

**THIS AGREEMENT IS MADE THE 12TH DAY OF NOVEMBER 2019**

## **PARTIES**

**(1) AT Technology Services Limited** a company registered in England and Wales (10315983) and whose registered office is at Streatham Place Surgery, 26-28 Streatham Place, London, England, SW2 4QY ("**ATT**"); and

**(2) Organisation name** whose main offices Address (the "**Customer**").

## **BACKGROUND**

This contract sets out the terms on which ATT will: (a) license the Customer access to EZ Analytics (BI Portal); and (b) provide related services set out in **SCHEDULE 2**

## **THE PARTIES HEREBY AGREE:**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation set out in Schedule 1 apply in this Contract.

### **2. TERM**

2.1 This Contract shall commence on the Commencement Date and shall continue in force for one (1) year unless terminated in accordance with its provisions or extended in accordance with Clause 2.2 ("**Term**").

2.2 The Customer may extend this Contract by further one (1) year periods by paying the Renewal Fee prior to the anniversary of the Commencement Date.

### **3. ATT'S OBLIGATIONS**

3.1 In consideration of the performance by the Customer of its obligations under this Contract:

- (i) ATT shall use its reasonable endeavours to provide the Services and make EZ Analytics available for ninety-nine per cent (99%) of the time (measured each calendar month), except during Maintenance. ATT shall grant a right to use EZ Analytics and its content in accordance with Schedule 3 (the "**Licence**");
- (ii) ATT (or its third-party licensors) may provide minor improvements, updates, enhancements, modifications, fault corrections, upgrade scripts, and changes to EZ Analytics from time to time ("**Maintenance**"). During the provision of Maintenance, the BI Tool may be unavailable. ATT shall use its reasonable endeavours to ensure that the unavailability of the BI Tool during the provision of Maintenance will not exceed more than fourteen (14) days in any calendar year.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (i) perform (or procure the performance by the Licensed Users) of the Customer Tasks in accordance with any dates specified by ATT;
- (ii) provide prompt co-operation and assistance and any information and/or documentation that ATT may reasonably require in order to enable ATT to provide the Services and procure that the Licensed Users do the same; and
- (iii) permit ATT staff to have such access as ATT may reasonably require to the relevant premises, clinical systems and facilities for the purpose of providing EZ Analytics and Services and procure that the Licensed

Users do the same;

- (iv) ensure (and shall procure that Licensed Users shall ensure) that log-in details and passwords are kept secure, and are protected from unauthorised disclosure and/or use;
- (v) have sole responsibility for the legality, reliability, integrity, completeness, accuracy and quality of the Customer Data, and Customer warrants that: (a) it is entitled (and has all necessary consents and approvals) to provide (and/or upload) the Customer Data to ATT for ATT to use it in accordance with this Contract; (b) the Customer Data does not contain any data or content which is unlawful or infringes the rights of any third party. Customer shall ensure that it maintains regular backups of all Customer Data; and
- (vi) comply with, and procure that the Licensed Users comply with all applicable laws and the terms of Schedule 3 and shall indemnify ATT against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from the Customer's or the Licensed Users' failure to comply with such terms, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any negligent act or omission by ATT.

4.2 Insofar as the performance of ATT's obligations under this Contract is delayed or prevented by reason of an act, omission or breach of this Contract by the Customer or by the Licensed Users then ATT shall be entitled to a reasonable extension of time to perform its obligations and to charge the Customer for the reasonable additional costs (if any) which it can demonstrate were incurred as a result of such act, omission, or breach.

## **5. CONTRACT PRICE**

- 5.1 In consideration of the provision of the Services and the grant of the Licence, the Customer shall pay the Contract Price and Expenses to ATT in accordance with Schedule 4 Part B.
- 5.2 The Contract Price, Expenses and Renewal Fee shall be exclusive of value added tax which shall be payable by the Customer, where applicable, in addition to the Contract Price, Expenses and Renewal Fee.
- 5.3 If the Customer fails to pay any amount due under this Contract on the due date for payment, ATT shall be entitled (without prejudice to any other right or remedy it may have) to charge interest on any amount outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 2018, such interest being charged as a separate, continuing obligation and not merging with any judgment.

