SERVICE PROVISION AGREEMENT FOR IQEMO CLOUD BASED CHEMOTHERAPY PRESCRIBING AND ADMINISTRATION

between

IQ HEALTHTECH LIMITED

and

[THE CUSTOMER] VIA G-CLOUD 11

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THIS AGREEMENT is dated   20XX

(1)   **IQ HEALTHTECH LIMITED** incorporated and registered in England and Wales with company number 07684840 whose registered office is at Hanover House, 5 Hanover Close, Christchurch, Dorset BH23 2FA (**Supplier/IQHT**).

(2)   **[The Customer]** whose registered office is at XXXX (**Customer**).

BACKGROUND

(A)   The Supplier has developed and provides a service called iQemo, a cloud-based chemotherapy e-prescribing, dispensing and nurse administration system that enables doctors to securely prescribe their patients' chemotherapy from any location with an internet connection based on preconfigured regimens.

(B)   The Customer is engaged in the business of providing chemotherapy services to patients in the United Kingdom.

(C)   The Customer wishes to use the Supplier's service in its business operations.

(D)   The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement and the G-Cloud framework.

AGREED TERMS

1.   INTERPRETATION

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

Additional Features: Additional features are features that are not included within the scope of the current iQemo version such as general e-prescribing.

Applicable Law: any law, statute or enactment of the UK, any licence, standard or principle of behaviour, rule, regulation or code of practice or guidance laid down or required by any regulatory authority or body or self-regulating or other organisation exercising supervisory authority or control over or in respect of the Supplier or the Customer pursuant to legislation or otherwise, and any other regulation, decision, licence or authorisation having the force of law of any body having jurisdiction in relation to the Supplier or the Customer that relates or is applicable to the Services.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Change Request Process: means the procedures regulating changes to the Services set out in Schedule 9.

Clinical Users: means each of the following, either individually or collectively as the context so requires: consultants, pharmacists and/or nurses.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information and which shall be treated in accordance with in clause 12.

Configuration Services: the configuration and related work referred to Schedule 3, to be performed by the Supplier to configure the Software so that the Software conforms with the Software Specification.

Corrective Action Plan: the plan agreed in accordance with clause 15 for the remedy of any affected services.

Corrective Action Notice: a written notice given by the Customer to the Supplier pursuant to clause 15.1 to initiate the Corrective Action Process.

Corrective Action Process: the process for remedying any affected services as set out in clauses 15.1 to 15.7.

Customer Account Team: the individuals appointed by the Customer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this Agreement. The initial members of the Supplier Account Team are listed in **Error! Reference source not found.**

Customer Data: the data inputted into the information fields of the Software by the Customer and/or by Service Recipients.

Customer's Project Manager: the member of the Customer Account Team named in **Error! Reference source not found.**, and as may be changed from time to time.

Deliverable: a defined level of functionality or other pre-set milestone within a particular phase of the Configuration Services, to be more particularly described in the Project Plan set out in Schedule 3.

Emergency maintenance: Maintenance that needs to be carried out as soon as possible e.g. an operating system security patch with potential security vulnerabilities.

Disaster Recovery and Business Continuity Plan: the business continuity plan as set out in Schedule 8 as amended from time to time.

Defect: is a condition in a software product which does not meet a software requirement.

Effective Date: the date of the signed contract.

Fees: the fees payable to the Supplier, as described in Schedule 1.

Group: in relation to a party means that party together with each and every direct or indirect subsidiary of that party or that party's holding company from time to time.

Hosting Services: the services that the Supplier provides to allow Service Recipients to access and use the Software, including hosting set-up and ongoing services, as described in Schedule 4.

Initial Term: shall have the meaning in clause 14.1.

Load: refers to the amount of data (traffic) being carried by the network.

Losses: means all losses, damages, claims, demands, actions, costs, charges, expenses or liabilities (including without limitation lost opportunity costs, additional administrative and management time, loss of anticipated savings and costs and

expenses of the Customer and legal expenses calculated on a solicitor and client basis) and "Loss" shall be construed accordingly.

Maintenance and Support: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to the Customer under this Agreement, all as described in Schedule 6.

Major security update: any high-profile update that may compromise the security of the solution e.g. an operating system patch that fixes an issue that has been widely exploited.

Migration Plan: means the plan described and referred to in Schedule 10.

Modifications: means all translations, adaptations, arrangements, derivative works, developments, enhancements, error corrections, fixes, versions, upgrades, updates, new releases and, without limitation, by reference to the foregoing, modifications.

Normal Business Hours: 8:30 am to 17:30 pm UK time, each Business Day.

Project Plan: the plan to be developed in the planning stage of the Configuration Services and set out in Schedule 3.

Service Failure Event: shall have the meaning in clause 6.3.

Service Level Arrangements: the service level arrangements set out in Schedule 7.

Service Recipients: users of the System.

Services: the Configuration Services, Hosting Services and/or Maintenance, Support and Software as applicable, given the context in which the term **Services** is used.

Software: the Supplier's proprietary software in machine-readable object code form only as described in Schedule 5, including any error corrections, updates, upgrades, Modifications and enhancements to it provided to the Customer under this Agreement.

Software Specification: the functionality and performance specifications for the Software, as set out in Schedule 5.

Source Code: means all logic, logic diagrams, flowcharts, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications, program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the software in question without reference to any other person or document and such that the software is in eye readable form and in such form that it can be compiled or interpreted into equivalent object or run time code.

Supplier Account Team: the individuals appointed by the Supplier from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this Agreement. The initial members of the Supplier Account Team are listed in **Error! Reference source not found.**.

Supplier's Project Manager: the member of the Supplier's Account Team appointed in accordance with clause 2.2. The Supplier's Project Manager at the Effective Date is named in **Error! Reference source not found.**.

System: the iQemo application as a whole including integrations and cloud hosting platform.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

1.2   Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4   A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5   Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6   Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7   A reference to **writing** or **written** excludes faxes and e-mail (unless expressly stated).

1.8   References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.9   A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.10   If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

2.   RESOURCING AND CONFIGURATION SERVICES

2.1   The Supplier Account Team shall consist of the personnel listed at **Error! Reference source not found.**. The Supplier shall use reasonable endeavours to ensure continuity

of its personnel assigned to this Agreement. The Customer may, where feasible, select and remove members from the Suppliers Account Team.

2.2 The Supplier shall appoint the Supplier's Project Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this Agreement. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Supplier's business.

2.3 The Supplier shall provide the resourcing and perform the Configuration Services in accordance with Schedule 3. The Supplier shall meet the performance dates set out in Schedule 3.

2.4 Should the Supplier anticipate a delay in meeting the delivery dates set out in Schedule 3, the Supplier must, at its own cost, implement the Corrective Action Process set out in clause 15.

2.5 On delivery of each Deliverable, the Customer shall be able to access the Deliverable online. Within fifteen days of the Supplier's delivery to the Customer of any Deliverable, the Customer shall review the Deliverable to confirm that it functions in conformance with the applicable portion of the Software Specification. If the Deliverable fails to conform with the applicable portion of the Software Specification, the Customer shall give the Supplier a detailed description of any such non-conformance (**Error**), in writing, within the fifteen-day review period.

2.6 With respect to any Errors contained in any Deliverables delivered to the Customer during the Configuration Services, the Supplier shall correct any such Error promptly and, on completion, submit the corrected Deliverable to the Customer.

2.7 If the Customer does not provide any written comments in the fifteen-day period described above, or if the Deliverable is found to conform with the Software Specification, the Deliverable shall be deemed accepted.

3. **HOSTING SERVICES, MAINTENANCE AND SUPPORT**

3.1 The Supplier shall perform the Hosting Services and Maintenance and Support services. The Service Level Arrangements shall apply with effect from the date on which the Configuration Services have been satisfactorily completed.

