

# **Agreement for the use of Primary Care Pathways Toolset**

**Primary Care IT Ltd**

**And**

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Table of Contents

1. Definitions and Interpretation..... 3

2. Background..... 7

3. Licence ..... 7

4. Term ..... 8

5. Services and Products..... 9

6. Customer's Obligations..... 9

7. Provider's Obligations..... 11

8. Support and Maintenance..... 12

9. Fees and Payment..... 13

10. Warranties ..... 14

11. Intellectual Property Rights..... 14

12. Termination and Exit Arrangements ..... 16

13. Confidentiality and Freedom of Information..... 17

14. Limitation of Liability ..... 19

15. Force Majeure..... 20

16. Insurances ..... 20

17. Waiver..... 20

18. Severability ..... 20

19. Amendment and Modification ..... 21

20. Non-solicitation ..... 21

21. Third Party Rights ..... 21

22. Notices..... 21

23. Dispute Resolution..... 21

24. Assignment and Subcontracting ..... 22

25. Whole Agreement..... 22

26. Contacts..... 23

27. Autonomy..... 23

28. Costs and Expenses..... 23

29. Third Party Rights ..... 23

30. Reservation of Rights ..... 23

31. Data Processing ..... 24

32. Audit Rights ..... 25

33. Agency Partnership ..... 25

34. Governing Law..... 25

35. Signatures..... 25

Schedule 1 – Products and Services provided under this Agreement..... 27

Schedule 2 – The Fee ..... 28

Schedule 3 – Implementation Plan ..... 29

Schedule 4 – Data Processing Agreement..... 30

Schedule 5 – Additional Services ..... 31

Schedule 6 – Operating Manuals ..... 33

This Agreement for the use of Primary Care Pathways Toolset (the "Agreement") dated 27<sup>th</sup> of February, 2020 is between:

- Primary Care IT Ltd, a company incorporated in England & Wales whose Company Number is 08656324 and whose registered address is GF6, Trumpeter House, Trumpeter Rise, Long Stratton, Norfolk, NR15 2DY ("**the Provider**") and
- \*\*\*\* ("**the Customer**")

individually a "Party" and collectively the "Parties" to this Agreement.

The Parties wish to record their agreement as to the arrangements which will exist between them and the rights and obligations of each Party in relation to the subject matter of this Agreement.

This Agreement (including all accompanying Schedules) applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom or practice. 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.

The Parties agree as follows:

## 1. Definitions and Interpretation

1.1. In this Agreement the following words and phrases have the following meanings:

**"Additional Services"** means additional technical, support and consultancy services which are outside of the scope of the Fees and are subject to the Additional Services Charging Rates set out in Schedule 5 (Additional Services) ("Schedule 5").

**"Additional Services Charging Rates"** means the rates set out in Schedule 5.

**"Additional Services Fee Proposal"** means the meaning given in Schedule 5.

**"Affiliate(s)"** includes each and any subsidiary or holding company of the Customer and each and any subsidiary of a holding company of the Customer or any business entity from time to time controlling, controlled by, or under the common control of the Customer.

**"Applicable Law"** means the laws of England and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes.

**"Authorised Representatives"** means the contacts set out in Clause 26.

**"Bank Holiday"** means a day on which banks in the UK are officially closed, kept as a public holiday.

**“Business Hours”** means the Customer’s hours of operation which are 8am – 6pm.

**“Commencement Date”** means date of the installation of the core toolset.

**“Confidential Information”** means information, data and material of any nature, held in any form or medium, which either Party may receive or obtain in the performance of or in connection with this Agreement and includes any information provided by the Provider to the Customer in advance of this Agreement.

**“Data Processing Agreement”** means the Data Processing Agreement contained in Schedule 4 (Data Processing Agreement) (“Schedule 4”) which must be signed by the Parties prior to the Commencement Date.

**“Documentation”** means the Operating Manual(s), user instruction manuals, guides and videos, technical literature and all other related materials, including on-line help files regarding the use of the Licensed Software, as updated from time to time, which can be accessed by the Customer via the Provider’s website or which has been supplied by the Provider to the Customer.

**“Due Date”** means a date on which a Fee(s) are due to be paid in accordance with invoices issued by the Provider to the Customer.

**“EMIS Web”** means the digital clinical system used by the Customer and into which the Products are installed.

**“Expiry Date”** means the date on which the Removal of Licensed Software is completed.

**“Error”** means any failure by the Licensed Software to operate in accordance with the Operating Manual(s).

**“Fee(s)”** means the charges payable by the Customer to Provider as specified in Schedule 2 (The Fee) (“Schedule 2”) in respect of the Initial Licence Term and any applicable Licence Renewal Term(s).

**“GDPR”** means the European General Data Protection Regulation being Regulation (EU) 2016/679 and the Data Protection Act 2018 as amended or updated from time to time, and any successor legislation and/or any replacement legislation thereof in the UK.

**“Good Industry Practice”** means the standards which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider of the same or similar Services and/or Products under the same or similar circumstances at the time the Services and/or Products are provided.

**“Information Access Log-in”** means the electronic access details (as replaced as required during the Term) provided by the Customer to, and held by, the Provider for the purpose of accessing the Customer’s EMIS Web to deliver the Provider’s obligations under this Agreement.

**“Intellectual Property Rights (“IPR”)”** means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other Intellectual

Property Rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**“Initial Licence Term”** means the twelve (12) month period from the Product Installation Date.

**“Licence Renewal Date”** means the date immediately following the end of the Initial Licence Term or previous Renewal Licence Term (as appropriate).

**“Licence Renewal Term(s)”** has the meaning set out in Clause 4.2.

**“Licensed Software”** means the Provider software specified as such in Schedule 1 (Products and Services provided under this Agreement) (“Schedule 1”) and which forms part of the Products and Services.

**“Operating Manual(s)”** means the information provided in Schedule 6 – Operating Manual(s) (“Schedule 6”).

**“Primary Care IT Toolset Data”** means data, materials and reports produced using the Licensed Software.

**“Personal Data”** means the meaning set out in the GDPR.

**“Process/Processing/Processor”** means the meaning set out in the GDPR.

**“Products”** means the Products to which the Licensed Software relates as set out in Schedule 1 (including any Updates and Documentation) which may from time to time be amended by agreement between the Parties.