## **6. LIABILITY**

- 6.1 Each Party accepts unlimited liability to the other for:
  - (i) death or personal injury caused by the negligence of that Party;
  - (ii) fraud committed by or on behalf of that Party; and
  - (iii) any other liability which may not be limited or excluded under any applicable law.
- 6.2 The Customer acknowledges that EZ Analytics: (a) is commercially available and has not been tailored to the Customer's or the Licensed Users' requirements (and it is the Customer's and the Licensed Users' responsibility to understand and implement any working practice changes required to make successful use of EZ Analytics); (b) is provided on an "as-is" basis and cannot be guaranteed to be free of bugs and errors; and (c) is dependent on third party software and services ("**Third Party Services**"), which are provided on an "as is", "with all faults" and "as available" basis without warranty of any kind. The Customer acknowledges that the business information in EZ Analytics is merely a presentation of the Customer Data, and as such ATT is not liable for the accuracy or completeness of the information in EZ Analytics. EZ Analytics is designed to provide a general overview of business information, to be used as part of the Customer's overall business information and data analysis systems. The Customer acknowledges that EZ Analytics is not intended to be a comprehensive business management tool, and

the Customer and Licenced Users should undertake their own investigations before relying on any content of EZ Analytics.

- 6.3 Subject to Clause 6.1, ATT shall not be liable to the Customer or the Licensed Users for (a) any indirect or consequential loss or (b) any loss of income, use, profits, business, contracts, revenues or anticipated savings whether arising from tort (including, without limitation, negligence or breach of statutory duty), breach of contract or otherwise.
- 6.4 Subject to Clause 6.1, and without prejudice to Clause 6.3, ATT's total aggregate liability to the Customer or the Licensed Users whether in contract, indemnity, tort (including, without limitation, negligence or breach of statutory duty) or howsoever otherwise arising or caused in connection with EZ Analytics and its content, the Services or this Contract generally, including, without limitation, any liability arising under or in connection with:
- (i) use of, or inability to use, EZ Analytics; and/or
  - (ii) use of, or reliance on, EZ Analytics or any of its content,
- shall not exceed the Contract Price paid by the Customer.
- 6.5 ATT shall not be in breach of this Contract to the extent that any neglect, default, act or omission of the Licensed Users, the Customer, or any agent, staff or subcontractor of the Customer (including, without limitation, a failure to perform the Customer Tasks) results in a breach of ATT's obligations under this Contract.
- 6.6 The Customer shall indemnify ATT against all any loss, damages, costs, expenses (including legal costs and expenses), claims or proceedings which it may suffer or sustain as a result of the Customer Data or the acts, omissions or defaults of the Customer or the Licensed Users, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any negligent act or omission by ATT.
- 6.6 Subject to Clause 6.7, ATT shall indemnify the Customer against damages finally awarded against Customer in any claim by a third party that the use of EZ Analytics in accordance with the terms of this Contract infringes the Intellectual Property Rights of that third party, except to the extent that such claim has been caused by any negligent act or omission by the Customer or the Licensed Users.
- 6.7 ATT's obligation in Clause 6.6 to indemnify the Customer shall not apply unless: (a) the Customer gives ATT prompt written notice of the action or claim upon becoming aware of the action or claim; (b) the Customer grants ATT exclusive control over the defence and settlement of the action or claim; and (c) the Customer gives ATT reasonable assistance in the defence and settlement of the action or claim, as requested by ATT (all of the Customer's reasonable out-of-pocket expenses in giving assistance shall be paid by ATT).

## **7. CONFIDENTIALITY**

- 7.1 Each Party shall, and shall use all reasonable endeavours to ensure that any person employed or engaged by that Party shall:
- (i) keep the other Party's Confidential Information confidential; and
  - (ii) use the other Party's Confidential Information only for the purposes of the performance of obligations under this Contract.
- 7.2 Each Party shall restrict access to the other Party's Confidential Information to those persons employed or engaged by that Party, or to professional advisers, who need to know the Confidential Information in connection with the performance of obligations under this Contract.
- 7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any information which:

- (i) is or becomes public knowledge other than by breach of this Clause 7; or
- (ii) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
- (iii) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- (iv) is independently developed without access to the other Party's Confidential Information; or
- (v) is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction.

## **8. DATA PROTECTION**

8.1 Each Party shall comply with the Act 2018 and the General Data Protection Legislation:

- (i) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed by the Data Protection Act 2018 and the General Data Protection Legislation.
- (ii) only to process (as defined in the 2018 Act) for and on behalf of the other Party, in accordance with the other Party's instructions and for the purposes of this Contract and to ensure compliance with the 2018 Act; and
- (iii) to allow the other Party to audit the other Party's compliance with requirements of this Clause 8.1 on reasonable notice and/or to provide the other Party with evidence of its compliance with the obligations set out in this Clause 8.1.