3.2 The authorised Customer users shall have access to the Hosted Services.

3.3 In relation to the Software:

   (a) the Supplier hereby grants to the Customer on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable licence to allow Service Recipients to access the Software through the Hosting Services and to use the Software solely for the Customer's business purposes;

(b)   the Customer shall not:

(i)   attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties; or

(ii)   attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties; or

(iii)   access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services; and

(c)   the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

4.   CUSTOMER DATA

4.1   The Supplier shall, and shall procure that its sub-contractors shall, comply with the Data Protection Act 1998 (prior to 25 May 2018, as amended or superseded from time to time) (**DPA**) and the General Data Protection Regulations (with effect from 25 May 2018, as amended or supplemented from time to time (**GDPR**), including any relevant and binding codes of practice, guidelines, and advice issued by the Information Commissioner's Officer (together the **Legislation**) in relation to any Personal Data (as defined in the Legislation) relating to or originating from the Customer, Service Recipients, its employees or patients and consultant users to which the Supplier and its sub-contractors gain access for the purposes of or pursuant to the arrangements contemplated by this Agreement. Any defined terms used in this clause 4, which are not defined herein, shall have the meaning ascribed to them in the applicable Legislation.

4.2   The Supplier undertakes that:

(a)   it will not permit any third party to Process the Customer's Personal Data without the Customer's prior written consent;

(b)   neither it nor any of its sub-contractors shall process or direct the processing of or send for processing any Personal Data relating to or originating from the Customer, its Service Recipients, its employees or patients and consultant users other than in the European Economic Area;

(c)   it and its sub-contractors each has in place now and shall on a continuing basis take appropriate technical and organisational measures to keep all Personal Data relating to or originating from the Customer, its Service Recipients, its employees or patients and consultant users secure and to

protect the Personal Data against accidental loss or unlawful destruction or alteration or unlawful disclosure or access;

(d) neither it nor any of its sub-contractors shall by act or omission cause the loss or corruption of any personal data or Customer Data;

(e) it and its sub-contractors shall each act in relation to Personal Data relating to or originating from the Customer, Service Recipients, its employees or patients and consultant users only in accordance with the Customer's instructions as set out in this Agreement and Schedule 12;

(f) it will notify the Customer of any changes to the Supplier's sub-contractors;

(g) it will take all measures required by Article 32 of the GDPR to ensure the security of the Processing of the Customer's Personal Data;

(h) it will take reasonable steps to ensure the reliability of any Supplier staff who Process the Customer's Personal Data, and their commitment to confidentiality and ensure that such staff receive training in data protection;

(i) it will promptly notify the Customer without undue delay (and, in no event, more than twenty-four (24) hours) after becoming aware of a Personal Data Breach and such notice will include all information reasonably required and requested by the Customer to comply with its obligations under the Legislation, and further will provide all reasonable assistance required by the Customer in connection with such Personal Data Breach;

(j) it will make available to the Customer all information reasonably necessary to demonstrate Supplier's compliance with the obligations set out herein and permit the Customer or another auditor mandated by the Customer, on reasonable prior notice, to inspect and audit the facilities and systems used by the Supplier to Process the Customer's Personal Data, and provide all information relating to the technical and organisational measures used by the Supplier to ensure the security of the Processing of the Customer's Personal Data and any and all records maintained by the Supplier relating to that Processing;

(k) where request by the Customer, it will delete, transfer or amend any Customer Personal Data; and

(l) it will cease Processing the Customer's Personal Data immediately upon the termination or expiry of this Agreement and, at Customer's option, either return or securely delete the Customer's Personal Data (unless Member State or Union law requires storage of the Customer's Personal Data).

4.3 If any Customer Data is lost or corrupted as a result of any act or omission of the Supplier or its sub-contractors, the Supplier shall restore the Customer Data at its own expense to the last back-up properly made by or on behalf of the Supplier.

4.4 The Supplier shall ensure that any sub-contractors used by it who process Personal Data of the Customer and/or Service Recipients also enter into an agreement

undertaking to the Supplier in equivalent terms to the undertakings given by the Supplier to the Customer in this clause.

5. **SUPPLIER'S OBLIGATIONS**

5.1 The Supplier undertakes that the Services will be performed in accordance with the Software Specification, and with a high degree of competence, skill and care.

5.2 The Supplier undertakes to the Customer that all software comprising or comprised in Deliverables will be checked with an up-to-date virus checker immediately prior to its delivery and the Supplier will take all other necessary steps to prevent any Virus being introduced into such software or any of the Customer's Group's hardware or computer programs or any other information technology equipment or platforms in its possession, control or dominion or any of the Customer's Group's equipment and/or software used to provide any Services hereunder. The Supplier shall further ensure that its agents, employees and sub-contractors shall take all such necessary steps as aforesaid.

5.3 The Supplier shall comply with the Customer's:

   (a) policies and procedures relating to clinical and pharmaceutical requirements including in relation to electronic signature for the ordering, supply and administration of medicines; and

   (b) security requirements and ensure that the Services are performed in accordance with ISO:9001 and ISO:27001 standards.

5.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

5.5 The Supplier shall, at all times, maintain a minimum Level 2 certification with NHS Digital Information Governance Toolkit as amended from time to time (or its equivalent).

6. **SERVICE LEVELS**

6.1 The Supplier shall meet or exceed the level of performance required for each Service Level from the relevant date as set out in, or as agreed pursuant to and in accordance with, Schedule 7.

6.2 If the Supplier fails to achieve any of the Service Levels and/or perform to at least the requirements of any other relevant terms of this Agreement, then the Supplier will, without prejudice to the Customer's other rights under this Agreement or otherwise:

   (a) immediately notify to the Customer in writing;

   (b) advise the Customer of the status of remedial efforts being undertaken;

(c)   investigate the underlying causes of the failure to meet the Service Levels to determine the cause;

(d)   prepare and deliver to the Customer a report identifying the failure and, where possible, its causes;

(e)   create and implement a plan to correct the failure;

(f)   remedy such failure in accordance with the plan (provided the failure in question is remediable) and to the reasonable satisfaction of the Customer; and

(g)   advise the Customer of the steps it will take, where possible, to make a future failure to achieve the relevant Service Levels or failure to meet its obligations under this Agreement less likely.

6.3   Failure on the part of the Supplier to meet any of the Service Levels (over the relevant period of assessment for such Service Level) set out in Schedule 7 will be classified as a Service Failure Event. For the avoidance of doubt, each Service Level that is not met for each relevant period of assessment shall constitute one (1) Service Failure Event.

7.   CUSTOMER'S DEPENDENCIES

NOT USED.

8.   CHARGES AND PAYMENT

8.1   In consideration of, and to the extent only of, the due and proper provision of the Services in accordance with the terms of this Agreement, the Customer shall pay the Fees set out in Schedule 1.

8.2   The Customer shall not be liable for payment of any fees, charges, expenses or costs of whatever nature including (without limitation) travel, accommodation, document reproduction transportation, courier, telecommunications or fax charges in respect of such licences or services except to the extent expressly identified in Schedule 1.

8.3   All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.4   The Supplier shall invoice the Customer monthly covering all licence fees due for the immediate next month. Each invoice is due and payable 30 days from the date of the invoice billed on the 1st of the calendar month provided it is also accompanied by sufficient billing information setting out details of the Services provided.

8.5   If the Customer disputes in good faith all or any other payment shown by an invoice, it shall pay the Supplier the amount that is not in dispute but the Customer need not pay the amount that is in dispute until the dispute has been resolved.

8.6   The Fees shall remain fixed during the Initial Term of this Agreement. The Supplier may, at any time following the expiry of the Initial Term but no more than once in any renewal term, propose changes to the Fees by notice in writing to the Customer. The Supplier shall provide the Customer with all information reasonably requested by the Customer to evidence the reason(s) for the proposed change to the Fees. The Parties shall negotiate in good faith the terms of any such change in the Fees; however the Customer shall not be obligated to agree to any such proposed change in the Fees.

