.3 maintenance of any attachments not included in the Equipment;

8.5.4 specification enhancement of the Equipment;

8.5.5 repairs where the relevant damage or malfunction has been caused by: (i) accident, transportation, neglect, and/or misuse; (ii) external voltage surge; (iii) fluid ingress; (iv) an act of God, fire, flood, war, act of violence, or vandalism; (v) any attempt by any person not authorised by Optum to adjust, repair or maintain the Equipment; or (vi) any attachments or associated equipment (whether or not supplied by Optum) that does not form part of the Equipment; and/or

8.5.6 repair or replacement of the Touch Screen(s).

8.6 EGTON DOES NOT GUARANTEE UNINTERRUPTED PERFORMANCE OF THE EQUIPMENT.

8.7 Optum may charge the Customer (in accordance with its standard rates from time to time) in respect of any Repair Services it provides at the request of the Customer:

8.7.1 which do not fall under clauses 8.1 or 8.3 and/or which are excluded from such Repair Services by virtue of any of the exclusions referred to in clause 8.5; or

8.7.2 which Optum finds are not necessary and thus should not have been requested by the Customer.

Optum shall notify the Customer of any such incident and provide the Customer with an invoice for such additional charges.

8.8 THE REPAIR SERVICES ARE SPECIFIC TO THE PARTICULAR SET OF EQUIPMENT PROVIDED BY EGTON TO THE CUSTOMER, THE REPAIR SERVICES ARE NOT TRANSFERABLE FROM ONE SYSTEM TO ANOTHER AND ARE VALID ONLY FOR THAT EQUIPMENT. REPLACEMENTS SUPPLIED FOR DEFECTIVE ITEMS WILL HAVE THE BENEFIT OF THE REPAIR SERVICES FOR THE REMAINDER OF THE TERM.

9. CUSTOMER OBLIGATIONS

9.1 The Customer shall:

9.1.1 not (except as expressly set out in the Agreement or as permitted by any applicable law which cannot be excluded) copy the Software or merge or incorporate the Software with or into any other software nor (subject to applicable law rights) attempt to disassemble, decompile, modify, adapt or reverse engineer the Software;

9.1.2 not (except as expressly set out in the Agreement or as permitted by any applicable law which cannot be excluded) translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license or create derivative works from the Software;

9.1.3 maintain accurate and up-to-date records of the number and location of all copies of the Software;

9.1.4 supervise and control use of the Software in accordance with the terms of the licensed rights granted under the Agreement;

9.1.5 ensure that its, and where applicable any Service Recipients', employees, agents and other parties who will use the Software are notified of any restrictions or limitations under the Agreement prior to such Service Recipient, employee, agent or party using the same;

9.1.6 where relevant, provide a copy of these Conditions to any Service Recipients and ensure that each is aware of the same;

9.1.7 not provide or otherwise make available the Software to any person other than its employees and/or where applicable any Service Recipients and their employees or as specified herein without prior written consent from Optum;

CONFIDENTIAL

9.1.8 not display the Software on a public bulletin board, ftp site, worldwide web site, chat room or by any other unauthorised means;

9.1.9 not use the Software or Services in relation to any immoral or illegal purpose for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to Optum's reputation; and

9.1.10 immediately upon the date of termination or discontinuance of the Services for whatever reason, destroy the Software (including, any copies) within its possession or control.

9.2 If the Customer requires the Repair Services, it shall:

9.2.1 notify Optum (through the nominated Optum support call centre) that it requires the Repair Services;

9.2.2 upon request, run self-test procedures or correct problems with remote telephone support;

9.2.3 allow Optum Engineers access to the Location of Service as reasonably required to perform the Repair Services; and

9.2.4 provide such reasonable information and assistance as Optum may require so as to facilitate the provision of the Repair Services.

9.3 The Customer shall be responsible for the security of any and all data it stores on the Automated Arrivals Kiosk and for taking appropriate backup copies of the data, and it is the Customer's own responsibility to restore or reconstruct all such data required on the Automated Arrivals Kiosk.

