

PATIENT PASS SOFTWARE SUBSCRIPTION AGREEMENT

COMMERCIAL DETAILS

Terms used in these Commercial Details but not defined herein shall have the meaning set out in the Terms and Conditions attached hereto.

Customer	
Effective Date	
Specialities	
Nominated Individual	
Configuration Fees	
Initial Subscription Term	
Subscription Fees	
Rebates	
Special Terms	
Schedules	Schedule 1 – Support Schedule 2 – Data Processing Schedule 3 – Third Party Processors Schedule 4 – Authorised User Criteria Schedule 5 – Retention Policy

1. This Agreement is made up of the following:
 - a. The Commercial Details;
 - b. The Terms and Conditions; and
 - c. The Schedules set out in the Commercial Details.
2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Agreement has been entered into on the date set out in the Commercial Details.

The parties hereby agree to the terms of this Agreement.

SIGNED by a duly authorised director)
for and on behalf of)
[PATIENT PASS LIMITED])

.....
Director's signature

.....
Director's name

SIGNED by a duly authorised signatory)
for and on behalf of)
[INSERT CUSTOMER NAME])
)

.....
Authorised signatory signature

.....
Authorised signatory name

.....
Authorised signatory position

PATIENT PASS SOFTWARE SUBSCRIPTION AGREEMENT

TERMS AND CONDITIONS

IT IS HEREBY AGREED

1. Interpretation

- 1.1 The following definitions and rules of interpretation in this clause apply in these Conditions.

Access Point: means the web address notified by the Supplier from time to time via which the Customer and users may access the Services.

Agreed Configuration Scope: as defined in clause 6.1.

Agreement: together, the Commercial Details these Conditions and the Schedules hereto.

Authorised Users: those individuals, who the Supplier determines satisfy the criteria approved by the Customer from time to time, the version of which at the date of this Agreement is annexed at Schedule 4 (**Authorised User Criteria**) and are granted access to the Services (or part of them).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commercial Details: the Commercial Details sheet attached hereto.

Confidential Information: any information (however recorded or preserved) that is confidential or proprietary in nature, including but not limited to:

- a) the terms of the Agreement;
- b) any information that would be regarded as confidential by a reasonable business person relating to a party's:
 - i. business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; and
 - ii. operations, processes, product information, know-how, designs, trade secrets or software; and
- c) any information developed by the parties in the course of carrying out this Agreement.

Conditions: these terms and conditions (as varied from time to time).

Configuration Fees: means:

- a) in respect of those specialities set out in the Commercial Details, those configuration fees set out in the Commercial Details; and

- b) in respect of any Speciality Subscription purchased following the date of this Agreement, those fees agreed in writing between the parties at the relevant time.

Configuration Services: the services to be provided by the Supplier to the Customer in respect of each Speciality Subscription, to configure the Software to that Speciality's specific user requirements, subject always to the Agreed Configuration Scope.

Configuration Template: the document provided by the Supplier specifying the [INSERT RELEVANT DETAILS] in respect of the potential scope of the Configuration Services.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by the Customer and/or Authorised Users and/or the Supplier on the Customer's behalf, in connection with the Customer's receipt and use of the Services and which is:

- a) Personal Data; and/or
- b) other data (including clinical data) relating to specific patients.

Data Protection Legislation: the UK Data Protection Legislation and, in so far as applicable to the provision of the Services and this Agreement, any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Documentation: the document(s) made available to the Customer by the Supplier online (via the web address notified by the Supplier to the Customer from time to time for this purpose) which sets out a description of the Services and the user instructions for the Services.

Downtime Service Credits: as defined in clause 4.4.

Emergency Maintenance: means maintenance required by the Supplier without prior notice to the Customer to ensure the continued functionality, security and performance of the Services.

Go-Live Date: as defined in clause 6.8.

Initial Subscription Term: the initial term of this Agreement, as set out in the Commercial Details.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, all other rights in the nature of copyright, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, and all other intellectual property rights, in each case

whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Nominated Individual: the individual(s) named in the Commercial Details, as varied from time to time by agreement, with responsibility for the effective provision of the Services (including the Configuration Services) in their Speciality.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Personal Data: means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Planned Maintenance: means maintenance of the Software and/or Services which causes the Services to become unavailable and has been notified to the Customer not less than two Business Days in advance.

Quarter: means a period of three consecutive calendar months, the first Quarter commencing on the first Go Live Date.

Rebates: the rebates to the Subscription Fees detailed in the Commercial Details, if any.

Renewal Period: the period described in clause 14.1.

Retention Policy: means as defined in clause 7.2.

Service Levels: the service levels to which the Support Services shall be provided, as set out in Part 2 of Schedule 1.