9.   CHANGE CONTROL

9.1   The Customer may request changes to the Software through the change request process described in Schedule 9.

9.2   The Supplier reserves the right to make changes to the Software not requested by the Customer where deemed necessary with the intention of improving the functionality, performance or to meet the requirements of the Suppliers other customers. Any such changes shall not result in additional fees or charges being incurred by the Customer, unless otherwise agreed with the Customer in writing in advance.

10.   PROPRIETARY RIGHTS

10.1   All intellectual property vesting in either party's Group prior to the Effective Date shall remain vested in such party's Group.

10.2   All intellectual property in any software and associated documentation created, developed or made by or on behalf of the Supplier in performance of or primarily to enable performance of any of the Services shall be wholly owned by the Supplier and/or its licensors.

11.   ESCROW ARRANGEMENTS

11.1   During the term of this Agreement, the Customer may require the Supplier to enter into an escrow arrangement and if it does, it shall notify the Supplier of its intention and upon being notified, the Supplier and the Customer shall each use best endeavours to agree and enter into a source code deposit agreement with "Escrow London" agreed between the parties in respect of all Source Codes comprised in or otherwise in respect of the Software or used by the Supplier in connection with the provision of the Services. If the parties and Escrow London do not enter into the source code deposit agreement within sixty (60) days of the date of this Agreement, either party may nominate an alternative escrow agent in place of Escrow London. If the parties and either escrow agent do not enter into a source code deposit agreement within a further sixty (60) days, then either party may further nominate an alternative escrow agent. If the parties and any escrow agent do not enter into a source code deposit agreement within a further sixty (60) days, the Supplier shall:

(a) deliver to the Customer an up-to-date and fully operational form of the Source Codes for the Software and all Modifications in respect of the Software used by or supplied or made available to the Customer; and

(b) comply with the provisions of clause 14.10.

11.2 The source code deposit agreement referred to in clause 11.1 shall instruct and authorise the escrow agent to release the Source Codes to the Customer on the occurrence of any of the following:

(a) the Customer gives notice pursuant to clause 14.5; or

(b) the events specified in clause 14.4; or

(c) any of the events specified in clause 14.2 in respect of the Supplier.

11.3 All costs arising in relation to the source code deposit agreement shall be paid by the Customer.

12.   CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement.   A party's Confidential Information shall not include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party; or

(b) was in the other party's lawful possession before the disclosure; or

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, including any stock or securities exchange.

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law,

any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.5   This clause 12 shall survive termination of this Agreement, however arising.

13.   LIMITATION OF LIABILITY AND INSURANCE

13.1   The Supplier's maximum liability in respect of the total amount of claims by or on behalf of the Customer that the Supplier has breached a term of this Agreement shall be five million pounds (£5,000,000) save that this clause shall not operate to exclude any liability of the Supplier:

   (a)   for fraudulent misrepresentation; or

   (b)   for death or personal injury; or

   (c)   for breach of any of clauses 4; 10; or 12; or

   (d)   in respect of any of the indemnities given by the Supplier in this Agreement; or

   (e)   anything that cannot be excluded by law.

13.2   The maximum liability of the Customer in respect of the total amount of claims by the Supplier that the Customer breached a term of this Agreement shall be no more than the total value of the Fees paid in the previous twelve months save that this clause shall not operate to exclude any liability of the Customer:

   (a)   for fraudulent misrepresentation; or

   (b)   for death or personal injury; or

   (c)   for breach of any of clauses 10 or 12; or

   (d)   anything that cannot be excluded by law.

13.3   Without limiting the Supplier's obligations or responsibilities under this Agreement, the Supplier shall take out and maintain insurance with reputable insurers to cover its liabilities under this Agreement, including for death of or injury to any person and loss of or damage, to any property (including property belonging to the Customer's Group or for which it is responsible) and any other loss, liability, damage, cost or expense.

13.4   The Supplier shall promptly, upon written request from the Customer from time to time provide the Customer with copies of all relevant insurance policies and evidence of payment of premiums due to reasonably satisfy the Customer that insurance has been taken out and is being maintained by the Supplier as required pursuant to clause 13.3 and for the purposes of assessing whether the range and amount of cover is sufficient.

13.5   All monies received by the Supplier under any policy or policies of insurance in respect of its liabilities under this Agreement for destruction or damage or loss of any materials or property or such proportion of the monies received as is applicable

thereto shall (subject to any right of set-off available to the Supplier) be applied in or towards the replacement or repair of such materials or property and this provision shall not affect any other obligation of the Supplier or the Supplier's liability under this Agreement.

14. TERM AND TERMINATION

14.1 This Agreement shall commence on the Effective Date and shall continue for a period of 12 months (**Initial Term**) unless this Agreement is terminated by the Customer giving at least 30 days' notice.

14.2 After the Initial Term this agreement shall continue for successive renewal terms of 12 months each, unless this Agreement is terminated by the Customer giving at least 30 days' notice.

14.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

    (a)   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

    (b)   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

    (c)   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

    (d)   an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

    (e)   the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

    (f)   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

    (g)   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(a) to clause 14.3(g) (inclusive); or

(i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.4 Without affecting any other right or remedy available to it under this Agreement, by law or otherwise, the Customer may terminate this Agreement with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material breach of this Agreement and either the breach is not capable of remedy or, having received notice from the Customer requiring it to remedy the breach, it does not remedy the breach within thirty days of the notice; or

(b) without limiting the Customer's ability to terminate pursuant to clause (a) the Supplier fails to remedy any persistent or continuous breach within thirty days after receipt of notice from the Customer to do so; or

(c) two (2) or more Service Failure Events have occurred in any consecutive three (3) month period or in any five (5) months in any rolling 12-month period; or

(d) two or more Warning Notices have been issued in any Month or five or more Warning Notices have been issued in any rolling six-month period; or

(e) a Service Failure Event has occurred and the Supplier fails to remedy this in accordance with this Agreement; or

(f) the Supplier fails to comply with a Corrective Action Plan; or

(g) the Supplier does not submit a Corrective Action Plan in accordance with clause 15.3(b); or

(h) the parties fail to agree the Corrective Action Process in accordance with clause 15.7; or

(i) the Supplier fails to implement or successfully complete the Corrective Action Plan in accordance with the Corrective Action Process pursuant to clause 15.6; or

(j) there is a breach of any of clauses 4, 10, or 12 by the Supplier.

14.5 The Customer may terminate this Agreement:

(a) on immediate notice if there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or

(b) at any time by providing 30 day's written notice to the Supplier;

(c)   by either immediately by written notice to the other if the other is in material or persistent breach of any of the conditions of this contract and either that breach is incapable of remedy or the offending party shall have failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach;

For the avoidance of doubt no termination payment shall be payable in connection with any termination by the Customer pursuant to this clause.

14.6   Should any Fees specified in Schedule 1, that have been properly invoiced, are not paid within sixty days after the period for payment the Supplier and Customer will formally agree a payment resolution plan. Should any Fees remain unpaid after the resolution has been agreed the Supplier may, at its discretion, terminate this agreement within 30 days.

14.7   The Supplier acknowledges and agrees that clause 14.3 and clause 14.6 set out the only grounds upon which the Supplier may terminate this Agreement.

14.8   The parties acknowledge that while none of the termination payments (if any) made pursuant to this clause 14 should properly be regarded as consideration for the supply of services for VAT purposes and therefore that no VAT would fall to be chargeable in connection with any termination payment, the Customer shall not be due to pay any termination payment in the absence of an invoice from the Supplier in respect of the termination payment. For the avoidance of doubt the Supplier shall not be entitled to submit the invoice to the Customer until termination has occurred.