9.4 The Customer shall provide Optum with such remote access to its systems as Optum may reasonably require for the purposes of providing the Services and complying with its obligations under the Agreement.

9.5 The Customer agrees and acknowledges that:

9.5.1 if any Service Recipient fails to comply with any element of the Agreement (or the requirements outlined above) then Optum will not be held to be in breach of any of its obligations under the Agreement in relation to the relevant Service Recipient(s) and the Customer shall use its reasonable efforts to assist Optum in seeking to resolve any such default on the part of a Service Recipient; and

9.5.2 if Optum's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (and/or a Service Recipient, or their respective agents, subcontractors, consultants or employees) then:

9.5.2.1 Optum shall not be liable for any costs, charges or losses sustained or incurred by the Customer and/or a Service Recipient arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly); and



9.5.2.2 the Customer shall (and/or where appropriate shall procure the Service Recipient shall):

9.5.2.2.1 agree with Optum a reasonable extension of time corresponding to the delay; and

9.5.2.2.2 fully indemnify and hold harmless Optum for all costs, fees, damages, lost revenue or other expenses arising from any such event.

9.6 The Customer shall be liable to pay Optum, on demand, all reasonable costs, charges or losses sustained or incurred by Optum arising from the Customer's and/or any Service Recipient's fraud, negligence or failure to perform, or delay in the performance of, any of its obligations under the Agreement. Optum shall confirm any and all such costs, charges and losses to the Customer in writing.

10. UPGRADE DISCOUNT TERMS

10.1 If the Customer purchases the Equipment to replace an existing Automated Arrivals Kiosk as part of an upgrade promotion offered by Optum, the Customer shall:

10.1.1 allow Optum to collect the existing Automated Arrivals Kiosk(s) on such date as Optum shall reasonably request; and

10.1.2 ensure that the existing Automated Arrivals Kiosk(s) provided to Optum pursuant to clause 10.1.1 is the same model as has previously been agreed by Optum as part of the upgrade promotion.

10.2 In the event that the Customer fails to meet its obligations under clause 10.1 then Optum may adjust the charges due in respect of the relevant Equipment accordingly.

11. SERVICE CHARGES

11.1 The Customer shall pay Optum the Service Charges due in respect of:

11.1.1 the Services, during the Term annually in advance; and

11.1.2 the purchase of Hardware and/or licensing of Software (where applicable), in accordance with the:

11.1.2.1 total price for the sale or licence (as applicable) of such items; and

11.1.2.2 any additional payment terms,

as set out in Optum's written quote or as otherwise agreed in writing with Optum.

11.2 Subject to clause 11.12, Optum may raise an invoice in relation to the Service Charge at any time on or after the Commencement Date (or any anniversary thereof). Should the Customer not receive such an invoice from Optum within thirty (30) days of the Commencement due date then it shall notify Optum in writing and Optum shall duly issue the invoice.

CONFIDENTIAL

11.3 The Customer shall pay each invoice in full and in cleared funds, within thirty (30) days of the date of such invoice to a bank account nominated in writing by Optum.

11.4 Optum may adjust the Service Charge annually in the event that the Term is longer than (or is extended by the parties beyond) one (1) year. Optum shall notify the Customer in writing of any change in the Service Charge prior to the expiration of the Term, or as part of any extension of the Term.

11.5 For the avoidance of doubt all the Service Charge is exclusive of VAT, which Optum shall add to its invoices at the appropriate rate.

11.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Optum on the due date, Optum may:

11.6.1 charge interest on such sum from the due date for payment at the annual rate of four percentage points above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand (or, Optum may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or

11.6.2 suspend all Services without any liability to the Customer (or any Service Recipient) until payment has been made in full.

11.7 Time for payment shall be of the essence of the Agreement.

11.8 Notwithstanding any provision in the Agreement to the contrary, all sums payable to Optum under the Agreement shall become due immediately on its termination. This clause 11.8 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

11.9 Optum may, without prejudice to any other rights it may have, set off any liability of the Customer to Optum against any liability of Optum to the Customer.