8.2 The Parties agree to use all reasonable efforts to assist each other to comply with the 2018 Act. In particular, this includes each Party providing the other Party with reasonable assistance in complying with subject access requests under the 2018 Act in relation to data processed under this contract.

8.3 From the date on which the General Data Protection Regulation ("**GDPR**") becomes effective in the UK, clauses 8.3 and 8.4 shall replace clauses 8.1 and 8.2. "**Personal data**", "**process**", "**data controller**", "**data subject**", and "**data processor**" shall have the meaning set out in the GDPR or any replacement legislation (together with all other applicable data protection laws being the "**DP Laws**").

8.4 Each Party will comply with its obligations under the DP Laws. Where ATT processes any data of which the Customer or a third party is the data processor (under or in connection with this Contract), ATT and the data processor shall set out in writing in advance the details of the nature and purposes of the processing, the data subjects and type of data involved, and the duration of such processing and:

- (i) Customer shall ensure at all times that: (a) there is a legal basis for ATT's processing under this Contract; and (b) Customer is entitled to transfer, provide and/or make available the data, so that ATT may lawfully use, process and transfer the data in accordance with this Contract; and
- (ii) ATT will: (a) only process the data on Customer's lawful documented instructions, including with regard to transfers of data to a third country or an international organisation (and Customer shall notify ATT if any instructions are unlawful); (b) ensure ATT's personnel have committed to confidentiality obligations; (c) shall not engage another processor without Customer's prior authorisation (and ensuring equivalent obligations to this clause are included); (d) at Customer's cost: (1) take all measures required pursuant to Article 32 of the GDPR; (2) assist Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Customer's legal obligations to respond to data subject's requests; (3) assist Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR, taking into account the nature of processing and the information available to ATT; (4) at Customer's choice (and where lawful), delete or return all the data and copies of it to Customer; and (5) make available to Customer all information

necessary to demonstrate compliance with the obligations laid down in this Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or its auditors; (e) notify the Customer without undue delay after becoming aware of a data breach; and (f) not transfer the data outside of the EEA without Customer's prior written consent.

- 8.5 The Customer acknowledges and agrees that ATT shall be entitled to: (a) collect, access, modify, distribute, audit, reproduce, delete or remove any Customer Data, and non-identifying and/or anonymised information relating to the Customer, the Licensed Users, and/or the use of EZ Analytics to the extent necessary to: (i) protect the Customer; (ii) provide, protect, and improve ATT's products and services; (iii) provide statistical analysis; (iv) protect the integrity of any data held by ATT; and/or (v) comply with the terms relevant to the Third Party Services; and (v) comply with this Contract and/or any applicable laws or regulations; (b) disclose such data and information if required by law, to enforce this Contract, or to protect ATT's rights or those of ATT's customers; (c) allow access to the Customer Data as strictly required by the third party providing the Third Party Services; and (c) use cookies on EZ Analytics.

## **9. INTELLECTUAL PROPERTY**

- 9.1 All Intellectual Property Rights and all other rights in EZ Analytics and its content (excluding the Customer Background) and the ATT Background shall be owned by ATT. All Intellectual Property Rights in the Customer Background shall be owned by the Customer.

## **10. FORCE MAJEURE**

- 10.1 If either Party is prevented, hindered or delayed from or in performing any of its obligations under this Contract (other than an obligation to make payment) by a Force Majeure Event:
- (i) that Party's obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that the Party is so prevented, hindered or delayed;
  - (ii) that Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Contract; and
  - (iii) as soon as reasonably possible after the cessation of the Force Majeure Event that Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Contract.

## **11. TERMINATION AND SUSPENSION**

- 11.1 Either Party may terminate this Contract immediately by notice in writing, if the other Party is in material breach of this Contract and fails to remedy the breach (if capable of remedy) within thirty (30) days of written notice of the breach being given by the terminating Party.
- (i) In case of contract termination - data will be retained for 1 months unless we agree specific terms and conditions. After 1 month data will be deleted.
- 11.2 ATT may terminate this Contract immediately by notice in writing, if:
- (i) the Customer is Insolvent; or
  - (ii) the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified to make such payment; or
  - (iii) the Customer or the Licensed Users dispute or challenge the validity of any of ATT's rights in relation to EZ Analytics or its content; or