Services: the subscription services known as ‘Patient Pass’ provided by the Supplier to the Customer pursuant to this Agreement via the Access Point, being a platform for secondary to tertiary consultation and referral management. Each Speciality may have a unique rule-based workflow, decision support tool and management plan that are customised for the Client and each Speciality. The Services also include a secure messaging system with an easy-to-use interface improving the communication between Authorised Users based in different locations and provides a fully audited timeline of such messages.

Software: the online software applications provided by the Supplier as part of the Services.

Speciality: the clinical speciality(s) or department(s) within the Client’s Trust which is/are authorised to access the Services, being as at the Effective Date, those specialities specified in the Commercial Details, as varied in accordance with clause 3 from time to time.

Speciality Subscriptions: the subscriptions purchased by the Customer pursuant to this Agreement which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Speciality Subscriptions, as set out in the Commercial Details (and varied in accordance with this Agreement), and less any Rebates accrued which have not already been deducted from previous Subscription Fees.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supplier: Patient Pass Limited (company number: **11991272**), a company registered in England and Wales with its registered office address at Tomorrow, Media City Uk, Salford, Greater Manchester, England, M50 2AB.

Support Service Credits: the service credits payable for a failure to meet any Service Levels, as calculated in accordance with clause 5.4.

Support Services: the support services related to the Services to be provided by the Supplier to the Customer in accordance with this Agreement, as further specified in Part 1 of Schedule 1.

Systems: the Customer's information and communications technology system and computing environment (consisting of hardware, software and telecommunication networks).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including, insofar as directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003(SI 2003/2426), in each case as amended, extended and re-enacted from time to time.

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.

Year: a period of twelve months during the Subscription Term, the first Year commencing on the Go-Live Date of the first Speciality in respect of which Configuration Services have been completed and the final Year ending on termination or expiry of this Agreement.

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

- 1.3 A person includes an individual, 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 shall include the singular; and a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 A reference to writing or written includes e-mail (to the email address notified for this purpose from time to time).
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 Any words following the terms **include, including, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, phrase or term preceding these terms.

2. Speciality Subscriptions

- 2.1 Subject to the Customer purchasing the Speciality Subscriptions in accordance with clause 3.4 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the purpose of providing the healthcare and related Services provided by the Customer.
- 2.2 The Customer undertakes that:
 - 2.2.1 it shall permit only the Specialities to access and use the Services and the Documentation;
 - 2.2.2 it will not allow or suffer any Speciality Subscription to be used by another speciality within the Client's trust nor by any persons within such specialities who are not Authorised Users;
 - 2.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, keep such password confidential and that the Client shall be responsible for notifying the Supplier of the required frequency of mandatory password updates to enable the Supplier to configure the Services accordingly;
 - 2.2.4 it shall permit the Supplier or the Supplier's designated representative to undertake an audit in order to establish the name and password of each

Authorised User to audit compliance with this Agreement. Save where the Supplier, acting reasonably, suspects a material breach of this Agreement, each such audit may be conducted no more than once per annum, at the Supplier's expense, and this right shall be exercised with reasonable prior written notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

- 2.2.5 if any of the audits referred to in clause 2.2.4 reveal that any password has been provided to any speciality which does not hold a valid Speciality Subscription and/or any individual who is not an Authorised User, then without prejudice to the Supplier's other rights pursuant to this Agreement or otherwise, the Supplier shall have the right (without the requirement to provide notice to the Customer) to disable such passwords and the Supplier shall not issue any new passwords to any such Speciality or individual other than in accordance with the terms of this Agreement;
 - 2.2.6 if any of the audits referred to in clause 2.2.4 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights pursuant to this Agreement or otherwise, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Commercial Details within 10 Business Days of the date of written notification of such finding;
 - 2.2.7 it shall provide to the Supplier any terms and conditions which it requires Authorised Users to accept prior to using the Services (**End User Terms**). For the avoidance of doubt, entry by any Authorised User and End User Terms shall not reduce or release the Client from any of its obligations pursuant to this Agreement;
 - 2.2.8 it has reviewed and approves the Authorised User Criteria in force at the date of this Agreement as adequate for the purpose of determining eligibility to be an Authorised User; and
 - 2.2.9 upon receipt of a written notice from the Supplier of any updates to the Authorised User Criteria, it shall promptly review such updates and respond in full to the Client's request for approval.
- 2.3 The Customer shall not, and shall procure that no Authorised User shall, access, store, distribute or transmit any Viruses, or any material, information, documentation and other content (**Material**) during the course of its/their use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.3.2 facilitates illegal activity;
 - 2.3.3 depicts sexually explicit images;
 - 2.3.4 promotes unlawful violence;

- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- 2.3.6 is otherwise illegal or causes damage or injury to any person or property; or
- 2.3.7 is otherwise in breach of the terms of this Agreement,

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, and without prior notice to the Customer, to disable the Customer's access to the Services, and permanently delete, any Material that breaches the provisions of this clause.