**“Product Installation Date”** means the date the Products are agreed by the Parties to have been installed in accordance with Clause 7.3.

**“Provider Obligations”** has the meaning set out in Clause 7.

**“Removal of Licensed Software”** means completion of the activities to remove the Licensed Software from the Customer’s EMIS Web in accordance with Clause 12.8.5.

**“Response”** means a response from a member of Provider’s support personnel to a Specified Contact acknowledging a report of an Error and agreeing the severity category to be applied to that Error in accordance with Clause 8 of this Agreement.

**“Services”** means implementation, configuration, bespoke development and/or operation and training, testing services and Support and Maintenance as more particularly set out in Schedule 1 as the same may from time to time be amended by agreement between the Parties.

**“Service Hours”** means the following hours of support provided by Provider for the Licensed Software: Monday to Friday 08:30 hours to 17:00 hours excluding Bank Holidays.

**“Specified Contact”** means any of the individuals designated as the contacts for the Customer in Clause 6.7.

**“Support and Maintenance”** means the support and maintenance activities relating to the Services and the Products referred to in Clause 8 of this Agreement and more particularly set out in Schedule 1.

**“Term”** means the period between the Commencement Date and the completion of the Removal of Licensed Software in accordance with the terms of this Agreement.

**“Termination Date”** means the date upon which the expiry or earlier termination of this Agreement takes effect in accordance with its terms.

**“Update(s)”** means a release, update or version of the Licensed Software including protocols, decided upon by the Provider at its sole discretion, that may contain minor functional enhancements, modifications, extensions, error corrections or bug fixes.

**“Upgrade”** means a major release that includes significant new functionality and/or other enhancements which the Provider may in its discretion make available to its customers only on payment of an additional or increased Fee.

**“Working Day”** means Monday to Friday inclusive, excluding Bank Holidays.

1.2. In this Agreement:

- 1.2.1. A reference to this Agreement shall mean this Agreement as amended or varied, supplemented, substituted, modified or novated from time to time in accordance with the terms of this Agreement.
- 1.2.2. References to “Clauses” and “Schedules” are, unless otherwise provided, references to the Clauses of and Schedules to this Agreement.
- 1.2.3. The headings (including the Clause and Schedule headings) contained in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.2.4. Unless stated otherwise, references to Provider and the Customer includes their permitted successors and assigns.
- 1.2.5. Words in the singular include the plural and words in the plural include the singular.
- 1.2.6. References to any gender shall include all other genders and references to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.
- 1.2.7. References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof.
- 1.2.8. Any phrase introduced by the words “including”, “includes”, “in particular” or “for example” or similar shall be construed as illustrative and shall not limit the generality of the related general words.

1.2.9. Unless stated otherwise with this Agreement, any reference to “writing” or “written” may include e-mail and all communications made by email must be copied to [dustyn@primarycareit.co.uk](mailto:dustyn@primarycareit.co.uk) and the Provider Contact specified in Clause 26.

- 1.3. If there is any conflict or ambiguity between the body of this Agreement and any of the other documents referred to in this Clause 1.3, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1. the body of this Agreement;
  - 1.3.2. the Schedules;
  - 1.3.3. any other document referred to in this Agreement.
- 1.4. Unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by a Party is without prejudice to that Party's other rights and remedies under law.

## 2. Background

- 2.1. The Provider has developed electronic tools (decision support), templates, protocols and documents (collectively referred to as the Primary Care Pathways Toolset) which it makes available to customers in support the use of the EMIS Web.
- 2.2. The Customer agrees to engage the Provider to provide the Customer with the Services and Products on the terms and conditions set out in this Agreement.
- 2.3. The Provider agrees to provide the Services and Products on the terms and conditions set out in this Agreement.

## 3. Licence

- 3.1. Subject to the provisions of this Agreement, the Provider shall, in consideration of the payment of the Fee or Fees, grant to the Customer a non-exclusive, non-transferable licence to use the Licensed Software for the Initial Licence Term and any subsequent Renewal Licence Terms.
- 3.2. The Provider reserves any rights not expressly granted in this Agreement.
- 3.3. The Customer is entitled to use the Licensed Software for the Initial Licence Term and any Licence Renewal Terms in accordance with the terms of this Agreement only.
- 3.4. Except as expressly authorised by Provider, the Customer:
- 3.4.1. may not copy any Licensed Software or Documentation except where such copying is incidental to normal use of the Licensed Software or where it is necessary for the purpose of back-up or operational security;
  - 3.4.2. may not rent, lease, sub-licence, loan, translate, merge, adapt, vary or modify the Licensed Software or Documentation;

- 3.4.3. may not make alterations to, or modifications of, the whole or any part of the Licensed Software or Documentation nor permit the Licensed Software or any part of it to be combined with, or become incorporated in, any other programs.
- 3.5. The Customer:
  - 3.5.1. may not remove, delete or alter any trademarks, copyright notices or other IPR notices of the Provider;
  - 3.5.2. may not use the Licensed Software or Documentation for the purposes of competitive analysis, the development of competing software product or any other purpose that is disadvantageous to Provider;
  - 3.5.3. shall keep all copies of the Licensed Software and Documentation secure and maintain accurate and up-to-date records of the number and locations of all copies of the Licensed Software and shall take all reasonable measures to prevent unauthorised copying;
  - 3.5.4. shall supervise and control use of the Licensed Software and Documentation and ensure that the Licensed Software is used by Customer's employees and representatives in accordance with the terms of this Agreement;
  - 3.5.5. upon request by the Provider, shall permit the Provider with access to the Customer's EMIS Web for the purpose of installing and/or replacing the current version of the Licensed Software and/or Documentation with any Updates, Upgrades or new releases provided by Provider.