- (iv) ATT shall cease at any time to have the right to grant the Licence in respect of all or part of EZ Analytics and its content (excluding Customer Background); or
  - (v) a period of suspension under Clause 11.7 lasts for longer than one month.
- 11.3 Termination or expiry of this Contract for any reason shall be without prejudice to any right or remedy of either Party which may have accrued prior to such termination or expiry.
- 11.4 On expiry or termination of this Contract for any reason the Customer shall discontinue all use of EZ Analytics and its content and shall procure that the Licensed Users do the same.
- 11.5 For the avoidance of doubt, upon expiry or termination of this Contract, ATT shall continue to be entitled to receive, and the Customer shall continue to pay, the Contract Price and Expenses in respect of any Services provided up to and including the date of termination or expiry (including all Expenses falling due for payment up to the date of expiry or termination and all Expenses falling due for payment after the date of expiry or termination which arise from non-cancellable commitments).
- 11.6 Any provision of this Contract which is either expressed or by implication is intended to survive termination or expiry of this Contract shall do so.
- 11.7 ATT may (without prejudice to its other rights or remedies), on written notice (except in the event of an emergency or third party cause), suspend provision of all or part of EZ Analytics (or its content) or Services (and/or restrict the Customer's and/or the Licensed Users' access to them, or disable any user identification code or password) if:
- (i) it suspects (acting reasonably) that the Customer or the Licensed Users are using EZ Analytics or its content in an unauthorised way;
  - (ii) there is (or ATT reasonably suspects there is or could be) a breach of Schedule 3, or the circumstances in Clauses 11.2(ii) or (iv) apply;
  - (iii) there is (or ATT suspects, acting reasonably, that there is or could be) a security breach by the Customer and/or the Licensed Users in respect of EZ Analytics; and/or
  - (iv) the relevant third-party ceases to provide, materially alters, or suspends its provision of, the Third-Party Services.

## **12. DISPUTE RESOLUTION**

- 12.1 If a dispute arises between the Parties in relation to any matter arising out of or in connection with this Contract which cannot be resolved by their authorised officers within ten (10) Business Days of the dispute arising, the Parties shall arrange for more senior representatives to meet solely in order to resolve the matter in dispute.
- 12.2 If the meeting referred to in Clause 12.1 does not resolve the matter in question within twenty (20) Business Days of the matter being referred to the more senior representatives, the Parties shall attempt to settle it by mediation in accordance with Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. To initiate a mediation, either Party may give notice in writing ("**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Parties shall co-operate with any person appointed as mediator, providing him/her with such information and other assistance as he/she shall require and will pay the mediator's costs, as the mediator shall determine or in the absence of such determination such costs shall be shared equally.



- 12.3 Nothing in this Contract shall prevent either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the process set out in this Clause 12.

### **13. NOTICES**

- 13.1 Any notice to be given under the Contract shall either be delivered personally or sent by first class recorded delivery post. The address for service of each Party shall be its address as set out above or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

- (i) if personally delivered, at the time of delivery;
- (ii) if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities

and, in proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class recorded delivery (as appropriate).

### **14. GENERAL PROVISIONS**

- 14.1 Save as required by law and/or the requirements of any relevant stock exchange, neither Party shall release any publicity relating to any matter in connection with this Contract without the prior written consent of the other Party.
- 14.2 Nothing in this Contract shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute either Party as the agent of the other or allow either Party to hold itself out as acting on behalf of the other.
- 14.3 This Contract supersedes all previous understandings and negotiations in respect of the Parties' obligations as provided in this Contract. Each of the Parties acknowledges and agrees that, in entering into this Contract, it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Contract or not) other than as expressly set out in this Contract, save for any Customer Tasks that have been notified to the Customer by ATT.
- 14.4 All representations (save in respect of fraudulent misrepresentation), warranties, conditions and other terms whether implied by statute or otherwise which are not expressly included in this Contract and which might otherwise relate to the Services or the Licence are hereby excluded to the extent permitted by law.
- 14.5 The delay or failure by a Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 14.6 If any provision of this Contract is agreed or held to be invalid or unenforceable, such provision shall not have the effect of invalidating or rendering unenforceable the remainder of this Contract and the Parties agree that they shall immediately commence in good faith negotiations to vary the terms of this Contract in order to remedy such invalidity or unenforceability.
- 14.7 The Customer shall not assign, novate, transfer or sub-contract the whole or any part of this Contract, or any of its rights or obligations under it, or grant any sub-licence, without the prior written consent of ATT.
- 14.8 This Parties' respective rights and obligations under this Contract shall continue for the benefit of, and shall be binding on their respective successor and assigns.

