

# **The University of Nottingham (PRIMIS)**

## **Terms and Conditions**

## SUBJECT TO CONTRACT

# SERVICES AGREEMENT

## B E T W E E N :

- (1) **THE UNIVERSITY OF NOTTINGHAM** a body corporate incorporated by Royal Charter and registered with number RC000664, of University Park, Nottingham NG7 2RD ('University'); and
- (2) **[Customer Legal Title]** [(company registration number [no.])], whose [registered OR administrative] address is [address] ('Customer').

Each of the University and Customer may be referred to hereafter as '**Party**' or together as '**Parties**'.

## W H E R E A S

- (A) The University has developed Primary Care Information Services ('**PRIMIS**') which is recognised as a national and international centre of excellence in primary care information.
- (B) The University, through PRIMIS, has certain skills and abilities the Customer wishes to make use of.
- (C) The University will provide the Services and the Customer will accept them subject to all the terms and conditions of this Agreement.

## A G R E E D

### 1 Definitions

The defined terms below apply in relation to interpretation of this Agreement.

- 1.1 '**Agreement**' means this Services Agreement.
- 1.2 '**Background IP**' means any IP owned or controlled by either Party at the Effective Date; and any specific IP necessary to the provision of the Services which the owning or controlling Party agrees in writing to make available for the purposes of the Services.
- 1.3 '**CHART**' means an Excel-based spreadsheet package which provides the framework for running the CHART Quality Improvement Tools.
- 1.4 '**CHART Library**' means a topic-specific method of delivering code sets, MIQUEST queries, post-processing logic and display criteria to users of CHART software which works in conjunction with CHART.
- 1.5 '**CHART Online**' means a web-based analytical tool for viewing comparative clinical data via CHART.
- 1.6 '**Confidential Information**' means any commercial, technical and other information and data (of whatever nature and form) in the possession or control of the Party disclosing it (the '**Discloser**') which is directly or indirectly disclosed or made available by or on behalf of the Discloser to the other Party (the '**Recipient**'), whether in writing, orally, in drawings, by site visits, by access to computer software or data or in any other manner, and which at the time

## SUBJECT TO CONTRACT

of disclosure is marked or identified as confidential or which, by reason of its nature or the circumstances surrounding its disclosure, would reasonably be understood as confidential.

- 1.7 **'Data Protection Legislation'** means the General Data Protection Regulation ((EU) 2016/679) and any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.
- 1.8 **'Effective Date'** means the commencement date of this Agreement, namely [date], notwithstanding dates of signature hereto.
- 1.9 **'Intellectual Property' ('IP')** means patents, trademarks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.
- 1.10 **'Process Developments'** means new tools, methods or concepts, techniques, adaptations and ideas of general application, or improvements to the University's Background IP, developed by the University in the course of carrying out the Services, including but not limited to any developments in and to Software Tools, or any specification criteria for created data extraction, post processing and display, including the design of the dashboards, the University's data, or the Training Materials.
- 1.11 **'Results'** means the results produced by the carrying out of the Services.
- 1.12 **'Services'** means the services in relation to primary care information described in Schedule 1 hereto to be carried out by the University pursuant to this Agreement.
- 1.13 **'Services Period'** means the period commencing with the Effective Date and ending [no.] months thereafter or until the completion of the Services, unless terminated earlier pursuant to clause 2 below. The Services Period may be extended by mutual agreement of the Parties in writing.
- 1.14 **'Software Tools'** means software and associated products used by the University in carrying out the Services, which are owned by or licensed to the University, and which may include without limitation software such as CHART, any CHART Library, CHART Online and any other software from time to time owned by or licensed to the University and used by the University in carrying out the Services.
- 1.15 **'Training Materials'** means the materials (if any), including but not limited to hand-outs and PowerPoint slides, prepared or adapted by the University and provided by the University to the Customer for the purposes of providing training, and all copyright therein.

## 2 Duration and Termination

- 2.1 This Agreement shall become effective on the Effective Date and will continue during the Services Period.
- 2.2 Either Party may terminate this Agreement forthwith if the other Party enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the other Party's undertaking or assets or there are reasonable grounds for anticipating the imminent occurrence of any of these events.

## **SUBJECT TO CONTRACT**

- 2.3 In the event that either Party commits any breach of or default in any of the terms or conditions of this Agreement, and fails to remedy such default or breach within thirty (30) days after the receipt of written notice from the other Party, the Party giving notice may at its option terminate this Agreement by sending notice of termination in writing to the other Party to such effect, and such termination shall be effective as of the date of the receipt of such notice.
- 2.4 The following provisions shall survive the termination of this Agreement for whatever reason: clauses 1, 2.4, 3.4, 3.5, 4, 5, 6, 7, 9, 10 and 11.