#### 4. Term

- 4.1. This Agreement shall commence on the Commencement Date and shall cease upon the Removal of the Licensed Software.
- 4.2. At the end of the Initial Licence Term and at the end of any and all subsequent Licence Renewal Term(s)), this Agreement shall automatically renew for the Licence Renewal Term unless either Party gives notice, in writing, to the other Party at least fourteen (14) Working Days prior to the end of the Initial Licence Term or preceding Licence Renewal Term (as applicable) of its intention not to renew.
- 4.3. Each Licence Renewal Term shall commence on the Licence Renewal Date and shall be for a period of twelve (12) months unless otherwise agreed between the Parties.
- 4.4. Any relevant amendments to this Agreement made as a result of the Parties agreeing a Licence Renewal Term shall be agreed by the Parties in accordance with Clause 19 and appended to this Agreement.
- 4.5. The Provider may at its sole discretion adjust the Fee applicable for any Licence Renewal Term offered to the Customer and shall provide the Customer with 20 Working Days' notice of such changes.



- 4.6. The obligations and rights set out in Clause 12 apply in respect of the Initial Licence Term and each and every Renewal Licence Term.

## 5. Services and Products

- 5.1. The Provider shall supply the Services and Products in accordance with Good Industry Practice, in a timely and professional manner and in accordance with the Implementation Plan included in Schedule 3 - the Implementation Plan ("Schedule 3") in all material respects.
- 5.2. The Provider shall use all reasonable endeavors to meet any agreed performance or delivery dates specified in Schedule 3 but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and provision of the Products.
- 5.3. The Provider reserves the right to amend Schedule 3 and/or charge the Provider as an Additional Service if delays arise during implementation as a result of conflicts with the patch domains on the Customer's EMIS web, the existence of which should have reasonably been brought to the attention of the Provider by the Customer prior to entering into this Agreement.
- 5.4. The Provider shall provide and the Customer shall receive the Services and Products in accordance with the warranties set out at Clause 10.
- 5.5. The Provider shall have the right at its sole discretion to make any changes to the Services and Products which are necessary to comply with any Applicable Law or safety requirement and/or in accordance with Clause 3.5.5.
- 5.6. The content of any Updates shall be decided upon by Provider at its sole discretion. Updates may be installed remotely by the Provider, provided to the Customer by means of electronic download or other formats/media as determined by Provider from time to time. The Provider will provide Documentation in respect of the any Updates to the Customer within 5 Working Days of the Update being provided to the Customer.

## 6. Customer's Obligations

- 6.1. The Customer shall reasonably co-operate with Provider in all matters relating to the Services and Products.
- 6.2. In accordance with Schedule 3, The Customer shall:
- 6.2.1. Upload to the Uniform Resource Locator (URL) (provided by the Provider to the Customer) the Customer's locally enhanced service specification and the forms that the Customer requires the Provider to optimize;
  - 6.2.2. provide the Provider with an Information Access Log-in to the Customer's EMIS Web and
  - 6.2.3. undertake any other activities which are stated in this Agreement to be the responsibility or obligation of the Customer.

- 6.3. The Customer shall permit the Provider unrestricted access to the EMIS Web using the Information Access Log-in for the duration of the Term of this Agreement.
- 6.4. The Customer shall provide the Provider with information relating to the Information Access Log-in and the associated set up details as reasonably requested by the Provider within 5 Working Days of such information being requested by the Provider. The Provider may from time to time, without notice and at its sole discretion, vary such information it requires the Customer to provide for the purpose of delivering its obligations under this Agreement.
- 6.5. The Customer shall provide Provider, its agents, subcontractors, consultants and employees, in a timely manner, with access to the Customer's systems, premises, office accommodation, information and other facilities as reasonably required by Provider to provide its obligations or exercise its rights under this Agreement.
- 6.6. The Customer shall not permit the Licensed Software and/or the Services or Products to be used in any of the following ways:
- 6.6.1. for any purpose other than its intended use (in accordance with Schedule 1 and Schedule 6 ("Operating Manuals") ("Schedule 6")) without the prior written permission of Provider;
  - 6.6.2. in breach of any reasonable instruction given by Provider, or
  - 6.6.3. that causes Provider to be subject to any criminal prosecution, enforcement action, civil claim or other action or liability.
- 6.7. In addition to the Contacts required to be nominated by Clause 26, the Customer shall designate one (1) or two (2) individuals within the Customer's organisation ("Specified Contacts") to serve as contacts between the Customer and Provider and to receive support through Provider's web portal, telephone support line or email using the methods set out below:
- Web portal URL: <https://desk.zoho.com/portal/primarycareit/>
- Telephone support line: 01508 536549
- Email: [support@primarycareit.zohodesk.com](mailto:support@primarycareit.zohodesk.com)
- All of the Customer's support enquiries shall be initiated primarily through these Specified Contacts.
- 6.8. To enable the Provider to provide Support and Maintenance, the Customer shall, during Business Hours, permit the Provider suitable access to relevant Customer personnel and to equipment upon which the Licensed Software is loaded or operating. This access shall where necessary include the ability for the Provider to connect remotely to equipment on which the Licensed Software is operating. The Provider will inform the Customer of the specifications of the equipment needed, and the Customer will be responsible all of the costs and use of any such equipment at the Customer's premises. Where the Customer is only able to provide restricted access to the Customer's systems, then the Provider may only be able to provide limited support and the Customer shall be responsible for any additional costs incurred to enable compliance with additional security requirements in accordance with Schedule 5.

- 6.9. The Customer shall:
- 6.9.1. provide supervision, control and management of the use of the Licensed Software;
  - 6.9.2. implement procedures for the protection and maintenance of the EMIS Web and implementation of backup procedures in the event of Errors or malfunction of the Licensed Software or any system on which the Licensed Software is loaded or operates, or with which it interfaces;
  - 6.9.3. document and promptly report to Provider all Errors affecting the Licensed Software and comply with all reasonable Provider instructions and procedures for their rectification, as soon as reasonably practicable after notification by the Provider;
  - 6.9.4. take all reasonable measures to ensure that the Licensed Software is operated by personnel properly trained in its use and the use of any equipment on which it is loaded or operates.
- 6.10. The Customer permits the Provider to use the Primary Care IT Toolset Data in support of marketing or promoting the Primary Care Pathways Toolset (including development and communication of case studies). The Provider will obtain the written agreement from the Customer before referring to the Customer by name as part of any marketing or promotional activities.
- 6.11. Upon request by the Provider, the Customer shall provide reasonable feedback to the Provider in respect of the Products and Services (including any Updates) and work collaboratively to create innovative new ways of working.