14.9 A person who is not a Party to this Contract shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. A person who is not a Party to this Contract shall not be entitled to object to, or be required to consent to, any variation to this Contract.

14.10 No variation to this Contract shall be effective unless made in writing and signed by both Parties.

14.11 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

## 15. LAW

15.1 The Parties submit to the exclusive jurisdiction of the English courts and agree that this Contract is to be governed and construed according to English law.

### IN WITNESS WHEREOF the Parties or their duly authorised representatives have signed this Contract

#### Signed for and on behalf of ATT by:

Signed: .....

Name:

Position: Director

Date: 12 November 2019

#### Signed for and on behalf of the Customer by:

Signed.....

Name.....

Position.....

Date.....



**SCHEDULE 1**

**DEFINITIONS AND INTERPRETATION**

1. In this Contract unless the context otherwise requires the following words and expressions shall have the following meanings:

**Contract** means this Contract between the Parties including the Schedules;

**ATT Background** means all documents (including any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form), software, tools, data, information and materials provided by ATT relating to the Services which existed prior to the Commencement Date;

**EZ Analytics** means ATT's business information portal and related software as made available through [www.ezanalytics.co.uk](http://www.ezanalytics.co.uk) by means of a managed (hosted) service in accordance with this Contract;

**Business Day** means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;

**Commencement Date** means the date of this Contract;

**Confidential Information** means any and all information, data and material of any nature which one Party may receive or obtain from the other in whatever form in connection with the operation of this Contract or otherwise relating in any way to the business, operations and activities of that Party, its employees, consultants, patients, agents and/or any other person with whom that Party has dealings;

**Contract Price** means the price payable by the Customer in respect of the provision of the Services and the grant of the Licence, as set out in Schedule 4, Part A, including the Services Fee and any fees for further support that may be incurred in accordance with this Contract;

**Customer Background** means all documents (including any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form), information and materials owned by the Customer which existed prior to the Commencement Date but, for the avoidance of

doubt, excludes the ATT Background;

**Customer Data** means all data that is provided or made available by or on behalf of the Customer and/or the Licensed Users to ATT (and which forms part of the Customer Background);

**Customer Tasks** means the tasks specified by ATT in writing, notified to the Customer;

**Expenses** means the expenses payable by the Customer in respect of the provision of the Services as set out Schedule 4, Part A, Paragraph 2;

**Force Majeure Event** means any event beyond the reasonable control of the Party claiming to be subject to the Force Majeure Event including, without limitation, strikes, lock-outs, labour or industrial disputes, acts of God, pandemic, war, riot, civil commotion, terrorism, malicious damage, suspension or termination of the Third Party Services, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm;

**GPs** means general medical practitioners who are:

- (a) registered on the performers list maintained in accordance with section 91 of the National Health Service Act 2006; and
- (b) providing services to the Customer's population (where the Customer is a Clinical Commissioning Group) or the relevant patient list (where the Customer is a GP federation or GP practice) pursuant to The National Health Service (General Medical Services Contracts) Regulations 2015; The National Health Service (Personal Medical Services Contracts) Regulations 2015 or the Alternative Provider Medical Services Directions 2016,

and a reference to GPs includes employees of those GPs;

**Insolvent** means the occurrence of any of the following events in respect the Customer:

- (a) a shareholders' meeting is convened for the purpose of considering a resolution that the Customer be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (b) the Customer is, or is deemed for the purposes of any law to be, unable to pay its debts or insolvent;
- (c) the Customer admits its inability to pay its debts as they fall due or suspends making payments on any of its debts or announces an intention to do so;
- (d) by reason of actual or anticipated financial difficulties, the Customer commences negotiations with creditors generally with a view to rescheduling any of its indebtedness, or a moratorium is declared in respect of any of the Customer's indebtedness;
- (e) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Customer;
- (f) a composition, assignment or arrangement with any creditor of any member of the Customer;
- (g) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Customer or any of its assets;
- (h) a resolution of the Customer or its directors is passed to petition or apply for the Customer's winding up or administration;
- (i) the Customer's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise);
- (j) if the Customer suffers any event analogous to the events set out in (a) to (i) of this definition in any jurisdiction in which it is incorporated or resident;

**Intellectual Property Rights** means patents, trademarks, service marks, trade names, copyright, rights in databases, rights in designs, know-how and all and any rights of a like nature and any applications for protection of any of these rights;

**Licence** shall have the meaning given in Clause 3.1;

**Licensed User** means the named employees of the Customer and the named GPs which are permitted by the Customer to use EZ Analytics, the total number of which must not exceed the total number of licences indicated in Schedule 4.