- 2.4 The Customer shall not and shall procure that no Authorised User shall, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- 2.4.1 copy, attempt to copy, modify, create derivative works of, frame, mirror, republish, download, display, transmit, or distribute any part of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with (or might reasonably be expected to compete with) the Services and/or the Documentation; or
- 2.4.3 use the Services and/or Documentation to provide commercial services to third parties; or
- 2.4.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 2.4.5 attempt to obtain, or assist third parties (including, employees, agents, contractors and other personnel of the Customer who are not Authorised Users) in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

- 2.5 The Customer shall use commercially reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify the Supplier in writing providing full details of such unauthorised access.
- 2.6 For the avoidance of doubt, where the Customer has more than one practice or hospital within its organisation, the Customer may, subject to the grant of all necessary Speciality Subscriptions, and compliance with the terms of this Agreement, allow other practices or hospitals access to the Services and/or the Documentation.
- 2.7 The Customer hereby acknowledges that the Services are accessed by a self-registration process (as detailed in Schedule 4 *Authorised User Criteria*) and such

self-registration process may only be carried out by individuals who hold a domain of nhs.uk or nhs.net (or any other domain which the Supplier may add to its Authorised User Criteria in accordance with the terms of this Agreement). Until an Authorised User receives full validation in accordance with the Authorised User Criteria, the functionality of the Services available to such Authorised User may be limited.

- 2.8 Subject to clause 13.2, the Supplier shall not be responsible for any failure to meet any of its obligations pursuant to this Agreement in respect of any Authorised User where such Authorised User has not received full validation in accordance with clause 2.7.

3. Additional Speciality Subscriptions

- 3.1 Subject to clauses 3.2 to 3.4:

3.1.1 the Customer may, from time to time during the term of this Agreement to request the purchase of additional Speciality Subscriptions in excess of the Speciality Subscriptions set out in the Commercial Details; and

3.1.2 in the event the Customer wishes to purchase an additional Speciality Subscription, the Supplier may grant access to the Services and the Documentation to such additional Speciality(s) in accordance with the provisions of this Agreement.

- 3.2 If the Customer wishes to purchase additional Speciality Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Speciality Subscriptions (including the requirement for any Configuration Services) and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld or delayed) and/or any further information required in respect of such request.

- 3.3 Where the Supplier approves the request, the Supplier shall activate the additional Speciality Subscriptions within five Business Days of completion of the necessary Configuration Services.

- 3.4 If the Supplier approves the Customer's request to purchase additional Speciality Subscriptions, the Customer shall, pay to the Supplier:

3.4.1 the relevant fees for such additional Speciality Subscriptions as set out in the Commercial Details within 30 days of the date of the Supplier's invoice in respect of the same (such invoice to be raised on or following the date of activation of such subscriptions). If such additional Speciality Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable); and

3.4.2 the relevant Configuration Fee as set out in the Commercial Details within 30 days of the date of the Supplier's invoice in respect of the same (such invoice to be raised in accordance with clause 9.3).

4. Services

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 The Supplier shall:

4.2.1 exercise reasonable skill and care in delivering the Services substantially in accordance with the Documentation; and

4.2.2 make the Services available 98% of the time in each calendar month during the Subscription Term, based on a 24 hour a day, seven day a week time period, less any time during which the Services are unavailable due to Planned Maintenance and/or Emergency Maintenance (**Uptime Commitment**).

4.3 The undertaking at clause 4.2.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services and/or the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

4.4 If the Supplier fails to meet or exceed the Uptime Commitment in any month, the Customer shall notify the Supplier within 14 days of the end of such month. Provided such failure is not disputed by the Supplier (acting reasonably), the following service credits, being the **Downtime Service Credits**, shall be applied by way of a deduction from the next invoice then due to be issued under this Agreement, or (where no further invoices are due to be issued) by way of a credit note against a previous invoice and the amount of the Downtime Service Credits shall be repayable by the Supplier as a debt within 30 days of the date of such credit note:

Percentage Uptime*	Percentage Credit
97% - 97.9%	5%
95% - 96.9%	10%
88% - 94.9%	20%
<88%	40%

* based on a 24 hour a day, seven day a week time period, less any time during which the Services are unavailable due to Planned Maintenance and/or Emergency Maintenance.