## **7. Provider's Obligations**

- 7.1. The Provider shall reasonably co-operate with the Customer in all matters relating to the Services and Products.
- 7.2. The Provider shall continue to maintain the expertise, experience and technological resource to deliver its obligations under this Agreement.
- 7.3. Upon receipt from the Customer of the Information Access Log-in required by Clause 6.2.2, the Provider shall install the Licensed Software in accordance with Schedule 3.
- 7.4. The Provider will provide the Customer with initial standardised training in the use of the Licensed Software as detailed in Schedule 1 and any further training as deemed appropriate by the Provider from time to time. The Provider reserves the right to charge the Customer in accordance with Schedule 5 for any additional training required by the Customer.
- 7.5. The Provider will respond in a timely fashion to any feedback received from the Customer in respect of the Products and Services (including any Updates) but the Provider is under no obligation to make any changes as a result of Customer feedback.

## 8. Support and Maintenance

- 8.1. Subject to payment by the Customer of all applicable Fees, for the Initial Licence Terms and any subsequent Licence Renewal Terms, the Provider will provide Support and Maintenance in respect of the most recent release of the Licensed Software and in respect of earlier releases of the Licensed Software, for a period of six (6) months from the date of issue of the immediately subsequent release.
- 8.2. Support and Maintenance will be provided during the Service Hours, and will comprise of:
  - 8.2.1. Updates and related Documentation;
  - 8.2.2. Telephone-based technical support to Specified Contacts;
  - 8.2.3. Email-based Technical support to Specified Contacts and
  - 8.2.4. Web Portal-based technical support to Specified Contacts.
- 8.3. The Customer will report any Errors in respect of which it requires Support and Maintenance Services:
  - 8.3.1. By telephoning the following number during Service Hours: 01508 536549;
  - 8.3.2. By email to Provider at [support@primarycareit.zohodesk.com](mailto:support@primarycareit.zohodesk.com); or
  - 8.3.3. By submitting a web portal report using URL  
<https://desk.zoho.com/portal/primarycareit/home>.
- 8.4. The Provider will not be obliged to respond to or act on any Error report until and unless made by a Specified Contact or reported in accordance with Clause 6.7 of this Agreement.
- 8.5. The Provider will use reasonable endeavours to:
  - 8.5.1. provide a Response to all Error reports within four (4) elapsed Service Hours;
  - 8.5.2. resolve reported Errors according to the severity of their effects as set out in this Clause 8 according to the priority assigned at the Provider's sole discretion as follows:
    - **"Priority 1: Severe"** which for the purpose of this Clause 8 means effecting system viability - within four (4) elapsed Service Hours;
    - **"Priority 2: Moderate"** which for the purpose of this Clause 8 means effecting important functionality – within eight and a half Service Hours or
    - **"Priority 3: Routine"** which for the purpose of this Clause 8 means any Error which is not classified as Priority 1 – Severe or Priority 2 – Moderate.
- 8.6. The Support and Maintenance applies only to the correction of Errors. The Provider shall not be liable or responsible for the resolution of any other malfunction of the Licensed Software, including any attributable to:
  - 8.6.1. the Customer's failure to permit the Provider with access to make the necessary Updates;
  - 8.6.2. changes to the operating system or environment which adversely affect the Licensed Software;

- 8.6.3. any alterations of or additions to the Licensed Software performed by Parties other than Provider or at the direction of Provider;
  - 8.6.4. use of the Licensed Software in a manner for which it was not designed;
  - 8.6.5. accident, negligence, or misuse of the Licensed Software;
  - 8.6.6. operation outside of environmental specifications;
  - 8.6.7. interconnection of the Licensed Software with other software products; or
  - 8.6.8. use of the Licensed Software on equipment other than the equipment for which it was designed and Licensed.
- 8.7. The Provider may at its sole discretion provide services in respect of:
- 8.7.1. an issue with the Customer's use of the Licensed Software which is not attributable to an Error; or
  - 8.7.2. unsupported versions of the Licensed Software.

Any such services shall be treated as Additional Services and the Provider shall be entitled to charge the Customer for these services in accordance with the Additional Services Charging Rates contained in Schedule 5.

- 8.8. The Provider reserves the right to charge the Customer in accordance with Schedule 5 for activities required to be undertaken to address any issue with the Licensed Software which is reported as an Error but found to be attributable to a failure by the Customer to operate the Licensed Software in accordance with the Documentation.

## **9. Fees and Payment**

- 9.1. The Customer shall for the use of the Services and Products and receipt of the Support and Maintenance, pay the Fees in accordance with this Agreement.
- 9.2. The Provider's invoices shall be payable by the Customer no later than the date specified in Schedule 2 for the Initial Licence Term. The Provider shall invoice for any Renewal Licence Terms on or after the Licence Renewal Date and the Customer shall pay the invoices not later than 10 Working Days from the date the invoice is received.
- 9.3. The Fees are exclusive of VAT and any other similar taxes, duties or levies or other deductions or withholdings in countries outside the United Kingdom, which shall be payable at the rate and in the manner prescribed by the Applicable Law.
- 9.4. If any Fees are not fully paid by the Due Date, the Provider shall be entitled to charge interest on any unpaid Fees on a daily basis (before as well as after any judgement) from the Due Date to the date of payment at the rate of two (2) per cent above the base rate of the Bank of England from time to time in force. Such interest shall accrue on a daily basis and be compounded quarterly. The Provider reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 9.5. In the event of any dispute in relation to the Fees, the Customer shall pay any undisputed sum by the Due Date, and the Parties shall, as soon as reasonably practicable, refer the dispute for resolution in accordance with the procedure set out in Clause 23. Any disputed Fees which are subsequently determined to be due and payable by the Customer to Provider shall attract interest in accordance with Clause 9.4 as from its original Due Date.
- 9.6. Subject to Clause 9.5 the Customer may not exercise any right of set off, retention, deduction or any other withholding against amounts invoiced to it by Provider.

#### **10. Warranties**

- 10.1. The Provider warrants that it has the right to grant the Customer a licence to use the Licensed Software in accordance with this Agreement.
- 10.2. The Provider does not warrant that the use of the Licensed Software will be uninterrupted or error-free.
- 10.3. The Customer warrants that it has all necessary rights and permissions for the Provider to provide the Services and Products to (and to access) the EMIS Web subject to the terms of this Agreement.
- 10.4. The warranties set out in this Clause 10 are in lieu of and exclude all other terms, conditions or warranties which might have effect between the Parties or be implied or incorporated into this Agreement or any collateral Agreement, whether by statute, common law or otherwise to the fullest extent permitted by law.