**Party** means ATT or the Customer as appropriate and **Parties** means both ATT and the Customer;

**Renewal Fee** means the fee set out in Schedule 4, Part A, Paragraph 3;

**Services** means the services to be provided by ATT, as detailed in Schedule 2;

**Services Fee** means the fee set out in Schedule 4, Part A, Paragraph 1;

**Territory** means England and Wales.

2. References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
3. References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
4. References to a "Clause" or "Schedule" are to Clauses or Schedules of this Contract; and references in this Contract to "Paragraphs" are Paragraphs of the relevant Schedule.
5. References to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
6. The headings are for convenience only and shall not affect the interpretation of this Contract.
7. Words denoting the singular shall include the plural and vice versa.
8. Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

**SCHEDULE 2**

**EZ ANALYTICS AND SERVICES**

**PART A: EZ ANALYTICS**

The following reports/dashboards will be included and designed based on local requirements and KPIs:

1. Medicines Management

**Steps agreed to commence service:**

- Data to be available at end of each month for extraction
- Dashboard to be published on 10th of each month
- Searches updated with clear criteria 1 month prior to next publish date

**PART B: SERVICES**

- EZ Analytics will be provided with user licenses to nominated individuals as specified by the Customer.
- Changes or Amendments to reports: the Customer can request reasonable changes or amendments to reports/dashboards served up in the Customer's instance of EZ Analytics up to 4 times per year within each contractual period.
- Training on how to use EZ Analytics and video user guides will be supplied on service commencement.

**SCHEDULE 3**

**LICENCE CONDITIONS**

**Use and protection of EZ Analytics**

1. ATT grants to the Customer a non-exclusive right during the Term to permit the Licensed Users to use EZ Analytics and its content in the Territory solely for the Customer's internal business purposes, subject to the terms of this Contract, and provided that the Customer does not: (a) sub-license access to, or use of, EZ Analytics; and/or (b) permit third parties to use (whether directly, as part of a managed service, or otherwise) EZ Analytics.
2. The Customer and the Licensed Users shall ensure that each use of the content of EZ Analytics bears the following:
  - (i) the following copyright identification: '© (year of publication)' (and the date to be placed in brackets after '©' shall be the date specified for that purpose by AT for the particular content); and
  - (ii) a notice to the effect that such content is used under licence from AT.
3. The Customer and the Licensed Users shall not do, or omit to do, anything to diminish the rights of ATT in the BI Tool or any of its content.
4. Nothing in this Contract shall give the Customer or the Licensed Users any right, title or interest in the BI Tool, other than the right to use them in accordance with the terms of this Contract. The Customer and all Licensed Users recognise ATT's title to the BI Tool and its content and shall do nothing inconsistent with such title and shall not claim any right title or interest in the BI Tool or its content, or any part of them, save as is granted by this Contract.
5. The Customer and the Licensed Users shall promptly call to the attention of ATT the use of any part of the BI Tool or its content by any third party or any activity of any third party which might amount to infringement or passing off.
6. All goodwill and reputation generated in the BI Tool and its content by the Customer and the Licensed Users shall be generated on behalf of ATT and be for ATT's benefit and the Customer and the Licensed Users shall hold any such goodwill generated as bare trustee for ATT.
7. The Customer and the Licensed Users shall not dispute or challenge the validity of EZ Analytics or its content or any other rights of ATT in relation thereto, either during the period of this Contract or at any time thereafter.
8. The Customer and the Licensed Users shall provide all such assistance as ATT may require in relation to the maintenance and protection of the BI Tool and its content.
9. The Customer and the Licensed Users shall provide to ATT, promptly upon ATT's written request, a written report in reasonable detail of any matter in relation to the Customer's and/or the Licensed Users use of EZ Analytics and its content as ATT shall specify.

**Infringement**

10. The Customer and the Licensed Users shall promptly notify ATT of any actual or suspected infringement within the Territory of the BI Tool or its content or any other Intellectual Property Rights in or relating to them ("**Infringement**") that comes to their attention.
11. ATT shall have the sole right to take action against third parties in respect of any Infringement. The Customer and the Licensed Users shall co-operate fully with ATT in taking all reasonable steps required by ATT in connection with any Infringement, including, without limitation, legal proceedings. ATT shall be responsible for the cost of any legal proceedings it requires and is entitled to any damages, account of profits and/or awards of costs recovered. The Customer and the Licensed Users shall use their best endeavours to assist ATT in any legal proceedings relating to any Infringement.
12. The Customer and the Licensed Users shall in no circumstances settle any claim or action against third parties in respect any Infringement without the prior written consent of ATT.