For this purpose, the percentage credit shall be calculated by reference to the Subscription Fees payable in the relevant month in respect of the affected Speciality Subscriptions (calculated on a pro-rata basis where an annual fee is payable).

4.5 Subject to the provisions of clause 13.2, the Downtime Service Credits shall be the Customer's sole and exclusive remedy for any unavailability of the Services.

4.6 The parties hereby acknowledge and agree that the Downtime Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Customer, particularly

given the steps the Customer has agreed to take (pursuant to clauses 8.3 and 8.4) to minimise the potential loss caused to the Customer as a result of any unavailability.

5. Support Services

5.1 The Supplier shall provide the Support Services during Normal Business Hours in accordance with the terms of the Agreement.

5.2 Subject always to the terms of this Agreement, the Supplier shall use reasonable endeavours to ensure its response times in connection with the Support Services meet the Service Levels.

5.3 If the Supplier fails to meet the Service Levels in any Quarter, the Customer shall notify the Supplier within 14 days of the end of the relevant Quarter. Provided such failure is not disputed by the Supplier (acting reasonably), the Support Service Credits shall be applied by way of a deduction from the next invoice then due to be issued under this Agreement, or (where no further invoices are due to be issued) by way of a credit note against a previous invoice and the amount for the Support Service Credits shall be repayable by the Supplier as a debt within 30 days of the date of such credit note.

5.4 If in any given Quarter, the Supplier fails to meet the relevant Service Levels in respect of more than five (5) P3 and/or P4 incidents the Customer shall, in respect of any subsequent P3 or P4 incidents in that Quarter, be eligible to receive the Support Service Credits set out in clause 5.6.

5.5 If in any Quarter, the Supplier fails to meet the relevant Service Levels in respect of two or more P1 and/or P2 incidents, then the Customer shall, in respect of any subsequent P1 or P2 incidents in that Quarter, be eligible to receive the Support Service Credits set out in clause 5.6.

5.6	The Support Service Credits shall be:	
	0-10% later than target response time Fees	0.5% of the annual Subscription Fees
	11-25% later than target response time Fees	1.25% of the annual Subscription Fees
	26-50% later than target response time Fees	2.5% of the annual Subscription Fees
	51-75% later than target response time Fees	3.75% of the annual Subscription Fees
	76-100% later than target response time Fees	5% of the annual Subscription Fees
	100% + later than the target response time	7.5% of the annual Subscription Fees

5.7 Subject to the provisions of clause 13.2, the Support Service Credits shall be the Customer's sole and exclusive remedy for any failure to meet the service levels.

6. Configuration Services

- 6.1 Prior to the commencement of the Configuration Services, to assist the parties' understanding of the requirements and potential functionality of the Services for each Speciality and ensure the scope of the Configuration Services is clearly understood, the Customer shall procure that the Nominated Individual for the relevant Speciality shall read, understand and sign a Configuration Template. Once signed, such Configuration Template shall be the **Agreed Configuration Scope** for such Speciality.
- 6.2 The Supplier shall provide the Configuration Services with reasonable skill and care and shall use reasonable endeavours to complete the Configuration Services within six months of the date of the Agreed Configuration Scope, but such date is an estimate only and time shall not be of the essence in respect of the Configuration Services.
- 6.3 The relevant Nominated Individual shall in a timely manner provide all information and assistance reasonably requested by the Supplier to enable the Supplier to provide the Configuration Services.
- 6.4 Following completion of each phase of the Configuration Services, the Supplier shall make available to the Customer the Services for the testing in a test environment.
- 6.5 The Customer shall carry out any testing in a timely manner and shall provide to the Supplier in writing, either:
- 6.5.1 acceptance of the Services, in which case the Configuration Services shall be deemed complete;
 - 6.5.2 full and detailed feedback in respect of the Configuration Services, in which case, subject to the terms of this Agreement, the Supplier shall carry out further Configuration Services and the process in clauses 6.4 and 6.5 shall apply to the output of such Services.
- 6.6 The Supplier may, by notice in writing to the Customer, terminate its obligations under this Agreement with respect to the relevant Speciality Subscription without any liability to the Customer whatsoever: (i) on the date it becomes apparent to the Supplier (acting reasonably) that the Configuration Services required by the Customer or Nominated Individual are outside of the Agreed Configuration Scope; or (ii) in the event that the Customer has failed to discharge its obligations under clause 6.3 within six months from the date of commencement of the Configuration Services.
- 6.7 Where the Configuration Services have not been completed within 6 months of commencement and the Supplier has not terminated its obligations under this Agreement with respect of the relevant Speciality Subscription pursuant to clause 6.6, save where directly attributable to the Supplier's acts or omissions, the Supplier may charge to the Customer, at its then applicable hourly rates, fees for the provision of any further Configuration Services.