### **3 Obligations of the Parties**

- 3.1 During the Services Period the University will use its reasonable endeavours to provide the Services and in compliance with all applicable laws and regulations, including but not limited to Data Protection Legislation and any subsequent legislation. The University will provide the Services to the standards of a reasonable university carrying out such work.
- 3.2 The University will use its reasonable endeavours to meet with time frames as specified in Schedule 1 hereunder. The University shall use its reasonable efforts to achieve the objectives of the Services efficiently and expeditiously by allocating sufficient effort, equipment, facilities, skilled personnel and other resources to complete such activities successfully and on time, providing that the Customer provides information and data to the University in a timely manner to enable the provision of the Services by the University.
- 3.3 During the performance of Services, the Parties shall meet as reasonably necessary to discuss the progress of the Services. The University shall submit to the Customer progress reports at the end of each milestone identified in Schedule 1 hereto, which reports shall include a summary of all work done. The University shall issue a final written report to the Customer on completion of the Services, including a comprehensive summary of the Services undertaken.
- 3.4 The University may publish at its sole discretion its Background IP and the Process Developments, and publish and make available to third parties the Results to the extent that this does not disclose the Confidential Information of the Customer.
- 3.5 For the avoidance of doubt nothing in this Agreement, subject to clauses 5 and 6, shall be construed as preventing the University carrying out services of a similar nature on behalf of any other entity.
- 3.6 Where the Services are provided at the Customer's premises, the Customer shall ensure that any member of staff or agent of the University attending is properly instructed in all matters relating to health and safety and is provided with a safe working environment.

### **4 Fees and expenses**

- 4.1 In consideration of the Services the Customer shall pay the University the fees specified in Schedule 1 and in accordance with the payment schedule set out in Schedule 1. All amounts payable by the Customer under this Agreement shall be exclusive of any applicable VAT or sales tax. In addition, the Customer will reimburse the University for reasonable, necessary and verifiable out-of-pocket expenses incurred by the University in connection with the Services upon submission of receipts or other evidence of the same.
- 4.2 The Customer shall be responsible for its own bank charges and shall not deduct such charges from sums due to the University under this Agreement. Until further notice payment shall be made directly into the bank account specified on the invoice or as otherwise notified to the Customer by the University.

## **SUBJECT TO CONTRACT**

4.3 If the Customer fails to make any payment by the due date, the University may, without prejudice to its other rights and remedies:-

4.3.1 charge the Customer interest in respect of the sum overdue in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 from the due date for payment to the date of actual payment (both dates inclusive) and the reimbursement of all expenses (including legal fees) incurred with respect to collection of overdue fees; such interest shall be payable on demand in addition to sums due under the Agreement; and/or

4.3.2 suspend any further performance of the Services.

## **5 Intellectual Property**

5.1 Background IP used in connection with this Agreement will remain the property of the Party introducing it. For the avoidance of doubt, no licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement. The Customer hereby grants to the University licenses to its Background IP to the extent required to enable the University to carry out the Services.

5.2 The Results, all Process Developments and all IP contained therein shall belong to the University.

## **6 Confidential Information**

6.1 Each Recipient undertakes, both during the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement, not to disclose the Confidential Information of the Discloser and not to use the Discloser's Confidential Information except for the purposes of this Agreement.

6.2 The obligations in clause 6.1 shall not apply or shall cease to apply to Confidential Information which:

6.2.1 has been received from a third party who are not bound by an obligation of confidentiality to the Discloser;

6.2.2 was already in the Recipient's possession prior to its acquisition from the Discloser as evidenced by written records;

6.2.3 was independently generated by the Recipient as evidenced by written records;

6.2.4 is in or comes into the public domain other than by reason of a breach of this Agreement;

6.2.5 is required to be disclosed by law or a court or other competent authority; or

6.2.6 is disclosed with prior written consent of the Discloser.

6.3 Neither the University nor the Customer will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent.

6.4 No Party will disclose, or will be required to disclose, any data identifying any person under this Agreement. The University may have access to general practitioner practice data for the

## **SUBJECT TO CONTRACT**

purposes of performing Services, and such data is and shall remain the property of the general practitioner concerned. The Customer shall not be entitled to have access to any such data except as expressly agreed otherwise in writing in this Agreement.

### **7 Warranties and Liability**

- 7.1 Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall exclude or limit either Party's liability for the following:
- 7.1.1 death or personal injury resulting from negligence;
  - 7.1.2 deliberate breach, fraud or statements made fraudulently;
  - 7.1.3 any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability.
- 7.2 Save as provided in clause 7.1, the University will not be liable for any exemplary, punitive or special damages, or any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused (even if caused by the University's negligence and/or breach of contract and even if the University were advised that such loss would probably result).
- 7.3 Subject to clause 7.1 of this Agreement, the University's total liability for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by the University's negligence and/or breach of contract) shall be limited to £500,000 (five hundred thousand pounds sterling) for each event or series of linked events.
- 7.4 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

### **8 Force Majeure**

- 8.1 No Party shall be liable to the other nor held to be in breach of this Agreement to the extent that it is prevented, hindered or delayed in performance or observance of its obligations (other than a payment obligation) hereunder by reason of industrial action, strikes, lock-outs, inability to obtain supplies, accidents, inability to obtain samples, armed conflict, commotions, malicious damage, government actions or omissions, denial of use of any necessary port and airport facilities, failures of power and fuel supplies, or any other cause of contingency whatsoever beyond its reasonable control. In the event that either Party shall be affected by force majeure, it shall give prompt notice thereof to the other Party.