**Reservation**

13. ATT reserves the right to grant licences of the BI Tool and its content within the Territory and worldwide to other licensees and to use EZ Analytics and its content in any other manner.

14. The Customer and the Licensed Users shall not frame EZ Analytics on any other site, or create a link to any part of EZ Analytics;

15. The Customer and the Licensed Users are responsible for making all arrangements necessary for them to have access to EZ Analytics, and the Customer must procure and maintain a suitable hardware and software environment for the Customer's and Licensed Users' access and use of EZ Analytics, in accordance with industry standards and as recommended and notified by ATT from time to time.

#### **Use of EZ Analytics and its Content**

16. Where EZ Analytics contains links to other sites and resources provided by third parties, these links are provided for information only and such links are not to be interpreted as approval by ATT of those linked websites or information obtained from them.

17. ATT may update and change EZ Analytics and its content, the Services, and any general terms of use specified by ATT in respect of EZ Analytics from time to time.

18. The Customer must promptly report any breach of this Contract in writing to ATT.

19. The Customer shall not and shall procure that the Licensed Users shall not:

- i. circumvent or bypass any technological protection measures in EZ Analytics;
- ii. remove any copyright, trade mark, or other proprietary rights notices from, or disassemble, decompile, reverse engineer or create derivative works based on the whole or any part of EZ Analytics or any related or underlying software or content, except and only to the extent expressly permitted by applicable copyright law;
- iii. copy, publish, lease, rent, lend, transfer, or sublicense (or allow access by unauthorised

applications to) EZ Analytics or any related or underlying software or content;

iv. create any software which is substantially similar to EZ Analytics;

v. use EZ Analytics or its content in a way: (a) prohibited by law, regulation or governmental order; (b) which could violate or infringe any rights of ATT or any third party; or c) which could harm EZ Analytics or impair a third party's use of EZ Analytics;

vi. use EZ Analytics or its content in any application or situation where failure of EZ Analytics or its content could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage;

vii. misuse EZ Analytics by introducing viruses, malware, spam or other material, code or components which are malicious or technologically harmful; or

viii. attempt to gain unauthorised access to, or disrupt EZ Analytics, its content, any Third Party Service, any other service, device data, or network, the server on which EZ Analytics is stored or any server, computer or database connected to EZ Analytics.

20. Subject to Clause 6.1, ATT will not be liable for any loss or damage caused by viruses or other technologically harmful or malicious material that may infect the Customer's or the Licensed Users' computer equipment, computer programs, data or other proprietary material due to the Customer and the Licensed Users' use of EZ Analytics or to the Customer's or the Licensed Users' downloading of any content from EZ Analytics.

21. The terms set out in this Schedule 3 are without prejudice to any general terms of use as specified by ATT in respect of EZ Analytics. The Customer and the Licensed Users agree that they are subject to, and shall comply with, any such general terms of use.

**SCHEDULE 4**

**CONTRACT PRICE**

**PART A: CONTRACT PRICE AND EXPENSES**

**1. CONTRACT PRICE**

The Customer shall pay to ATT the following annual subscription payment of **£15,000 plus VAT, £18,000.00 inclusive of VAT ("Subscription Fee")**, to commence an initial 12-month license to the EZ Analytics Portal and apps listed in the description and calculation in the table below.

Description	List Price and Licensing Parameters	Total List Size	Sub total

Should any further support be required, beyond the specified Services, ATT shall charge the Customer for such support at a day rate of £500 plus VAT.

**2. EXPENSES**

The Customer shall pay all reasonable expenses necessarily incurred by ATT in the course of the provision of the Services, subject to production of receipts or other appropriate evidence of payment. Such expenses shall include but not be limited to travel costs, venue hire, hospitality, AV equipment and other related costs.

**3. RENEWAL FEE**

The Renewal Fee at the 11th month anniversary will be no less than the Subscription Fee at the 11th month anniversary (Renewal Date), subject to contract review and mutual agreement on price, based on the combination of apps mentioned in the Description above. This rate would change if more apps were required by the Customer, subject to a mutually agreed price (usually at a rate of £0.05 + VAT per additional app per patient). Note that such a Renewal Fee does not cover any further training/workshop.