14.9   The Customer may notify the Supplier from time to time and at any time that the Customer intends to cease (in whole or in part) receiving the Services and to commence receiving alternative Services. On and as required by each notification, the Supplier shall do all things necessary to enable the Customer to perform the Services in substitution for the Supplier and:

(a)   eliminate or minimise any disruption or deterioration of the Services or failure to achieve the Service Levels during or as a result of the change from the Supplier as the supplier of the Services; and

(b)   comply with the Migration Plan.

14.10   On termination of this Agreement for any reason:

(a)   all licences granted under this Agreement shall immediately terminate;

(b)   each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

(c)   the Migration Plan will be invoked;

(d)   any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages

in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15.   CORRECTIVE ACTION PROCESS AND STEP-IN

15.1   Where the Customer gives notice to the Supplier that the Customer believes that the Supplier is likely to default in its compliance with any of its obligations under this Agreement and:

(a)   the Supplier does not disagree in writing within five Working Days; or

(b)   the Supplier disagrees in writing within five Working Days, in which case the dispute shall automatically be referred to emergency resolution under the dispute resolution procedures specified in Schedule 11, and the dispute is resolved under the emergency procedure in favour of the Customer.

15.2   The parties agree and declare that a Corrective Action Notice shall not restrict the Customer in or prevent the Customer from serving any termination notice or from issuing a subsequent or other Corrective Action Notice.

15.3   Acting promptly (taking into account the nature and severity of the breaches) and in any case within five Working Days of receipt of a Corrective Action Notice, the Supplier shall either:

(a)   submit a draft Corrective Action Plan, even if it disputes that it is responsible for the matters which are the subject of the Corrective Action Notice; or

(b)   inform the Customer that it does not intend to submit a Corrective Action Plan, in which event the Customer shall be entitled to terminate this Agreement.

15.4   The Customer shall either approve the draft Corrective Action Plan within five Working Days of its receipt, or it shall inform the Supplier why it cannot accept the draft Corrective Action Plan. In such circumstances, the Supplier shall address all such concerns in a revised Corrective Action Plan, which it shall submit to the Customer within two Working Days of its receipt of the Customer's comments. If no such notice is given, the Supplier's draft Corrective Action Plan shall be deemed to be agreed.

15.5   Once agreed, the Supplier shall immediately start work on the actions set out in the Corrective Action Plan. Performance by the Supplier of its obligations under this clause shall be without prejudice to any other rights or claims that the Customer may have under this Agreement, Applicable Law, in equity or otherwise in relation to the circumstances that gave rise to the Corrective Action Notice.

15.6   If a Corrective Action Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Corrective Action Plan by the required Corrective Action Plan completion date, the Customer may:

(a)   terminate this Agreement; or

(b)   give the Supplier a further opportunity to resume full implementation of the Corrective Action Plan; or

(c)   escalate any issues under the Dispute Resolution Procedure.

15.7   If, despite the measures taken under this clause, a Corrective Action Plan cannot be agreed within twelve (12) Working Days then the Customer may elect to end this Corrective Action Process and terminate this Agreement.

15.8   If any persistent breach (including under the Corrective Action Process pursuant to this clause and any Service Failure Event), default, force majeure pursuant to clause 17, implementation of the Disaster Recovery and Business Continuity Plan, emergency, including any need for the Customer to take any action as a result of any legal or regulatory reason (not being a force majeure event) or non-performance by the Supplier under this Agreement substantially prevents, hinders, degrades or delays the performance of the Services (**Affected Function**), at the Customer's option and without limiting any other rights of the Customer (whether in law or under this Agreement) , the Customer may, upon prior written notice, take control of the part of the Services that impacts on the Affected Function and, in doing so, may take such other action as is reasonably necessary to restore the Affected Function.

15.9   The Customer will cooperate with the Supplier to the extent reasonably necessary in respect of any shared services environment of the Supplier and, where possible, shall follow the Supplier's then current procedures and processes, so far as applicable to the delivery of the Services.

15.10   Nothing in this clause 15 shall limit the Supplier's liability to the Customer with respect to any default or non-performance by the Supplier under this Agreement. However, the Supplier shall not be liable for any further significant failure or deterioration in the Services that is directly caused by the Customer exercising the step in rights.

15.11   When any of the following occurs:

(a)   the Customer gives the Supplier notice that either the Customer or a third party acting on its behalf cannot remedy the failure to provide the Affected Function; or

(b)   where appropriate, the Supplier gives the Customer notice that the event triggering the exercise of the Customer's rights under clause 15.8 above has ended and that the Supplier is able to continue to provide the affected Services, then the step-in shall cease.

16.   AUDIT AND MONITORING

16.1   Audit

(a)   Subject to clause 16.1(c), the Customer and any agents or consultants of the Customer may at any time and with reasonable prior notice of no less than one (1) month undertake any inspection of any of the Services, and make

any audit or check of any aspect of the Supplier's performance of this Agreement as required by the Customer. The Supplier shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

(b) The Customer shall not (other than where it has reasonable grounds to believe that the Supplier is failing to comply with its obligations under this Agreement) exercise its right referred to in clause 16.1(a) more than two (2) times in any twelve (12) month period.

(c) Without prejudice to clauses 16.1(a) and 16.1(b), the Customer may undertake its own performance monitoring at any time for any purpose arising out of or in connection with this Agreement, including in order to ensure that the Services are being provided in accordance with this Agreement.

16.2   Monitoring

(a) At no cost to the Customer, monitoring meetings between the Supplier and the Customer shall be held, either in person, video conferencing or telephone call every month or at such other intervals not less than monthly as the Customer may reasonably request to the Supplier in writing.

(b) A suitably senior representative of the Supplier shall be required to attend each monitoring meeting supported by personnel suitably qualified to respond to the areas of expertise notified by the Customer.

(c) The Supplier shall bring to each monitoring meeting such information for the preceding month, comprising:

(i)   details of the Services provided to the Customer and the prices of those Services;

(ii)   details of all Service Failure Events;

(iii)   details of all complaints about the Services and details of the resolution of the complaint (if applicable); and

(iv)   any other information that the Customer reasonably requests.

16.3   Warning Notices

(a) Without prejudice to the Customer's rights under clause 14 (Term and Termination) and any other express rights under this Agreement, if at any time the Supplier has committed any material or persistent non-material breach of its obligations under this Agreement then the Customer may give written notice (**Warning Notice**) to the Supplier setting out the matter or matters giving rise to such notice and containing a reminder to the Supplier of the implications of such notice. Any such notice shall state on its face that it is a "Warning Notice". The maximum number of Warning Notices that the Supplier may receive in any one Month is one (1).

(b) Without prejudice to the Customer's rights under clause 14 (Term and Termination) and any other express rights under this Agreement, if the Supplier receives one (1) or more Warning Notices in respect of the Services, the Customer may by notice to the Supplier increase the level of its monitoring of the Supplier, or (at the Customer's option) of the Supplier's monitoring of its own performance of its obligations under this Agreement.

16.4   Reporting a Service Failure Event

(a) Failure on the part of the Supplier to meet any of the KPIs / thresholds (over the relevant period of assessment for such KPI/threshold) set out in Schedule 7 will be classified as a Service Failure Event. For the avoidance of doubt, each KPI / threshold that is not met for each relevant period of assessment shall constitute one (1) Service Failure Event.

(b) The Supplier shall be responsible for monitoring the performance of Services and this includes a duty to record all Service Failure Events that occur. The Supplier is required to report all Service Failure Events to the Customer within ten (10) days of a Service Failure Event occurring.

17.   FORCE MAJEURE AND BUSINESS CONTINUITY

17.1   Force Majeure

(a) Subject to clause 17.2, neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, act of God, war, riot, civil commotion, malicious damage, or fire, flood or storm. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

17.2   Business Continuity

(a) the Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms.

(b) The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every 12-month period). The Customer shall be entitled to participate in such tests as it may reasonably require.

(c) Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.