#### **11. Intellectual Property Rights**

- 11.1. The Customer acknowledges that all IPR in the Licensed Software, the Services and Products (including any protocols, searches, templates or any other material created on its systems) and any Documentation belong and shall remain with Provider indefinitely, and the Customer shall have no right, title or interest in or to the Licensed Software, Services and Products or Documentation other than the right to use the same in accordance with the terms of this Agreement.
- 11.2. The Customer agrees not to reproduce, transmit, share, display (including without limitation display on any intranet or extranet site), copy, sell, publish, distribute, or in any way provide the Primary Care IT Toolset Data produced by the Licensed Software to any Party outside the Customer organisation and site without prior express written consent from Provider.
- 11.3. The Provider shall indemnify the Customer in respect of any claim that the use of the Licensed Software and/or the Documentation by the Customer in accordance with this Agreement infringes the IPR of any third party (a "Claim"), provided always that the Customer has not modified, enhanced or in any way altered the Licensed Software.

- 11.4. The Provider will at its own option and expense defend or settle any Claim and, subject to this Clause 11, pay any final judgement entered against the Customer with respect to any Claim provided that the Customer shall:
- 11.4.1. notify the Provider in writing of the Claim as soon as reasonably practicable after becoming aware of it;
  - 11.4.2. grant the Provider sole control of the defence of the Claim; and
  - 11.4.3. provide the Provider with all information and assistance reasonably necessary for the proper defence of the Claim;
  - 11.4.4. mitigate any losses associated with the Claim.
- 11.5. In no circumstances will the Provider be liable for any costs or expenses incurred by the Customer without the Provider's written express authorisation, which shall not be unreasonably withheld or delayed.
- 11.6. In the event that any Claim is upheld, threatened or reasonably apprehended, the Provider may at its sole option and expense:
- 11.6.1. obtain any licence or permission necessary for the Customer's continued use of the Licensed Software and/or Documentation; or
  - 11.6.2. replace or modify the Licensed Software and/or Documentation so that it becomes non-infringing and without reducing the performance and functionality of the Licensed Software,
  - 11.6.3. terminate the Agreement and refund pro-rata to the Customer such part of any Fee subject to the third party claim paid by the Customer which relate to the unexpired portion of the Agreement.
- 11.7. The Provider will have no liability under this Clause 11 in respect of:
- 11.7.1. any infringement arising from the combination of the Licensed Software or Documentation with other products not supplied or approved by the Provider; or
  - 11.7.2. any modification of the Licensed Software or Documentation not made or expressly approved by the Provider; or
  - 11.7.3. any information or data supplied to the Provider by the Customer;
  - 11.7.4. use of the Licensed Software otherwise than in accordance with the Provider's instructions.
- 11.8. The provisions of this Clause 11 shall constitute the Customer's exclusive remedy in respect of any infringement by the Licensed Software of third party Intellectual Property Rights.

## 12. Termination and Exit Arrangements

- 12.1. The Customer is on notice that following expiry of the Initial Licence Term or any or all subsequent Licence Renewal Terms the Licensed Software may become out of date.
- 12.2. The Provider shall have no liability in respect of losses howsoever arising from the Customer's use or attempted use of the Licensed Software between the expiry of the Initial Licence Term or any or all subsequent Licence Renewal Terms and the Removal of Licensed Software.
- 12.3. Unless Renewal Licence Term(s) are entered into in accordance with the terms of this Agreement, this Agreement will cease upon expiry of the Initial Licence Term or relevant Renewal Licence Term as appropriate (subject to any early termination which occurs in accordance with the terms of this Agreement).
- 12.4. Either Party may terminate this Agreement at any time having provided 10 Working Days written notice (in accordance with the process set out in Clause 22 – Notices) to the other if the other Party:
  - 12.4.1. is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other Party fails to remedy that breach within twenty (20) Working Days after receiving written notice requiring it to remedy that breach; or
  - 12.4.2. is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 12.5. The Provider shall have the right to terminate this Agreement for convenience for any or no reason by providing no less than 20 Working Days' written notice to the Customer.
- 12.6. The Provider reserves the right to suspend the provision of the Services and Products to the Customer with immediate effect in the event that:
  - 12.6.1. the Customer is in material breach of any of its obligations under this Agreement which has not been rectified within 20 Working Days following notice of such breach;
  - 12.6.2. any regulatory authority requires Provider to suspend the Services and/or Products and the Provider has no other reasonable alternative way to provide the Services and/or Products; or
  - 12.6.3. the Customer fails without cause to pay Fees within 10 (ten) Working Days of the due date for such Fees.
- 12.7. Termination by either Party in accordance with the rights contained in this Clause 12 shall be without prejudice to any other rights or remedies of that Party accrued prior to termination.
- 12.8. On termination for any reason:



- 12.8.1. all rights granted to the Customer under this Agreement shall cease;
- 12.8.2. the Customer shall cease all activities authorised by this Agreement;
- 12.8.3. the Customer shall immediately pay to Provider any Fees due to Provider under this Agreement;
- 12.8.4. the Customer shall immediately destroy or return to Provider (at the Provider's option) all copies of Documentation in its possession, custody or control and, in the case of destruction, certify to Provider that it has done so; and
- 12.8.5. the Customer shall permit the Provider with access to its premises and/or EMIS Web within 10 Working Days for the purpose of removal of the Products.

### 13. Confidentiality and Freedom of Information

13.1. For the purpose of this Clause 13:

- 13.1.1. **"Codes of Practice"** means the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to Sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued by in respect of FOIA obligations, as amended, updated and replaced from time to time;
- 13.1.2. **"Discloser"** means any Party who discloses Confidential Information to the other Party;
- 13.1.3. **"EIR"** means the Environmental Information Regulations 2004 and any subsequent regulations issued from time to time;
- 13.1.4. **"FOIA"** means the Freedom of Information Act 2000; and
- 13.1.5. **"Recipient"** means any Party that obtains or receives Confidential Information from the Discloser.