- 6.8 Within a reasonable period following completion of the Configuration Services, the Supplier shall make available to the Customer the Services to which the Customer is entitled pursuant to the relevant Speciality Subscription for use in a live environment. The date on which such Services are made available shall be the **Go-Live Date**.
- 6.9 Subject always to the provisions of clause 13.2, the Supplier shall not be liable for any loss, damage or liability whatsoever suffered or incurred by the Customer to the extent resulting, directly or indirectly, from:
- 6.9.1 the Customer's failure to provide or delay in providing any information and/or assistance requested in accordance with this clause 6; and/or
 - 6.9.2 the Customer's or Nominated Individual's requirements in respect of the Configuration Services extending beyond the Agreed Configuration Scope.
- 7. Customer data**
- 7.1 The Customer shall own all right and title to and interest in:
- 7.1.1 all rights arising from or in connection with its acquisition, verification or presentation of the Customer Data; and
 - 7.1.2 all copyright arising from the authorship of literary work in the creation of Customer Data,
- and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Data.
- 7.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Data Back-up and Retention Policy annexed to this Agreement at Schedule 5 (**Retention Policy**), as such document may be amended by the Supplier in its reasonable discretion from time to time.
- 7.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its Retention Policy in force at the relevant time.
- 7.4 Save where directly attributable to any breach by the Supplier of the terms of this Agreement, the Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 7.10).
- 7.5 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations, responsibilities or rights under the Data Protection Legislation.
- 7.6 The parties acknowledge that:

- 7.6.1 in respect of the personal data processed by the Supplier on behalf of the Customer in connection with the Services whether or not Customer Data (**Personal Data**), the Customer is determining the purpose and approving the manner in which data is processed in connection with the provision of the Services and that, accordingly the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation; and
 - 7.6.2 Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of data subject.
- 7.7 Without prejudice to the generality of clause 7.5, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and processing of the Personal Data for the duration and purposes of this Agreement so that the Supplier may lawfully process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf.
- 7.8 Without prejudice to the generality of clause 7.5, the Supplier shall, in relation to any Personal Data processed by the Supplier in the course of the provision of the Services:
 - 7.8.1 process that Personal Data only as is strictly necessary to provide the Services and on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process such Personal Data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - 7.8.2 not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - 7.8.2.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 7.8.2.2 the data subject has enforceable rights and effective legal remedies;
 - 7.8.2.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 7.8.2.4 the Supplier complies with reasonable instructions notified to it in writing in advance by the Customer with respect to the processing of such Personal Data;

- 7.8.3 ensure that all personnel who have access to and/or process such personal data are obliged to keep the Personal Data confidential;
 - 7.8.4 assist the Customer, at the Customer's cost, in responding to any request (including a subject access request) from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 7.8.5 notify the Customer in writing without undue delay on becoming aware of a personal data breach;
 - 7.8.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Laws to store the Personal Data;
 - 7.8.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and the Data Protection Legislation and immediately inform the Company if, in the opinion of the Supplier, an instruction provided by the Customer infringes the Data Protection Legislation; and
 - 7.8.8 allow for audits by the Customer or its authorised representatives to review the Supplier's compliance with this clause 7 and the Data Protection Legislation, provided that such audits shall not take place more than once in any twelve month period (unless the Customer, acting reasonably, suspects a breach of Data Protection Legislation) and shall be on reasonable prior written notice and carried out in such a manner as to minimise disruption to the Supplier's business. The Supplier may require the Customer's authorised representatives to enter into binding confidentiality obligations with it prior to such audit.
- 7.9 In each calendar year the Supplier shall complete and publish the Data Security and Protection Toolkit. The Customer hereby acknowledges and agrees that the completion and publishing of the Data Security and Protection Toolkit satisfies the requirements of Article 32 of the General Data Protection Regulation (2016/679) and constitutes the taking of appropriate technical and organisational measures adequate to protect the Personal Data processed by the Supplier against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, such Personal Data and are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage of the Personal Data, having regard to the state of technological development and the cost of implementing any measures.
- 7.10 The Customer consents to the Supplier appointing the third-party processors of Personal Data specified in Schedule 4 (as amended and updated by agreement in writing between the parties from time to time). The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the

Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.

8. Customer's obligations

8.1 The Customer shall:

8.1.1 provide the Supplier with:

8.1.1.1 all necessary co-operation in relation to this Agreement; and

8.1.1.2 all necessary access to such information as may be reasonably required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and the compliance with its obligations in respect of any Configuration Services pursuant to clause 6;

8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be fully responsible for any Authorised User's breach of this Agreement;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services and the Configuration Services;

8.1.6 ensure that its Systems comply with the relevant specifications and requirements notified by the Supplier as necessary from time to time for the full and proper operation of the Services; and

8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its Systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Systems or other telecommunications and network links.