18.   WAIVER

18.1   A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

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

19.   COMPLIANCE WITH APPLICABLE LAW, RIGHTS AND REMEDIES

19.1   The Supplier shall (at no additional cost to the Customer) at all times carry out and provide the Services in compliance with all Applicable Laws. The Supplier shall maintain such records as are necessary pursuant to such Applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Customer (or its authorised representative).

19.2   The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Fees as the result of a change in Applicable Law.

19.3   Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Applicable Law.

20.   SEVERANCE

20.1   If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

20.2   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21.   ENTIRE AGREEMENT

21.1   This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2   Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

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

22. ASSIGNMENT

22.1 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement but the Supplier may sub-contract to each of the entities named as a sub-contractor in **Error! Reference source not found.**.

22.2 The Customer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

24. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. NOTICES

26.1 Any notice required to be given under this 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 address set out in this Agreement with a copy (in the case of the Customer) to a selected Customer representative or such other address as may have been notified by that party for such purposes.

26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery) with a copy (in the case of the Customer) sent to the e-mail address set out in clause 26.1. 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. A notice sent by e-mail shall be deemed to have been received at the time of transmission.

27. DISPUTE RESOLUTION

The parties intend, where it is practicable to do so and depending on the nature of the dispute in question, to attempt to resolve disputes informally. Any dispute between the parties arising out of or relating to this Agreement which cannot be resolved between the parties will be resolved as provided in Schedule 11.

28. GOVERNING LAW

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

29. JURISDICTION

Subject to clause 27, the parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by   ....
for and on behalf of **IQ HEALTHTECH
LIMITED**

Signed by   ....
for and on behalf of **[The Customer]**

Schedule 1   Fees

To be defined as per G-Cloud pricing document

Schedule 2   Personnel

To be defined in accordance with the Customer

SUPPLIER

1.1   Supplier Account Team

Project Sponsor		
Project Manager		
Solution Architect		
Integration specialist		
UAT test lead		
Technical support manager		

SUBCONTRACTORS

1.2   Supplier's subcontractors

Oncology pharmacist		
Hosting		

CUSTOMER

1.3   Customer Account Team

Project Manager	
Clinical Lead	
Lead Pharmacist	
Lead Nurse	
IT Primary Contact	

Schedule 3   Project Approach, Resourcing and Configuration Services

To be defined in accordance with the Customer

[Insert Project Plan and Project Initiation Document]

Schedule 4   Cloud Hosting Services

1.   **HOSTING SET-UP**

The set-up phase of the Cloud Hosting Services includes those services provided by the Supplier or its contracted third parties to design, install, configure and test the Cloud Hosting Services, as well as the hosting facility and internet connectivity, to ensure agreed Service Level Arrangements, application performance and Disaster Recovery objectives (as set out in Schedule 8) are delivered as per the requirements of the Customer.

2.   **INSTALLATION AND CONFIGURATION**

The Supplier shall procure, install and configure all necessary hosting equipment to provide the Customer access to the Software. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects, and installation of the Software.

3.   **FACILITY**

The hosting equipment shall be installed in a rack-mounted configuration inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, fire suppression, and managed power supply with UPS and generator back-up.

4.   **INTERNET CONNECTIVITY**

(a)   The Supplier shall provide secure internet connectivity through an internet service provider at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and a load balancer for traffic management and speed optimisation. The Customer shall, and shall ensure that its Service Recipients shall, make their own arrangements for internet access in order to access the Software.

(b)   The Supplier shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access.

5.   **CONTINUING HOSTING SERVICES**

The continuing Hosting Services provided by the Supplier or its contracted third parties, which allow for availability (as per the agreed requirements set out in Schedule 7) of the Software, include internet connectivity (as detailed in paragraph 4 above), load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

6. **LOAD DISTRIBUTION MANAGEMENT**

The Supplier shall provide load-balancing services to distribute load and redundancy across front end web application servers. The Supplier will always use its best endeavours to provide agreed response times as set out in Schedule 7 at peak concurrent user load across the Customers authorised users.

7. **SECURITY SERVICES**

The Supplier shall provide security services as follows:

(a)   the data centre shall be fully compliant with ISO:27001 and ISO:9001 standards;

(b)   For performance, reliability and security purposes the Software environment is split across multiple dedicated servers which are load balanced. These servers are protected by a dedicated pair of Cisco ASA 5500 firewalls. The data is held in a mirrored Microsoft SQL Server database which is configured with automatic failover (for technical details please see iQemo System Level Security Policy).

(c)   facility access shall be limited to the authorised Supplier and contracted third-party personnel as described in the hosting suppliers data sharing agreement. Access to the servers containing the data will be provided only as required in the event of a support ticket raised with the hosting supplier. Access is otherwise restricted. This may be audited through the hosting suppliers help desk ticket system.

(d)   the facility shall be monitored 24 hours a day, seven days a week through closed circuit video surveillance

(e)   access to all system data is restricted to specified named Supplier employees as described in our iQemo System Level Security Policy.

(f)   the hosting supplier will be granted access if required to engage in any support issues. This will be in accordance with the signed data processing agreement with the hosting supplier.

(g)   data access security shall be provided through managed firewall services via a virtual private network for administration and SNMP monitoring

(h)   Industry standard anti-Virus software, that is automatically updated to the latest virus definitions, is installed on all servers.

(i)   Software patch management, including server operating systems, SQL Server data base management software, firewalls, load balancer and the iQemo application. Patches will be applied as required, typically on a monthly cycle, outside of Normal Business Hours to ensure minimal disruption to the System. Supplier will use best endeavours to ensure there is no disruption to the Customers authorised users.

(j)   All data will be encrypted in transit between the Service Recipients' web-browser and the System.

(k)   Encrypted at rest data backup to an offsite location. Backup data will be encrypted in transit to the offsite location.

7.2   **Penetration Testing**

The Customer may, with prior notice, perform its own penetration testing against the iQemo system and hosting infrastructure. This will be arranged and paid for by the Customer.

8.   MONITORING SERVICES

The Supplier shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

9.   BACK-UP, ARCHIVING AND RECOVERY SERVICES

The Supplier shall develop the back-up Schedule, perform Scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up Schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up. Data backups will be encrypted at rest with AES256. The Supplier shall ensure that backups are tested on a monthly basis. The Supplier shall ensure that data is mirrored to a separate SQL Server to ensure that there is no data loss if the primary SQL Server fails.

The Supplier will ensure that the Customer is provided with access to its iQemo data by an agreed means, and at an agreed frequency, to enable additional business intelligence reporting.

10.   RELEASE MANAGEMENT AND CHANGE CONTROL

The Supplier shall provide release management and change control services (see iQ HealthTech Operational Change Control Procedure) to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by the Supplier to maintain the Hosting Services.

The Supplier undertakes to the Customer that all software comprising or comprised in the Services and Deliverables will be checked with an industry standard virus checker (Symantec Endpoint Protection) that is setup to automatically update to the latest virus definitions. Any software developed is virus checked, using this virus checker, immediately prior to its deployment to the production servers and the Supplier will take all other necessary steps in accordance with good industry practice to prevent any Virus, software switch, time or logic bomb or disabling code, routine or expiration date as (these terms are understood in the computer industry) being introduced into such software or any of the Customer's Group's hardware or

computer programs or any other information technology equipment or platforms in its possession, control or dominion or any of the Customer's Group's equipment and/or software used to provide any Services hereunder. The Supplier shall further ensure that its agents, employees and sub-contractors shall take all such necessary steps as aforesaid.

11.   **ADMINISTRATION SERVICES**

These services include the installation and administration of additional hardware, operating system(s) and other software, and other resources as necessary to maintain the Hosting Services.

Schedule 5   Software

The Software is the iQemo e-prescribing software, a systemic anticancer therapy (SACT) prescribing application that enables doctors to securely prescribe their patients SACT from any location with an internet connection. The Software consists of the following components:

- SACT protocol module for building and approving SACT protocols.

- SACT e-Prescribing module to allow doctors to refer, prescribe and digitally sign SACT prescriptions and pharmacists to screen and verify protocols.