13.2. The provisions of this Clause 13 shall remain in full force and effect notwithstanding termination or expiry of this Agreement for any reason.

13.3. Each Party shall treat in confidence the other's Confidential Information and shall not disclose any of the other's Confidential Information to any other person other than its own employees or consultants under conditions of confidentiality and then only to the extent required for proper performance of its obligations under this Agreement.

13.4. The Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement;

13.5. This Clause 13 shall not apply to any Confidential Information which:

- 13.5.1. appears in public literature or otherwise within the public domain, unless the information is in the public domain as a result of a breach of Agreement or any other act or omission by the Recipient;

- 13.5.2. any information or knowledge possessed by Recipient prior to disclosure to it by the Discloser or rightfully acquired from sources other than the Discloser;
  - 13.5.3. information which is required by law or a court of competent jurisdiction to be publicly released;
  - 13.5.4. is obtained by a third Party who is lawfully authorised to disclose it;
  - 13.5.5. is authorised for release by the prior written consent of the Discloser;
  - 13.5.6. the disclosure of which is required to ensure compliance with the FOIA and/or Codes of Practice
  - 13.5.7. where disclosure of Confidential Information is required pursuant to judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Law.
- 13.6. The Customer will consult with the Provider's Authorised Representative prior to disclosing any of the Provider's Confidential Information pursuant to a request for such information under Clauses 13.5.3, 13.5.6 and 13.5.7.
- 13.7. In protecting Confidential Information received from the other Party, each Party shall employ a reasonable standard of care, which shall be no less than the standard of care employed in protecting its own Confidential Information. Both Parties will establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the other Party's Confidential Information in its possession and to prevent unauthorised access thereto or use thereof.
- 13.8. Upon any termination of this Agreement, each Party shall cause all Confidential Information belonging to the other Party in whatever medium the same is recorded or held to be returned, deleted or destroyed according to the written instructions of the other Party.
- 13.9. The Customer shall indemnify, keep indemnified and hold harmless Provider, its officers, employees, agents, and subcontractors on demand as a debt from and against any and all claims, fines, losses, damages, demands, costs, expenses, fees (including, court and legal fees on an indemnity basis) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by Provider directly or indirectly because of or in connection with any breach of the Customer's obligations under this Clause.
- 13.10. Where the Customer is a public authority and is under a duty to comply with the provisions of the FOI or EIR as amended from time to time, including any related guidance or codes of practice, the Provider shall provide reasonable assist to the Customer in meeting any requests for information in relation to this Agreement in return for a reasonable fee notified by the Provider to Customer within ten (10) Working Days of receipt of any such written request.
- 13.11. The Customer will give the Provider reasonable opportunity (and in the case of a request, at least five (5) Working Days) to object or make representations regarding such disclosure, which the Customer shall consider in good faith prior to responding to the request or otherwise publishing such

information. The Customer will also give consideration to whether the information in question is subject to any exemptions, particularly regarding commercially sensitive information.

- 13.12. If the Customer, acting properly, concludes that it is obliged to disclose some or all of the information in question, it will give the Provider notice in writing for its decision including the reasons for dismissing the objections (if any) made by the Provider, such notice to be given prior to disclosure to the extent that it is practicable in all of the circumstances.

#### 14. Limitation of Liability

- 14.1. Nothing in this Agreement shall in any way limit or exclude either Party's liability for:
- 14.1.1. death or personal injury caused by its negligence; or
  - 14.1.2. fraud or fraudulent misrepresentation; or
  - 14.1.3. any other act or omission for which liability cannot be limited by law.
- 14.2. Subject to Clause 14.1, the Parties entire liability to each other in respect of the Services and Products and all losses arising out of or in connection with the performance or non-performance of obligations under this Agreement is as follows:
- 14.2.1. in respect of the indemnity given by the Provider in Clause 11.3 is unlimited;
  - 14.2.2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no circumstances exceed £5,000,000.
- 14.3. Subject to Clause 14.1, and in respect of payment of the Fees by the Customer, the Provider shall not be liable to the Customer, whether in contract, tort (including negligence) or otherwise and whether or not such losses or damage were foreseen, foreseeable, known or otherwise for loss of revenue, loss of actual or anticipated profits, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss, corruption or destruction of data, loss of contracts or any indirect, special or consequential loss.
- 14.4. The Customer shall indemnify, keep indemnified and hold harmless the Provider, its officers, employees, agents, and subcontractors on demand as a debt from and against any and all claims, fines, losses, damages, demands, costs, expenses, fees (including, court and legal fees on an indemnity basis) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered, incurred or sustained by the Provider directly or indirectly because of or in connection with any breach of the Customer's obligations under this Agreement.
- 14.5. The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in

either case) the Provider shall have no liability otherwise than pursuant to the express terms of this Agreement.

- 14.6. In no event will the Provider have any liability for non-provision or delay in the provision of the Services which can be reasonably attributed to the acts or omissions of the Customer or its employees, or third Parties outside the control of the Provider.
- 14.7. Both Parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.

#### **15. Force Majeure**

- 15.1. Neither Party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its reasonable control including but not limited to, act of God or governmental act, war, flood, fire, explosion, accident, civil commotion, or transportation or communications problems, or impossibility of obtaining materials.

#### **16. Insurances**

- 16.1. The Provider shall maintain in force an insurance policy or policies which cover(s) the following:
  - 16.1.1. Employers' Liability £2,000,000 (two million pounds) in any one occurrence;
  - 16.1.2. Public/Products Liability £5,000,000 (two million pounds) in any one occurrence and in the aggregate; and
  - 16.1.3. Professional Indemnity £5,000,000 (five million pounds) in any one occurrence and in the aggregate.
- 16.2. The Provider shall supply evidence of such policy or policies to the Customer within 10 (ten) Working Days of a written request by the Customer.

#### **17. Waiver**

- 17.1. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

#### **18. Severability**

- 18.1. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

## **19. Amendment and Modification**

- 19.1. Any amendment or modification of this Agreement (including any agreed Licence Renewal Term(s)) will only be binding if evidenced in writing, signed by an Authorised Representative of each Party and appended to this Agreement.