11.10 Where the Customer is purchasing Hardware, Software licences, Services and/or the supply and use of Equipment for the benefit of a number of Service Recipients the date of actual receipt of Services, Software licences and/or delivery and installation of Equipment and/or Hardware may not be uniform across all Service Recipients, and accordingly Service Recipients will likely receive the benefit of the same at various points following the Commencement Date.

11.11 For the purposes of clause 11.12, Service Recipients who have received the benefit of the Services, software licences, Equipment and/or Hardware are referred to as "**Actual Service Recipients**", and those who have not yet received the benefit of the same are referred to as "**Pending Service Recipients**".

11.12 Notwithstanding clause 11.10, Optum shall be entitled to invoice the Customer in respect of Service Charges as follows:



11.12.1 for the first Contract Year, Optum shall be entitled to invoice the Customer in advance, immediately following the Commencement Date, for all Service Charges due in respect of all Service Recipients in the first Contract Year, on the basis that all Service Recipients are deemed to be Actual Service Recipients on or immediately following the Commencement Date;

11.12.2 where the Term exceeds 12 months:

11.12.2.1 for the second Contract Year, Optum shall adjust the Service Charges, on a pro rata basis, to reflect any period in the first Contract Year during which any Service Recipients were Pending Service Recipients; and

11.12.2.2 for the third and subsequent Contract Years, Optum shall be entitled to invoice the Service Charges in full, in respect of all Service Recipients; and/or

11.12.3 where the Term is only 12 months (or less), then at the expiry of the Term, Optum shall issue the Customer with a credit note in respect of the Service Charges on a pro rata basis, equivalent to the period during the Term that any Service Recipients were Pending Service Recipients.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Customer acknowledges that any and all Intellectual Property Rights created, developed, subsisting or used in or in connection with the delivery of the Services, (including in respect of the Optum Materials) are and shall remain the sole property of Optum.

12.2 In the event that new inventions, designs or processes evolve in performance of, or as a result of the Services, the Customer acknowledges that the same shall be the property of Optum unless otherwise agreed in writing by Optum.

12.3 The Customer acknowledges that where Optum does not own the Intellectual Property Rights in any Optum Materials, then Customer's use of such Optum Materials shall be conditional on Optum obtaining the necessary licence(s) from the relevant licensor(s) of such materials on such terms as will entitle Optum to license such rights to the Customer.

13. CONFIDENTIALITY

13.1 The Customer shall keep in strict confidence Optum Materials and any technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and which have been disclosed to the Customer and/or where appropriate any Service Recipient by Optum, its employees, agents, consultants or subcontractors and any other confidential information concerning Optum's business or its Services which the Customer may obtain (collectively, the "**Confidential Information**").

13.2 The Customer and/or where appropriate a Service Recipient may disclose the relevant Confidential Information:

13.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such Confidential Information for the purposes of carrying

CONFIDENTIAL

out the Customer's obligations under the Agreement and/or of receiving the Services; and

13.2.2 as may be required by law, court order or any governmental or regulatory authority.

13.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any Confidential Information keep the same confidential and otherwise comply with this clause 13.

13.4 The Customer shall not use any Confidential Information for any purpose other than to perform its obligations under the Agreement.

13.5 All materials, equipment and tools, drawings, specifications and data supplied by Optum to the Customer (including, the Optum Materials) shall, at all times, be and remain the exclusive property of Optum, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Optum, and shall not be disposed of or used other than in accordance with Optum's written instructions or authorisation.

14. LIMITATIONS OF LIABILITY

14.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 14, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

14.2 This clause 14 sets out the entire financial liability of Optum (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) in respect of:

14.2.1 any breach of the Agreement;

14.2.2 any use of the Services (or any part of them); and

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

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

14.3.1 death or personal injury resulting from negligence;

14.3.2 any Losses as a result of fraud or fraudulent misrepresentation by Optum; or

14.3.3 any Losses which cannot be excluded or limited pursuant to applicable law.