- Scheduling module

- Nurse administration module to allow patient SACT drug administration to be recorded.

- NHS SACT Reporting

Please see the formal specification of the iQemo system functionality for the current version XXXX, which describes the system functionality in more detail. Such formal specification may be subject to change by the Supplier from time to time. Such changes shall be dealt with in accordance with the change request process set out in Schedule 9 below. A copy of the current iQemo system functionality document is set out directly below:
[Include latest iQemo Specifications]

Schedule 6   Maintenance and Support

1.   MAINTENANCE EVENTS

1.1   Maintenance of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services (**Maintenance Events**) shall not be performed during Business Days (including bank holidays) between 08:00 and 20:00 UK time.

1.2   The Supplier may interrupt the Services to perform planned maintenance on Saturdays or Sundays between 06:00 to 12:00 UK time. The Supplier will provide notification of any planned maintenance at least 3 Business Days in advance.

1.3   In addition, the Supplier may interrupt the Hosting Services outside Normal Business Hours for emergency un-scheduled maintenance, provided that it has given the Customer at least two hours' advance notice.

1.4   In the event of a major security update being published the Supplier reserves the right to apply any update within 24 hours of an update becoming available and any downtime caused will not be considered for the purpose of service availability measurement.

1.5   Any Maintenance Events which occur during Normal Business Hours, and which were not requested or caused by the Customer, shall be considered downtime for the purpose of service availability measurement. The Supplier shall at all times use its best endeavours to meet the agreed service levels, as per schedule 7, and keep any service interruptions to a minimum.

1.6   Any downtime caused by the Customer's equipment or infrastructure failure will not be considered for the purpose of service availability measurement.

1.7   The Supplier may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth, and may install that equipment and/or bandwidth without approval from the Customer. Such additional equipment and/or bandwidth shall be provided by the Supplier at the Supplier's sole expense.

2.   MAINTENANCE

2.1   System maintenance includes the following actions, which shall be carried out by the Supplier:

   a)   Operating system updates and patches (Microsoft Windows Server).

   b)   Database management system updates and patches (Microsoft SQL Server).

   c)   iQemo quarterly updates – new functionality.

d) Database indexing / performance tuning.

e) Firewall firmware updates.

f) Load balancer updates and patches.

g) Anti-virus software definition updates.

2.2   Operating system and database management systems will be updated on a monthly schedule as they are released by the respective third party supplier.

2.3   Additional features, outside of the scope of this Agreement, developed by the Supplier, as requested by the Customer, may be purchased separately at the Supplier's then current pricing, at the time of request, as agreed between both parties in writing via change request.

2.4   The Supplier shall maintain and update the iQemo Software. Should the Customer determine that the iQemo Software includes a Defect, the Customer may at any time file error reports via the Supplier's service desk. During maintenance periods, the Supplier may, at its discretion, upgrade versions, install error corrections and apply patches to the System. The Supplier shall use all reasonable endeavours to avoid un-scheduled downtime for Software maintenance.

3.   **TECHNICAL SUPPORT SERVICES**

3.1   The Supplier shall provide the Customer with technical support services as per the Service Level Arrangements set out within schedule 7. The Supplier shall provide the Supplier support engineers (SSEs) named in Schedule 2 who are assigned to the Customer account. The SSEs shall handle support calls from the Customer and shall maintain continuity of knowledge of the Customer account history. The Supplier shall use reasonable endeavours to provide continuity of SSEs.

3.2   Supplier technical support shall accept voicemail (via the helpdesk number 01202 489 554) or e-mail (via support@iQemo.com) 24 hours a day, seven days a week. The Supplier technical support call centre shall accept calls for English language telephone support during Normal Business Hours. The Supplier shall use all reasonable endeavours to process support requests, issue trouble ticket tracking numbers, determine the source of the problem and respond to the Customer as per the Service Level Arrangements in schedule 7. The Supplier technical support call centre shall respond to all support requests from the Customer within the time periods specified in Section 1 of Schedule 7 (Service Level Agreement), according to priority.

3.3   The Supplier shall provide monitoring of its Hosting Services as described in paragraph 8 of Schedule 4 24 hours a day, seven days a week.

3.4   The Customer shall also use reasonable efforts to provide support requested by the Supplier for data integration tools and processes developed or maintained by the

Customer in order to connect the Software to the Customer's other software and databases.

3.5   Before the Supplier or the Customer make changes to integration interfaces between the Software and the Customer's internal data stores or systems, the Supplier or the Customer shall provide notice to the other in order to ensure the continued operation of any integration interfaces affected by such changes. The Supplier shall provide The Customer, or the Customer shall provide the SSEs, with at least 60 days' advance notice of such changes. Such notice shall include at least the new interface specifications and a technical contact to answer questions on these changes. The Supplier or the Customer (as applicable) shall also provide up to 10 Business Days of integration testing availability to ensure that operational testing and user acceptance testing has been satisfactorily performed and signed off by both the Customer and the Supplier. If the Customer requires a new interface or a change to the existing interface the Customer shall pay for all such services relating to integration testing carried out by the Supplier at the Supplier's then current daily fee rates.

3.6   Should the Supplier be unable to resolve a technical issue involving the underlying server operating system or database management system the Supplier will arrange and cover the cost of "Professional Support" from the relevant software supplier.

Schedule 7   Service Level Arrangements

1. Service Levels

Service Levels	Monthly Uptime Percentage	Measurement Period
Uptime guarantee	99.9%	Monthly

Service Priority	Response Time	Fix
Priority 1 - Critical	5 minutes	2 hours
Priority 2 - Very High	15 minutes	4 hours
Priority 3 - High	30 minutes	8 hours
Priority 4 - Medium	2 hours	2 days
Priority 5 - Low	4 hours	Agreed with a member of the Customer Account Team

2. Definitions

In this Schedule, the following words have the following meanings:

Uptime guarantee: The Service availability to Service Recipients calculated on a monthly basis.

Downtime: any period of time during which the Service is not available.

Downtime Period: means any period of five consecutive minutes where Downtime occurs.

Fix: means a permanent solution to an incident or problem that is agreed with the Customer and then implemented.

Monthly Uptime Percentage: means the total number of minutes in the relevant calendar month minus the number of minutes of Downtime incurred from all Downtime Periods in the relevant calendar month, divided by the total number of minutes in the relevant calendar month.

Response Time: means the period of time between the Customer first logging an incident or problem with the Supplier's Help Desk until a solution or workaround is found by the Supplier.

Scheduled Downtime: means Downtime that is notified to the Customer by the Supplier at least five (5) Business Days prior to the commencement of such Downtime. Scheduled Downtime is not considered Downtime for purposes of the SLA, and will not be counted towards any Downtime Periods.
Scheduled downtime will include, but is not limited to, the following:

- Microsoft Windows updates

- Microsoft SQL Server updates

- iQemo software updates

- Security updates to Firewalls, Load Balancers and other infrastructure

In the event of a major security update being published, the Supplier reserves the right to apply such update within 24 hours of that update becoming available and any downtime caused will not count against the 99.9% Uptime Guarantee.

Any downtime caused by a force majeure event affecting the Supplier or its third-party supplier, or any downtime that results from the Customers equipment or infrastructure failure will not count towards the 99.9% Uptime Guarantee.

3. **Support request priorities**

   a. All time periods are calculated from the date and time of receipt of a notification by the Supplier's Help Desk of an incident or problem and continue during the hours for which support services are provided by the Supplier which, for purposes of clarity shall be Normal Business Hours. For Priority 1, Priority 2 and Priority 3 incidents or problems, support will continue to be provided by v until the incident or problem is resolved, even if this extends beyond Normal Business Hours.

   For incidents or problems reported over email by the Customer, an automatic time stamp is created by the Supplier's Help Desk system upon receipt of such email support ticket request.