## **20. Non-solicitation**

- 20.1. The Customer or its Affiliates shall not for a period of 12 months after the Expiry Date, without the prior written agreement of the Provider, employ or offer to employ, or enter into a contract for the services of, any individual who was, at any time during the term of this agreement, an employee or a consultant of the Provider or entice, solicit or procure any such person to leave the employment of the Provider (or attempt to do so) whether or not that person would commit any breach of contract in leaving such employment or provision of services; or procure or facilitate the making of any such offer or attempt by any other person.

## **21. Third Party Rights**

- 21.1. Unless otherwise expressed to the contrary in this Agreement, nothing in this Agreement confers or purports to confer on any person who is not a Party to it any right to enforce any of its terms.

## **22. Notices**

- 22.1. Any notice required to be given under or pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post (except in the event of a current industrial dispute affecting the postal service, when the relevant Party shall serve by another means permitted in this Clause 22) to the other Party marked for the attention of the person nominated in Clause 26 at the address set out for such Party below:
1. Primary Care IT Ltd, GF6, Trumpeter House, Trumpeter Rise, Long Stratton, Norfolk, NR15 2DY
  2. \*\*\*\*\*

## **23. Dispute Resolution**

- 23.1. Except as otherwise provided, in the event of any dispute arising out of or in relation to the Services and Products provided under this Agreement, the Customer must first use its best endeavors to consult and negotiate with Provider to attempt to reach a settlement of the dispute satisfactory to both Parties. To such end the Parties shall within ten (10) Working Days of a dispute arising convene a meeting between their Authorised Representatives and any other relevant members of their management having regard to the matter under discussion (together, the "Appointed Persons") to attempt to resolve the dispute.

- 23.2. If the Appointed Persons agree upon a settlement of the dispute, they will sign a statement setting out its terms and the Parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach such a settlement within twenty (20) Working Days of the meeting convened in accordance with Clause 23.1, the Parties will refer the dispute to mediation before having recourse to litigation. The mediation shall be conducted in accordance with the NHS dispute resolution procedures
- 23.3. If the matter has not been resolved by the NHS dispute resolution procedure within twenty (20) Working Days of the initiation of that procedure, or if either Party will not participate in the NHS dispute resolution procedure then the dispute shall be decided by the English Courts.
- 23.4. Nothing under this Clause 23 shall restrict Provider's ability to enforce its rights to payment of any Fees properly due.

#### **24. Assignment and Subcontracting**

- 24.1. The Customer shall not sub-licence, lease or assign the benefit or burden of this Agreement in whole or in part or allow the Licensed Software to become the subject of any charge, lien or encumbrance, without the prior written consent of Provider.
- 24.2. The Provider may assign, charge or otherwise transfer any of its rights or obligations under this Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer.

#### **25. Whole Agreement**

- 25.1. This Agreement and any document referred to in it constitute the whole and only agreement and understanding between the Parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the Parties in connection with the subject matter of this Agreement whether existing prior to or at the same time as this Agreement. The express terms of this Agreement are instead of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 25.2. Any purchase order issued by the Customer will be accepted by Provider solely for the purposes of order confirmation and referencing invoices, and no terms or conditions included in, referred to in or attached to any such purchase order will have any effect.
- 25.3. This Agreement may be executed in any number of counterparts each of which when executed by one or more of the Parties shall constitute an original but all of which shall constitute one and the same instrument.

25.4. Nothing in this Agreement will preclude either Party from seeking injunctive relief to prevent or stop a breach of confidentiality or an infringement of Intellectual Property Rights.

## **26. Contacts**

26.1. The Parties have agreed to appoint the following:

26.1.1. Provider Contact – Nicola Vlatseas

26.1.2. Customer Contact – \*\*\*\*

26.2. The Provider Contact shall be the Authorised Representative of the Provider and be deemed to be empowered on behalf of the Provider for all purposes connected with the Agreement.

26.3. The Customer Contact shall be the Authorised Representative of the Customer and be deemed to be empowered on behalf of the Customer for all purposes connected with the Agreement.

26.4. Each Party shall be entitled, upon reasonable prior notice to the other Party, to replace the person it has appointed pursuant to this Clause 26 with another employee of equivalent experience and knowledge.

## **27. Autonomy**

27.1. Except as otherwise provided in this Agreement, the Provider will have full control over working time, methods, and decision making in relation to provision of the Services and Products in accordance with the Agreement.

## **28. Costs and Expenses**

28.1. Each Party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

## **29. Third Party Rights**

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

## **30. Reservation of Rights**

30.1. All rights not specifically and expressly granted to the Customer by this Agreement are reserved to the Provider.

### 31. Data Processing

- 31.1. The Parties undertake to comply with the provisions of the GDPR and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.
- 31.2. The Parties accept and acknowledge that no Personal Data will be intentionally collected or processed by Provider via the Licensed Software, which are not designed to be used for this purpose. Any Personal Data that is collected or processed by Provider shall be unintentional, and the Parties shall comply with this Clause 31 and the provisions of the Data Processing Agreement agreed by the Parties and included as Schedule 4 to this Agreement ("Schedule 4") to ensure the risk of such unintentional capture of Personal Data is minimised.
- 31.3. The Provider shall not be required to verify whether Personal Data has been processed by Provider as a result of providing the Licensed Software. If, however, the Provider becomes aware that Personal Data is captured and processed by Provider as a result of its provision of the Licensed Software, it shall notify the Customer and may suspend provision of the Licensed Software. The Customer shall take all necessary steps to ensure that the provision of the Services by Provider will not result in Provider processing Personal Data.
- 31.4. If the Provider has unintentionally obtained Personal Data as a result of providing the Licensed Software, the Customer shall instruct Provider to return or delete the Personal Data with which it has been provided. If the Customer fails to provide any instructions to Provider within 5 (five) Working Days of Provider notifying the Customer of the Personal Data it holds, the Provider shall be entitled to delete such Personal Data. The Provider shall not be required to recommence provision of the Licensed Software until it has received confirmation from the Customer that it has taken the steps necessary to ensure Provider shall not process Personal Data as a result of providing the Services.
- 31.5. Notwithstanding Clauses 31.1 to 31.4 inclusive, the Parties acknowledge that Provider may have sight of patient identifiable data which may constitute Personal Data when asked by Customer to investigate Errors with the Licensed Software
- 31.6. The Customer warrants to Provider that the Customer (a) has all requisite authority and has obtained and will maintain (including, by way of incorporating into all materials and processes through which Personal Data is captured) all necessary consents required under the Data Protection Legislation, and (b) has otherwise fully complied with all of its obligations under the Data Protection Legislation, in order to allow Provider to carry out its obligations.
- 31.7. This warranty shall apply notwithstanding termination or expiry of the Agreement for any reason. The Customer shall immediately notify Provider if any of the consents is revoked or changed in any way which impacts on Provider's rights or obligations under or in connection with the Agreement.
- 31.8. The Customer shall indemnify, keep indemnified and hold harmless Provider, its officers, employees, agents, and subcontractors on demand as a debt from and against any and all claims, fines, losses, damages, demands, costs, expenses, fees (including, court and legal fees on an indemnity basis) and liabilities (in each case whether direct, indirect or consequential) of whatever nature suffered,