### **9 Notices**

- 9.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, first class post, Special Delivery post or Airmail, but not by email or fax, addressed to the recipient below (or another person which the recipient has notified in writing to the sender in accordance with this clause 9, to be received by the sender not less than seven days before the notice is despatched).
- 9.1.1 For The University – to Head of Research Grants and Contracts, Research and Graduate Services, Kings Meadow Campus, Lenton Lane, Nottingham NG7 2NR, United Kingdom.

## SUBJECT TO CONTRACT

9.1.2 For the Customer – to [address]

The notice, demand or communication will be deemed to have been duly served:

9.1.3 if delivered by hand, at the time of delivery;

9.1.4 if delivered by first class post or Special Delivery post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than business days in England).

## 10 Disputes

- 10.1 All disputes will initially be referred by either Party to a representative of each Party responsible for the overall performance of this Agreement, who will meet as soon as reasonably practicable to discuss the dispute. If those representatives are unable to resolve the dispute after meeting, the dispute shall be referred to senior officers of the Customer and of the University respectively with authority to settle the dispute (the '**Directors**'). The Directors will meet within twenty (20) working days and attempt to resolve the dispute.
- 10.2 If any dispute arises out of this Agreement which the Directors are unable to resolve within twenty (20) working days of their meeting pursuant to clause 10.1, the Parties will attempt to settle it by mediation in London in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 10.3 To initiate mediation a Party must give notice in writing to the other Party requesting mediation (the '**ADR Notice**') and send a copy of the ADR Notice to CEDR.
- 10.4 If there is any point in the conduct of the mediation (including nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the commencement of the mediation, CEDR will, at the request of either Party, decide that point for the Parties, having consulted with them.
- 10.5 The mediation will start not later than twenty-eight (28) days after the date of the ADR Notice.
- 10.6 Neither Party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and such attempt has been unsuccessful, provided that nothing in this Agreement will prevent either Party seeking injunctive relief to prevent or stay a breach of any provision of this Agreement.

## 11 General

- 11.1 The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.
- 11.2 This Agreement shall not be assigned by either Party without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. The University may subcontract parts of the Services providing that the University remains responsible for the carrying out of such parts of the Services and the University shall ensure that the Customer's rights hereunder are unaffected by such sub-contracting.
- 11.3 Any variation to this Agreement shall be in writing and signed by authorised signatories for both Parties.
- 11.4 If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

**SUBJECT TO CONTRACT**

- 11.5 No failure, delay, relaxation or indulgence on the part of either Party in exercising or partial exercise of any right hereunder shall operate as a waiver of such rights.
- 11.6 The formation, existence, performance, validity and all aspects of this Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Parties submit to the jurisdiction of the courts of England.
- 11.7 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 11.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**SIGNED** for and on behalf of  
**The University of Nottingham:**

**SIGNED** for and on behalf of  
**[Customer Legal Title]**

.....  
.....  
Caroline Blackman Edney  
Director of Procurement

.....  
.....  
[Name and Position]

.....  
.....  
Date

.....  
.....  
Date



## **Schedule 1 – The Services**

*[Description of Services to be supplied by the University].*

*[Price of the Services – sample alternatives structures follow].*

Invoices to the Customer shall be sent to the following address:

[addressee for invoices at Customer] and may be sent by email attachment to the following email address [email address for invoices at Customer].

*[payment on completion:]*

£[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be submitted on or shortly after completion of the Services in material accordance with this Work Order.

*[payment in advance – include the second (highlighted) sentence if you want all monies in hand before you start work]*

£[amount] ([amount in letters]), payable within thirty (30) days of the University's invoice, to be submitted on or shortly the date of execution of this Work Order. [For the avoidance of doubt, and notwithstanding any other provision in the Work order or in the FSA, the University shall not be obliged to start work under this Work Order until the payment has been received in full and in cleared funds in accordance with the University's invoice.] [The Customer shall also pay any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services within thirty (30) days of the University's invoice in respect thereof, to be submitted once the Services are complete.]

*[payment in two instalments, one up front, one on completion:]*

The total price shall be £[amount] ([amount in letters]), payable as follows:

- £[amount] ([amount in letters]), payable within thirty (30) days of the University's invoice, to be submitted on or shortly the date of execution of this Work Order. [For the avoidance of doubt, and notwithstanding any other provision in the Work order or in the FSA, the University shall not be obliged to start work under this Work Order until the payment has been received in full and in cleared funds in accordance with the University's invoice.]
- £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be supplied on or shortly after completion of the Services in material accordance with this Work Order.

*[payment in quarterly instalments:]*

The total price shall be £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable within thirty (30) days of the University's invoice, to be submitted to the Customer quarterly in arrears.

*[payment in X dated instalments:]*

## SUBJECT TO CONTRACT

The total price shall be £[amount] ([amount in letters]), [together with any reasonable, necessary and verifiable expenses incurred by the University in undertaking the Services,] payable as follows:

- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];
- [£[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];
- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date];] and
- £[amount] ([amount in letters]) [plus expenses incurred to the date of payment] payable on [date].