   For incidents or problems reported over the phone by the Customer, the Supplier will manually raise a support ticket in the Supplier's Help Desk system, which shall generate a time stamp.

   b. The Customer shall determine the priority of any fault, using one of following priorities:

   Priority 1 – Critical Fault
   The problem will be defined as Priority 1 when the entire Service is down and inaccessible. Priority 1 incidents shall be reported by telephone only.

   Priority 2 – Very High Fault
   The problem will be defined as Priority 2 when operation of the Services is severely degraded, or major components of the Service are not operational, and work cannot reasonably continue.

   Priority 3 – High Fault

The problem will be defined as Priority 3 when certain features of the Service are impaired while most major components of the Service remain functional.

Priority 4 – Medium Fault

The problem will be defined as Priority 4 when certain non-essential features of the Service are impaired while most major components of the Service remain functional.

Operational support requests, notably request for new drugs, removal of discontinued drugs and assistance with new regimen configuration, will be classified as a 'Priority 4 – Medium Fault' accepting that they are not faults other than in exceptional circumstances as mutually agreed on a case-by-case basis and will not be subject to service credit allocation.

Priority 5 – Low Fault

The problem will be defined as Priority 5 for errors that are, non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services.

4. Performance Measurement

a. The Supplier will measure its performance in respect of the Service Levels listed in this Schedule and will report such performance (including the provision of an exceptions report and failed orders) to the Customer monthly on a date agreed between the Customer and the Supplier.

5. Reporting

a. The Supplier shall utilise the necessary internal measurement and monitoring tools and procedures required to measure and report the Supplier's performance of the Services against the applicable Service Levels. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify the Service Levels are being met and shall be subject to audit by the Customer. The Supplier shall provide the Customer with information and access to such tools and procedures upon request, for purposes of verification.

b. The Supplier shall measure its actual performance of the Services against the Service Levels, not merely a sampling of its performance of such Service, unless otherwise specifically stated in the measurement methodology for a specific Service Level.

c. If the Supplier fails to properly monitor or measure any Service Level or report on its performance for any Service Level as required in this Schedule on or

before the date that the report is due, then in either case the Supplier shall be deemed to have failed to meet such Service Level.

d. Post go-live of the Service, the Supplier will attend quarterly project review meetings with the Customer to review any issues, system changes and performance against KPIs (to be determined by the Customer).

The Supplier will provide monthly reports that will include, but not limited to, the following:

- System uptime
- Support ticket priorities and resolution times
- System usage - consultant numbers/ number of scripts
- Software releases – planned/unplanned

6. **Service Credits**

The Supplier offers the following service credits in the event of a failure by the Supplier to meet the Uptime Guarantee.

Monthly Uptime Percentage	Measurement Period	Service Credit Allocation
99.90% – 99.94%	24 / 7 monthly	5% of monthly license fee
98% - 99.89%	24 / 7 Monthly	10% of monthly license fee
< 98%	24 / 7 Monthly	20% of monthly license

The Supplier offers the following service credits in the event of failure of the Supplier to meet the response and/or resolution times to service requests.

Service Level	Response Time	Resolution Time	Service Credit Allocation
Priority 1 - Critical	15 minutes	2 hours	20% of monthly license fee
Priority 2 - Very High	30 minutes	4 hours	10% of monthly license fee
Priority 3 - High	2 hours	8 hours	5% of monthly license fee
Priority 4 - Medium	4 hours	2 days	0%
Priority 5 - Low	8 hours	Agreed with Authorised User	0%

Schedule 8   Disaster Recovery and Business Continuity Plan

1.   **BACKGROUND**

1.1   Business continuity planning (BCP) is not solely about IT failure and a business continuity plan must be written by the operators of the business as the primary focus is the continuance of the applicable service as best as possible and as safely as possible to their patients.   Typically, BCP scenarios include loss of power, loss of access to the building, shortage of staff etc.   BCP is distinct from disaster recovery (DR) which concerns the recovery of failed IT systems.   As the Software is 'software-as-a-service' (SaaS, i.e. outsourced), the parties agree that responsibility for DR falls on the Supplier.

2.   **NETWORK FAILURE**

2.1   There are principally three components: (i) the local area network (LAN), (ii) the organisations connectivity to the Customer's core network (WAN), and (iii) the Customer's central connection out to the internet.   It should be noted that this scenario is not specific to the Software.   Should the LAN or WAN for an organisation fail, they would have no access to a host of other systems.   Likewise failure of the central internet connection would affect email access, staff remote access, consultant remote access, the Customer's website and a number of other services.

3.   **RESILIENCE**

3.1   The Customer has built in resilience with dual links at both the WAN and internet connection level.   So whilst failures do occur, they are infrequent and typically short lived.   However, that does not mean there is no risk of significant failure as indeed there is with other services that would impact the business such as power supply.

3.2   The Supplier will ensure the hosting environment will conform to an RPO of at least 15 minutes or better and an RTO of at least 4 hours or better.

4.   **MITIGATION**

4.1   The System provides the functionality to generate and securely transfer prescriptions to a specified file location, automatically. It is recommended that this functionality is utilised as part of the DR plan. The Customer shall provide the location to the SFTP site and the Supplier will configure the System to transfer the PDF prescriptions to this file location. The System will transfer a copy of the PDF prescription at the following times:

(a)   When a prescription is first prescribed

(b)   When a prescription is screened

(c)   If any change is made to the prescription

To avoid the risk of error the System will overwrite the PDF prescription so that the latest version is always available. The Supplier recommends that the Customer ensures that this SFTP location is backed up as part of the daily backup routine.

4.2   Alternatively if the functionality described in 4.1 is not utilised it is recommended that the Customer manually downloads each PDF prescription when they are screened and copies them to a location on the Customer's local network.

4.3   In the event of LAN or WAN failure, only one site is affected. Therefore staff centrally or at another site would continue to have access and could provide vital information over email, fax or bike courier.

5.   **CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

5.1   The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan shall incorporate the matters set out in this Schedule above and shall also include:

(a)   details of how the Supplier will implement the Disaster Recovery and Business Continuity Plan;

(b)   details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Customer (as notified by the Customer from time to time);

(c)   details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services; and

(d)   identification of all reasonably possible failures of or disruptions to the Services.

5.2   The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan shall also include:

(a)   back-up methodology;

(b)   data verification procedures;

(c)   identification of potential disaster recovery scenarios;

(d)   provision of appropriate levels of spares, maintenance equipment and test equipment;

(e)   responsibilities of the sub-contractors in the event of a disaster;

(f)   hardware configuration details, network planning and invocation rules and procedures;

(g)   Service levels that the Supplier will have to comply with in the event of a disaster; and

(h)   Customer dependencies (if any).

5.3   The Supplier shall also ensure that the Disaster Recovery and Business Continuity Plan defines the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations. It shall also define the rules for storing data, the required availability for that data and the mechanisms for making that data available. It shall also include:

(a)   risk analysis (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis);

(b)   possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure;

(c)   business continuity maintenance;

(d)   documentation of business processes, procedures and responsibilities;

(e)   a communications strategy; and

(f)   procedures for reverting to normal service.

6.   REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

6.1   The Disaster Recovery and Business Continuity Plan shall be reviewed by the Customer and the Supplier annually, or at such other times as may be requested by the Customer or the Supplier.

Schedule 9   Change Request Process

1.   OVERVIEW

1.1   This document outlines the change request process to be implemented between the Customer and the Supplier for the Services. The process outlined in this document will be necessary for all changes to the System in order to provide a safe, consistent and controlled approach to further enhancing the System.

2.   DEFINITIONS

2.1   In this Schedule, the following words shall have the following meanings:

Change: A change in the context of this document is defined as any change to existing functionality that is already part of the Services (including the iQemo software and hosting facilities) or any new functionality proposed for inclusion in a subsequent release of the Services.