14.4 Subject to clause 14.3, Optum shall under no circumstances whatever be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

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

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

14.4.3 loss (whether direct or indirect) of goodwill or injury to reputation;

14.4.4 loss (whether direct or indirect) of anticipated savings;

14.4.5 loss (whether direct or indirect) of use;

14.4.6 loss (whether direct or indirect) of, or corruption to, data or information; and/or

14.4.7 indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement.

14.5 Subject to clause 14.3, Optum's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise, arising out of or in connection with the Agreement in respect of all Losses (including, under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Service Charges paid and/or due to be paid by the Customer under the Agreement in that Contract Year (or in respect of any and all Losses arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Service Charges paid and/or due to be paid in the final Contract Year of the Agreement).

14.6 Any Losses suffered by a Service Recipient under or in connection with the Agreement ("**Service Recipient Losses**") shall be deemed for the purposes of the Agreement to be Losses suffered by Customer under the Agreement, and that Customer shall be entitled to seek to recover from Optum any such Service Recipient Losses, subject always to the provisions of this clause 14, as though the relevant Losses had been suffered by the Customer (provided always that under no circumstances shall any Service Recipient have any right to bring any claim or action against Optum other than via the Customer and subject to the terms of the Agreement and if any such claim should be brought then the Customer will indemnify Optum in respect of the same).

15. DATA PROTECTION & SECURITY

15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is the data controller and Optum is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

15.3 Annex 1 sets out the scope, nature and purpose of processing by Optum, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update

CONFIDENTIAL

Annex 1 to reflect any changes to the scope of the processing.

15.4 Without prejudice to the generality of clause 15.1, the Customer (and/or where appropriate the relevant Service Recipient) will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Optum for the duration and purposes of the Agreement.

15.5 Optum shall, in relation to any Personal Data processed in connection with the performance by Optum of its obligations under the Agreement:

15.5.1 process that Personal Data on the written instructions of the Customer or where appropriate the relevant Service Recipient (unless otherwise required by law);

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

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

15.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer (and/or where appropriate the relevant Service Recipient) has been obtained and the following conditions are fulfilled:

15.5.4.1 the Customer (and/or where appropriate the relevant Service Recipient) or Optum has provided appropriate safeguards in relation to the transfer;

15.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

15.5.4.3 Optum complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

15.5.4.4 Optum complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;

15.5.5 assist the Customer (and/or where appropriate the relevant Service Recipient), at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

15.5.6 notify the Customer (and/or where appropriate the relevant Service Recipient) without undue delay on becoming aware of a Personal Data breach;



15.5.7 at the written direction of the Customer (and/or where appropriate the relevant Service Recipient), delete or return Personal Data and copies thereof to the Customer (and/or where appropriate the relevant Service Recipient) on termination of the Agreement unless required by law to store the Personal Data; and

15.5.8 allow for audits by the Customer (and/or where appropriate the relevant Service Recipient) or its designated auditor in respect of Optum's data processing activities under the Agreement.

15.6 Optum is given general authorisation to engage third-parties to process the Personal Data ("Sub-Processors") without obtaining any further written, specific authorisation from the Customer or where appropriate the relevant Service Recipient. Optum shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. Optum is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of Optum's material sub-processors as at the date of the Agreement is set out on Optum's website (or will otherwise be notified to the Customer). 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. If the parties are (acting reasonably) unable to resolve the objection and Optum informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate the Agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, Optum will refund any unused prepaid fees).

15.7 The parties may, acting reasonably, agree to amend the Agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.

15.8 Optum acknowledges that the Customer has (and the relevant Service Recipients have) duties and obligations under the Freedom of Information Act 2000 (FOIA) and Optum will upon request give reasonable assistance where appropriate or necessary in relation to their compliance with such duties.

16. TERM AND TERMINATION

16.1 The Agreement shall commence on the Commencement Date. Unless terminated earlier pursuant to these Conditions, the Agreement shall continue for the Initial Term and shall automatically renew at the end of the Initial Term (and on each anniversary of that date) for a further period of twelve (12) months.

16.2 Without affecting any other right or remedy available to it, either party may give written notice to the other party, not later than thirty (30) days before the end of the Term, to terminate the Agreement at the end of the Term.