incurred or sustained by Provider directly or indirectly because of or in connection with any breach of the Customer's obligations under this Clause.

### **32. Audit Rights**

- 32.1. Each Party shall be entitled, at its own cost and upon the provision of reasonable prior written notice, to audit the other Party's records to ensure compliance with its obligations under this Agreement. Each Party shall provide the other with reasonable access to any documents, records or information relating to this Agreement in order to allow such audit to take place. The Party conducting the audit shall use all reasonable endeavors to minimise any disruption caused to the other Party by the conduct of such audit.
- 32.2. The Customer agrees to permit Provider and its Authorised Representatives, at reasonable times and on reasonable advance notice, to inspect and have access to the premises, and to the computer equipment located there, at which the Licensed Software is being kept or used, for the purpose of ensuring that the Customer is complying with these terms. The Provider may at its sole discretion accept self-certification verified by a third party professional advisor together with supporting evidence to demonstrate compliance with the licence terms in lieu of any Audit.
- 32.3. If an Audit reveals that the Customer is using Licensed Software other than in accordance with the licence granted by this Agreement, the Customer will promptly reimburse Provider for the reasonable costs and expenses incurred by Provider related to such audit and pay the Provider a reasonable administration fee as determined by the Provider.

### **33. Agency Partnership**

- 33.1. Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties; or to constitute either of the Parties as the agent of the other Party.

### **34. Governing Law**

- 34.1. This Agreement shall be governed by and construed in accordance with the Applicable Law and, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction over any claim or matter or to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any proceedings may be brought in such courts.

### **35. Signatures**

- 35.1. The authorised signatories of the Parties have signed this Agreement on the day(s) and year(s) set out at the start of this Agreement.

**Primary Care IT Ltd**

Name: Nicola Vlatseas \_\_\_\_\_ Signature:  \_\_\_\_\_

**Customer**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

# Schedule 1 – Products and Services provided under this Agreement

## 1. Products

### Products (Licensed Software)\* and Documentation

1.1 [Primary Care Pathways](#) professional [toolset](#)

\*to include Updates but excluding any Upgrades

## 2. Services

### 2.1 Implementation arrangements

[See suggested timescales in Schedule 3](#)

### 2.2 Customer specific configuration

[Localisation to include locally enhanced services within templates and also alerts](#)

### 2.3 Training

[Onsite visit to train on the tools, review which tools to be set live and to review the localisation](#)

Schedule 2 – The Fee

The Fee of £18,688.25 per anum (including VAT £22,425.90) is payable by the Customer in consideration of the Products and Services for the Initial Licence Term as broken down below.

(Set out the Products from Schedule 1)

• Primary Care Pathways Professional Package

↓

Total cost for Products: £11213.25 (including VAT £13,455.90)

Total cost for Services (localization and training): £7475 (including VAT £8970)

Total Fee: £18688.25 (£22425.90 including VAT)

The Fee is payable by the Due Date.

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(To be completed by PCIT on a case by case basis based on which Products the Customer is using)¶  
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### Schedule 3 – Implementation Plan

This Schedule sets out the relevant activities and timescales for implementing the Products and Services under the Agreement. *See attached file: Professional Implementation Plan*

**Schedule 4 – Data Processing Agreement**

See attached Data Processing Agreement to this document

# Schedule 5 – Additional Services

## 1. Additional Services

- 1.1. Provision of Additional Services
  - 1.1.1. The Provider may from time to time at its sole discretion offer Additional Services to the Customer including, but not limited to, technical, support, training and consultancy services.
  - 1.1.2. The Additional Services will be set out by the Provider to the Customer in an Additional Services Fee Proposal.
  - 1.1.3. The Additional Service Fee Proposal will be based on the Additional Services Charging Rates set out in Table 1 of this Schedule 5 below which sets out volume linked hourly rates for different categories of Provider staff.
  - 1.1.4. The Provider reserves the right to vary the Additional Services Charge Rates at its sole discretion and more particularly based on the nature of the Additional Services activities and the appropriate skills mix. The Provider reserves the right to propose alternative and/or additional staff categories and to assign charging rates to these staff categories.
  - 1.1.5. The Provider may vary the Additional Services Charging Rates from time to time and will issue the revised hourly rates to the Customer at the commencement of the next Licence Renewal Term.
  - 1.1.6. The Provider may, where it considers appropriate in relation to the type of Additional Services being requested by the Customer, propose to the Customer a fixed fee arrangement for such Additional Services as opposed to on a time incurred basis using the Additional Services Charging Rates.
  - 1.1.7. If the Customer wishes the Provider to undertake the Additional Services in accordance with an Additional Services Fee Proposal, the Customer shall confirm in writing that the Customer accepts the relevant Fee Proposal in full.
  - 1.1.8. The Provider shall invoice the Customer for Additional Services in accordance with the terms contained in the Additional Services Fee Proposal. The Customer shall settle all of the Provider's invoices within the payment period set out in such invoices.

2. The Additional Services Charging Rates

2.1.1. The Additional Services Charging Rates are set out in Table 1 below.

Staff category	Skills profile	Additional Services Charging Rate (£ per hour)
Administrator	No formal qualifications. Experienced administrator	£15.00
Developer	A developer with appropriate experience in developing the Primary Care Pathways toolset	£50.00
Director	A Director of Primary Care IT Ltd	£200.00

Table 1



Deleted: Schedule 6 – Operating Manuals... [1]



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