User story: A user story is a tool used in agile software development to capture a description of a software feature from an end-user perspective. The user story describes the type of user, what they want and why. A user story helps to create a simplified description of a requirement.

Acceptance test: An acceptance test is a formal description of the behaviour of a software product, generally expressed as an example or a usage scenario.

Release: A release is a collection of user stories from the product backlog. Each release is given a unique version number.

Product Backlog: The product backlog is simply a list of all User Stories that have not yet been scheduled to a specific release number. These items can have a technical nature or can be user-centric e.g. in the form of user stories.

User Acceptance Testing: Acceptance Test undertaken by the Service users

3.   AUTHORISED CUSTOMER APPROVAL STAFF

3.1   The Customer's change advisory board will appoint representatives to cover the following roles:

    (a)   Person responsible for screening and approving all Change requests

    (b)   Person(s) responsible for signing off User Acceptance Testing

    (c)   A designated point of contact for the Supplier to discuss implementation requirements with the Customer

4.   CHANGE REQUEST PROCESS

4.1   The Change request process is split into the following high-level sections, these are:

(a)   Identify – A user determines that a Change is needed or a feature needs to be added

(b)   Authorise – the Customer authorises the Change

(c)   Schedule – All Change(s) are submitted to the Supplier and scheduled for release

(d)   Develop – the Supplier implements the Change(s) into the Software

(e)   Test – the Customer tests and signs off on any Changes, in the test environment, before these Changes are introduced into the live (production) environment.

(f)   Deploy – the Supplier will deploy the new release with the agreed Changes on a date agreed with the Customer.

4.2   **Identify**

Any user of the System may identify that a Change to existing functionality may be needed or that new functionality needs to be added. The user must complete a Change request form and submit it to the Customer's change advisory board for approval.

4.3   **Authorise**

(a)   The Customer will appoint an individual who is responsible for verifying that a Change is necessary and that the written request is an accurate representation of what is required. All verified Changes will be presented to the Customer's change advisory board for approval before they are submitted to the Supplier for implementation.

(b)   Each Change request will be given one of the following business values used to determine how urgent the Change is:

(i)   Critical

(ii)   High

(iii)   Medium

(iv)   Low

(c)   Once a Change request is authorised it will be sent to the Supplier ready to be scheduled into a Software release. The Supplier will assign each Change request a unique reference number.

4.4   **Scheduling**

(a)   All software development is managed by the Supplier based on agile software development principles. There is a Software Product Backlog where all new User Stories are logged in the Supplier's software management system (Target Process). Each User Story is scheduled for a release in line with the associated business value. For example, a Change request with a business value of "Critical" will be scheduled into the next feasible release of the System.

(b)   The Customer's change advisory board will be provided with a proposed release document consisting of all the User Stories to be developed in the release with an estimated User Acceptance Testing (**UAT**) release date. This allows the Customer's change advisory board to review the release contents before it is started. Please note that the UAT release date may change during the release development cycle as occasionally additional "Critical" functionality may get included and it is our policy that software quality takes precedence over release dates.

(c)   If the Change is related to a software Defect then the impact of that Defect should be established and given a business value. If the Defect is classed as "Critical" or "High" then a patch will be developed, tested and released for UAT as soon as possible in line with the SLA in Schedule 7.

4.5   **Develop**

After agreeing the proposed release document the Supplier will develop the User Stories to be included in the release. The User Stories will be tested against the defined Acceptance test criteria. Before release to UAT the release is regression tested against a formal regression test plan to ensure that the existing functionality still works as expected.

4.6   **Test**

Once the release has passed the regression testing it will be released into the UAT environment so that the designated representatives from the Customer can sign off that the new functionality meets the scope of the Change request and is clinically safe. A release note document will be provided that highlights all new features that have been included in the release. Evidence of any testing carried out will be provided to the Customer on request.

4.7   **Deploy**

Once the release has been approved and UAT is signed off a release date will be scheduled and agreed. The deployment will typically be done on a Sunday morning between 09:00 and 12:00 GMT as this is quietest time for application use. An email

will be sent round to all users 48 hours before the update, explaining the new functionality that has been released.

Schedule 10   Migration Plan

1.   OBJECTIVES

1.1   The purpose of migration planning is:

   (a)   to enable the Customer to perform in substitution for the Supplier:

      (i)   all of the Services if this Agreement is terminated or expires;

      (ii)   those Services in respect of which the Customer exercises its step-in rights pursuant to clause 15.8 of this Agreement;

      (iii)   those Services in respect of which the Customer exercises its migration rights in clause 14.9 of this Agreement;

      (iv)   all other circumstances in which the Customer may invoke the Migration Plan;

   (b)   to eliminate or minimise any disruption to or deterioration in the Services or failure to achieve the Service Levels as a result of the step-in of the Customer or the migration in respect of any Services to the Customer or a replacement supplier pursuant to the Customer exercising its migration rights in this Agreement.

2.   MIGRATION

2.1   The Supplier shall supply such data extracts in machine readable format as the Customer reasonably requires.

2.2   The Supplier will continue to offer the Services on a rolling month-by-month basis during the Migration Plan period at the same monthly fee as agreed during the term of this Agreement.

2.3   All Customer Data will be provided, appropriately encrypted, by an agreed means (for example in the form of a Microsoft SQL Server backup file ".bak"), to a designated member of the Customer's IT department, which will be:

   (a)   provided at a minimum of one month before termination or expiry of this Agreement or the Services (or any part thereof) or upon request from the Customer;

   (b)   updated once all user activity has ceased after the expiry of this Agreement or the Services (or any part thereof); and

   (c)   provided securely via an agreed mechanism e.g. to a file drop location via a VPN.

2.4   If the Customer wishes to completely stop using the Services or Software the Supplier will disable the application after the termination of this Agreement, in line with the aforementioned termination timescales in 2.3.

2.5   For a period of up to one month after termination or expiry of this Agreement, upon request from the Customer, the Supplier will grant temporary access to the Software or Services for the sole purpose of looking up specific records.

2.6   The Supplier will not be responsible for migrating any Customer Data into a replacement system upon termination or expiry of this Agreement.

2.7   The Supplier will assist with answering any questions, in a timely fashion, related to data migration to another solution.

2.8   Upon termination or expiry of this Agreement the Supplier will switch off any VPN tunnels within one month of the end of this Agreement on a date that is agreed with the Customer.

Schedule 11   Dispute Resolution Procedure

1.   If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then, the parties shall follow the procedure set out in this clause:

(a)   either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Project Manager of the Customer and Project Manager of the Supplier shall attempt in good faith to resolve the Dispute; and

(b)   if the Project Manager of the Customer and Project Manager of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Procurement of the Customer and Operations Director of the Supplier who shall attempt in good faith to resolve it;

(c) if the Head of Procurement of the Customer and Operations Director of the Supplier are for any reason unable to resolve the Dispute within a further period of 14 days, the Dispute shall be referred to a director or officer of the Customer and a director or officer of the Supplier who shall attempt in good faith to resolve it.

2. If the Dispute cannot be resolved between the parties in accordance with (1) above, such Dispute may be resolved by the courts of England and Wales in accordance with clause 29.

SCHEDULE 12: PROCESSING DETAILS

This Schedule 12 includes details relating to the Processing activities of the Supplier with respect to the Customer's Personal Data.

Subject matter and duration of the Processing of the Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Agreement.

The nature and purpose of the Processing of the Personal Data

The Supplier shall process Personal Data in order to provide the goods or services to the Customer.

The types of the Personal Data to be Processed

Personal data Processed may include, but is not limited to, the name, identification number(s), location data, online identifier(s) or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a Data Subject. The Supplier may also Process special categories of data which includes, but is not limited to, information relating to a Data Subject's health.

The categories of Data Subject to whom the Personal Data relates

Personal Data will be processed in relation to customers and/or staff of the Customer.

The obligations and rights of the Data Controller and Data Controller affiliates

The obligations and rights of the Data Controller are set out in the Agreement.