8.2 The Customer shall ensure that all Authorised Users have received adequate training in respect of the Services and the appropriate use of the Services and that such training is refreshed at regular intervals.

- 8.3 The Customer acknowledges that no computing infrastructure is wholly reliable or risk-free and, accordingly, that the safeguards and processes set out in clause 8.4 are adequate for its needs.
- 8.4 The Customer hereby acknowledges and agrees that:
- 8.4.1 the Supplier shall carry out regular back-ups of the Customer Data in accordance with its Retention Policy;
 - 8.4.2 the back-ups specified at clause 8.4.1 shall include storage to the Customer's local on-site hardware;
 - 8.4.3 the data backed-up shall be saved in a readable and easily accessible manner; and
 - 8.4.4 in the event of any unavailability of the Services, the Customer may access the local back-up which can be used by the Customer to identify the status of any Customer Data and minimise the impact of such unavailability on the Customer.
- 8.5 In the event the Customer at any time concludes the measures set out in clause 8.4 are inadequate it shall immediately notify the Supplier.
- 8.6 The Customer hereby acknowledges that this Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9. Charges and payment

- 9.1 The Customer shall pay to the Supplier in accordance with this clause 9:
- 9.1.1 the Subscription Fees in respect of the Speciality Subscription(s); and
 - 9.1.2 the Configuration Fees in respect of the Configuration Services per Speciality Subscription.
- 9.2 The Subscription Fees shall be paid by the Customer to the Supplier (to the bank account notified for this purpose from time to time) in full in advance on the first day of each Year (subject to production of a valid invoice in respect thereof).
- 9.3 The Configuration Fees shall, subject to clause 3.4, be paid by the Customer to the Supplier (to the bank account notified for this purpose from time to time) in full in advance prior to commencement of the relevant Configuration Services.
- 9.4 If the Supplier has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of the Supplier (including, without limitation, the Supplier's rights pursuant to clause 9.5), interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of The Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 9.5 In addition to its rights pursuant to clause 9.4, on any date prior to the Go-Live Date for any Speciality Subscription, the Supplier may, without liability to the Customer and without the requirement to notify the Customer in advance, disable the Customer's (and each Authorised Users') password, account and access to all or part of the Services provided in connection with such Speciality Subscription and the Supplier shall be under no obligation to provide such Services while the invoice(s) concerned (and any interest accrued thereon in accordance with clause 9.4) remain unpaid.
- 9.6 All amounts and fees stated or referred to in this Agreement:
- 9.6.1 shall be payable in pounds sterling;
- 9.6.2 are, subject to clauses 12.3, 13.3.2 and 14.3, non-cancellable and non-refundable;
- 9.6.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.7 The Supplier shall be entitled to increase the Subscription Fees by a value of up to 10% of the current Subscription Fees, at the end of the Initial Subscription Term, and at the end of each twelve month period thereafter, upon 90 days' prior written notice to the Customer.
- 9.8 The Supplier's decision as to the accrual of Rebates shall be final.

10. Proprietary rights

- 10.1 It is envisaged that in the course of this Agreement the Customer will create and provide to the Supplier literary and artistic works and other intellectual property relating to the diagnosis, treatment and therapy of patients and organisational and administrative matters ancillary thereto, such as referrals including, without prejudice to the generality of the foregoing:
- 10.1.1 a menu option list of:
- (i) primary patient referral reasons;
- (ii) based on the selection of (i) above, secondary patient referral reasons;
and
- (iii) based on the selection of (ii) above, tertiary patient referral reasons;
- 10.1.2 a plurality of clinical questions ("**Clinical Questions**"); and
- 10.1.3 a schema linking each Clinical Question to the menu selections of 10.1.1 (i) to (iii) above,

to enable the Supplier to deliver: the Services; the Configuration Services; and the Support Services, ("**Customer Works**").

10.2 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights:

10.2.1 in the Customer Works; and

10.2.2 subsisting in or related to the Services, the Software and the Documentation.

Except as expressly stated herein, this Agreement does not grant the Customer or any Authorised User any rights to, under or in, any such Intellectual Property Rights, or any other rights or licences in respect of the Services, Software or the Documentation.

10.3 The Customer hereby:

10.3.1 assigns to the Supplier (where such rights do not automatically accrue to the Supplier) future copyright in all such Customer Works; and

10.3.2 agrees to assign to the Supplier all other Intellectual Property Rights in the Customer Works.