16.3 No element of the Service Charge shall be refundable by Optum on termination of the Agreement.

CONFIDENTIAL

16.4 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if:

16.4.1 the other party fails to pay any amount due under the Agreement on the due date for payment and it remains in default not less than seven (7) days after being notified in writing to make such payment;

16.4.2 the other party commits a material breach of any of the terms of the Agreement, provided if such a breach is remediable, the party in breach fails to remedy that breach within thirty (30) days of being notified in writing of the breach; or

16.4.3 the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).

16.5 On termination of the Agreement for any reason:

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

16.5.2 the Customer shall (and shall ensure that any Service Recipients shall) destroy or return (as appropriate) all of the Optum Materials. If the Customer fails to do so, then Optum may enter the Customer's (and/or where appropriate the relevant Service Recipient's) premises or Location of Service and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

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

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

16.6.2 not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

16.7 Without prejudice to the generality of clause 16.6, the provisions of clauses 12, 13, 14, 15, 16, 17 and 26 will survive expiry or termination of the Agreement for any reason.

17. INDEMNIFICATION

17.1 The Customer shall defend, indemnify and hold harmless Optum (its directors, officers, agents and employees) at all times from and against any Losses



suffered, sustained or incurred by Optum in relation to any claim relating to or arising from the Customer's and/or any Service Recipient's (or any of its or their directors, officers, agents and employees) use of the Services other than in accordance with the terms of the Agreement.

17.2 In the event Optum is able to claim under the indemnity in clause 17.1 (or such a claim seems likely to arise), then Optum may suspend delivery of the Services unless or until such time as Optum is certain, in its reasonable opinion, that there is not likely to be a claim or the claim has been resolved.

18. WARRANTY DISCLAIMER

18.1 Except as expressly stated in the Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Optum. Any condition, warranty, representation or other term concerning the supply of the Equipment, sale of Hardware and provision of the Services which might otherwise be implied into, or incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

18.2 EGTON DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR FREE.

18.3 The Customer acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software meet its requirements.

19. FORCE MAJEURE

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

20. VARIATION

20.1 Optum may, from time to time and without notice, change the Services in order to comply with any applicable safety or legal requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If Optum requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

20.2 Subject to clause 20.1, no variation of the Agreement or of any of the documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

CONFIDENTIAL

21. WAIVER

21.1 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.

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

22. SEVERANCE

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

23. ENTIRE AGREEMENT

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

23.2 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.

23.3 Nothing in this clause 23 shall limit or exclude any liability for fraud.

24. ASSIGNMENT

24.1 The Customer shall not, without the prior written consent of Optum, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

24.2 Optum may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under this and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

24.3 Save as expressly provided for under the Agreement in respect of any Service Recipients each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.



24.4 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) except always that, subject to clause 24.5 each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

24.5 Notwithstanding clause 24.4, the parties may by agreement rescind, vary or terminate the Agreement without the consent of any Service Recipient, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

25. NOTICES

25.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office (or in the absence of the same, its primary place of business), or such other address as may have been notified by that party for such purposes, or (in the case of notices sent to Optum by the Customer) by email to uk.contracts@optum.com

CONFIDENTIAL

25.2 A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

25.3 All notices sent to Optum shall be marked for the attention of Legal Counsel.

26. GOVERNING LAW AND JURISDICTION

26.1 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 law of England and Wales.

26.2 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).

Processing by Optum

Purpose of Processing:	for the purposes of delivering the Services and meeting other obligations specified in the Agreement.
Duration of the Processing:	for the Term (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the Services).
Nature:	such processing as is necessary to enable Optum to provide the Services provided for under the Agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).
Types of Personal Data:	data which may be processed under the Agreement includes (without limitation): names, date of birth, addresses, telephone numbers, email addresses and other contact details together with data concerning health.
Categories of Data Subject:	data subjects may include: members of the Customer's (and/or where applicable any Service Recipient's) staff (including those of its associated entities or third party suppliers) and, patients (and members of the patients' family).