10.4 The Supplier confirms that it has all the rights in relation to the Services, Software and the Documentation that are necessary to grant the licence permissions it purports to grant under, and in accordance with, the terms of this Agreement.

10.5 In the event of a termination of this Agreement, save for any termination by the Supplier pursuant to clause 14.2, the Supplier shall grant forthwith, free of charge and royalty-free, a licence under all Intellectual Property Rights in the Clinical Questions to permit the Customer to perform (or to have performed on its behalf) the following acts in relation to the Clinical Questions or any substantial part of them:

10.5.1 reproduce them in any material form including by the creation of modifications and storage by electronic means;

10.5.2 issue copies of them to the public;

10.5.3 show or play them in public including by the delivery of lectures;

10.5.4 communicate them to the public by electronic means; and

10.5.5 retain them in the course of business.

In each case such licence permissions are granted for the purpose (and solely for the purpose) of enabling the Customer to:

10.5.6 create (or have created) its own patient referral platform (“**Client Platform**”) which incorporates the Clinical Questions; and

10.5.7 operate such a platform for the purpose of delivering healthcare and advice to the public in the United Kingdom,

and the aforesaid licence permissions shall not permit the Customer to undertake any of the aforesaid acts for any commercial purpose including but not limited to the purpose of providing services to third parties which compete with those offered by the Supplier.

- 10.6 Nothing in clause 10.5, shall be construed as providing, either expressly or impliedly, any assignment to the Customer of any Intellectual Property Rights owned by the Supplier nor any derogation from the Customer's obligations under the provisions of clause 11.

11. Confidentiality

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

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

11.1.2 was in the other party's lawful possession before the disclosure;

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

11.1.4 is independently developed by the receiving party, which independent development can be shown by satisfactory written evidence.

- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make (whether by act or omission) the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than as strictly necessary for the performance of this Agreement.

- 11.3 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.

- 11.4 A party may disclose the other party's Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much written notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the party to which the Confidential Information belongs in relation to the content and form of such disclosure.

- 11.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, save where arising from that party's breach of this Agreement.

- 11.6 The Customer acknowledges that details of the Services, the Documentation and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8 The above provisions of this clause 11 shall survive termination or expiry of this Agreement, however arising.

12. Indemnity

- 12.1 Subject always to the provisions of clause 13, the Customer shall defend, indemnify and hold harmless the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- 12.1.1 the Customer is given prompt written notice of any such claim;

- 12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- 12.1.3 the Customer is given sole authority to defend or settle the claim.

- 12.2 Subject always to the provisions of clause 13, the Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 12.2.1 the Supplier is given prompt written notice of any such claim;

- 12.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

- 12.2.3 the Supplier is given sole authority to defend or settle the claim.

- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer (save for a pro-rata reimbursement of any Subscription Fees paid in advance for that Year).

- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- 12.4.1 a modification of the Services or Documentation by anyone other than the Supplier (or its authorised representatives); or

- 12.4.2 the Customer's use of the Services or Documentation in a manner contrary to this Agreement and any other reasonable written instructions given to the Customer by the Supplier; or
- 12.4.3 the Customer's use of the Services or Documentation after written notice of the alleged or actual infringement from the Supplier or any competent authority.
- 12.5 The foregoing and clause 13.3.213.3 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality in connection with this Agreement.

13. Limitation of liability

- 13.1 Except as expressly and specifically provided in this Agreement:
 - 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer;
 - 13.1.2 the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services (including the Configuration Services), or any actions taken by the Supplier at the Customer's direction;
 - 13.1.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
 - 13.1.4 the Services and the Documentation are provided to the Customer on an "as is" basis; and
 - 13.1.5 the Customer's receipt of the Services shall not limit or reduce its legal and regulatory obligations to maintain full and proper records relating to patient care and the transfer of records within the Practice(s).
- 13.2 Nothing in this Agreement excludes the liability of the Supplier for:
 - 13.2.1 death or personal injury caused by the Supplier's negligence;
 - 13.2.2 fraud or fraudulent misrepresentation; and/or
 - 13.2.3 any other liability which cannot be limited or excluded by applicable law.
- 13.3 Subject to clauses 13.1 and clause 13.2, 4.4, 5.3 and 6.6:
 - 13.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss or corruption of data or information, pure

economic loss, or for any special, indirect or consequential loss; in each case, however arising under this Agreement;

- 13.3.2 and subject to clause 13.3.1, the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Speciality Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. Term and termination

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 14.2 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:

14.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

14.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

14.2.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

14.2.4 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- 14.2.5 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 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;
 - 14.2.6 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 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;
 - 14.2.7 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;
 - 14.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.9 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;
 - 14.2.10 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; or
 - 14.2.11 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 14.2.4 to clause 14.2.10 (inclusive).
- 14.3 The Supplier may terminate this Agreement on notice in writing to the Customer if:
- 14.3.1 it has notified the Customer, in accordance with clause 6.6, that it is unable to complete the Configuration Services and such Configuration Services relate to any Speciality Subscription purchased pursuant to this Agreement; and
 - 14.3.2 it becomes reasonably apparent to the Supplier it is unable to comply with its obligation at clause 7.9 of this Agreement, in which case the Supplier shall as soon as reasonably practicable following such termination reimburse to the Customer any Subscription Fees paid but in respect of which Services have not been received.
- 14.4 On termination of this Agreement for any reason:
- 14.4.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

- 14.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 14.4.3 the Supplier may destroy or otherwise dispose of any of the Customer Data stored on its servers in accordance with clause 7.2;
- 14.4.4 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; and
- 14.4.5 any provision that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

15. Anti-Bribery

15.1 The Supplier shall:

- 15.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 (Relevant Requirements);
- 15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 15.1.3 have and shall maintain in place throughout the Subscription Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 15.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- 15.1.5 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier and the Supplier warrants that it has no foreign public officials as officers or employees at the date of this Agreement;
- 15.1.6 within three months of the Effective Date, and annually thereafter, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 15 by the Supplier. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

- 15.2 For the purpose of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any

guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

16. Force majeure

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. Variation

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

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

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 law.

20. Severance

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

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 misstatement based on any statement in this Agreement.

22. Assignment

22.1 Neither Party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. Third party rights

This Agreement does not confer any rights on any person or party pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

24.1 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, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address notified in writing for this purpose from time to time.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. Counterparts

25.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26. Governing law

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

27. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection

with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

Support

PART 1: Support Services

All support enquiries in connection with the Services must be referred to the Customer's internal support team in the first instance.

It is expected that such internal team will have the capability to fully resolve all First Line Requests.

The Customer's internal support team may refer any Second Line Requests to the Supplier using the contact details notified for this purpose from time to time, provided always that the support team has completed the Second Line Request referral form, the current version of which is annexed to this Agreement at Part 3 of this Schedule 1, to the Supplier's reasonable satisfaction.

The Supplier shall use reasonable endeavours to respond to any Second Line Request raised in accordance with this Schedule within a time that meets or exceeds the Service Levels.

For the purpose of this Schedule:

A "First Line Request" means any request received relating to the Services which shall include but not limited to (i) a direct response to users with respect to enquiries concerning the performance, functionality or operation of the servers, (ii) a direct response to users with respect to problems or issues with the servers, (iii) a diagnosis of problems or issues of the Services, and (iv) a resolution of problems or issues in respect of the Services to the extent relating to the Systems.

A "Second Line Request" means any request received which relates to a failure or malfunction of the Services and not the Systems.

PART 2: Service Levels

Priority	Name	Description	Response
P1	Critical	Interruption making a critical functionality inaccessible or a complete network interruption causing a severe impact on services availability. There is no possible alternative	1 hr
P2	Important	Critical functionality or network access interrupted, degraded or unusable, having a severe impact on services availability. No	2 hrs

		acceptable alternative is possible.	
P3	Normal	Non-critical function or procedure, unusable or hard to use having an operational impact, but with no direct impact on services availability. A workaround is available.	24hrs
P4	Low	Application or personal procedure unusable, where a workaround is available or a repair is possible	48hrs

The response time measures how many Normal Business Hours it takes the Supplier to respond to a Second Line Request raised during Normal Business Hours in accordance with Part 1 of Schedule 1. The Supplier shall be deemed to have responded when it has replied to the initial request. Such response may be in the form of an email or telephone call, to either provide a solution or request further information. Guaranteed response times depend on the priority of the item(s) affected and the severity of the issue.

Part 3: Second Line Request Referral Form

[TO BE INSERTED]

SCHEDULE 2

Processing, Personal Data and Data Subjects

1. Processing by the Supplier

Nature and Scope: the processing required to provide the Services to the Customer in accordance with the terms of this Agreement.

Purpose: the provision of the Services to the Customer pursuant to this Agreement.

Duration: the term of this Agreement and any further period during which the processing is required pursuant to Applicable Laws.

2. Types of personal data:

3. Forename(s), Surname, Date of birth, Gender, NHS number, Information relating to the individuals physical or mental health or condition, medical treatment details

4. Categories of data subject:

Patients and Practitioners

SCHEDULE 3

Third Party Processors

Redcentric Solutions Limited (company number: 08322856).

SCHEDULE 4

Authorised User Criteria

[Self-registration process to be inserted]

SCHEDULE 5

Retention Policy