Should the Customer wish to further extend the Agreement in accordance with Clause 2.2 after the initial one (1) year period, it shall pay ATT no less than the Subscription Fee at the Renewal Date for each further one (1) year period, to cover the continued access and maintenance of the EZ Analytics Portal. This rate would change if more apps were required by the Customer, subject to a mutually agreed price (usually at a rate of £0.05 + VAT per additional app per patient). Note that such a Renewal Fee does not cover any further training or workshops.

**PART B: PAYMENT TIMETABLE**

**1. INVOICING**



- 1.1 ATT shall invoice the Customer for the Services Fee on the Commencement Date.
- 1.2 ATT shall invoice the Customer for the Renewal Fee on the Renewal Date.
- 1.3 ATT shall invoice the Customer for the Expenses and any further support required (at a day rate of £500 plus VAT) as and when such Expenses arise or such further support is required.

**2. PAYMENT**

- 2.1 The Customer shall pay any such invoice submitted by ATT within thirty (30) days of the date of the invoice into such bank account as ATT may nominate to the Customer from time to time in cleared funds without deduction or set off.

**SCHEDULE 5**

**DATA SHARING AGREEMENT**

This Contract is subject to the following Data Sharing Agreement (DSA) i.e. Schedule 5. This covers data sharing between ATT and the Customer(s).

As a prerequisite, ATT must be granted access to relevant clinical systems – via suitable access levels, for example:

- For EMIS Web – Access to the system via EMIS search and report and/or EMIS Enterprise

**1. POLICY STATEMENTS AND PURPOSE OF THIS DATA SHARING AGREEMENT**

1.1 EZ Analytics enables patient information to be brought together in one single location, removing the need for access to individual practice systems. Bespoke or pre-defined searches can be run, producing anonymised data for reporting, which is controlled through the creation of electronic sharing agreements.

1.2 Access to practice data is dependent on each practice activating their electronic sharing agreement.

1.3 By signing up to the data sharing agreement below, you are providing consent to share aggregate data with ATT to automate searches for reporting activity at both CCG/Federation/Group and practice level.

**2. LEGAL BASIS FOR INFORMATION DATA SHARING**

2.1 The requirement is to ask for aggregated reports and the information extracted will be anonymised data which does not contain any personal identifiers therefore the conditions of the DPA do not apply to its processing. This offers an additional level of security.

**3. INFORMATION**

3.1 What information is it necessary to extract?

ATT will be able run searches and reports to inform service planning and commissioning decisions using the agreed data set required for each search. This encompasses a more streamlined process for the practice, as it takes away the onerous task of practice staff building, running and producing searches and reports.

3.2 Who is going to be responsible for signing the data sharing agreement and ensuring its return?

The Customer (CCG/Federation/GP surgery) will identify a responsible individual(s) for this information data sharing agreement with their contact details. This person will be known as the 'Data Controller' (see section 8).

3.3 How will you keep a record of what information has been extracted?

The Customers Clinical IT system will record what information has been extracted and practices are able to view the searches and reports within their own clinical system.

3.4 How is this information going to be extracted?

The information will be extracted electronically through the agreed mechanisms as specified in Schedule 2. The Customer is able to review the data report and raise any concerns or comments to the ATT team as appropriate. The Customer will ensure appropriate security measures and compliance with the Information Governance policy within their own CCG/Federation/GP surgery.

3.5 Who will have access to this information and what may they use it for?

ATT will have role-based access to the specified system(s) as per Schedule 2 for the purposes of collating activity for each participating practice/Customer(s). Data can also support health commissioning needs to inform service planning and inspire improvement for patient care by measuring trends, risk stratification, prediction and forecasting and optimising use of resources.

3.6 Timescales

This will be on-going for the life time of the programme, as per Schedule 2 and Schedule 4.

- 3.7 How securely does the information need to be stored?  
The information will remain securely stored within EZ Analytics and will be subject to the same security and storage measures as NHS N3 standards, with Role Based Access Control (RBAC).

Each partner signing this DSA agrees to adhere to the agreed standards of security. If there is a security breach in which information received from another party under this DSA is compromised, the originator will be notified at the earliest opportunity via the identified individual(s) at 3.2 who must forward details to the Customer's Senior Information Risk Owner (SIRO).

- 3.8 How long are you going to keep the information?  
The information will be kept for the life span of the programme and then in accordance with the records management guidance for the retention and disposal of information.

#### **4. BREACH OF CONFIDENTIALITY**

- 4.1 ATT will adhere to the Customer's serious incident procedure for the management of all information governance breaches (to be specified by the Customer).

#### **5. COMPLAINTS PROCEDURES**

- 5.1 ATT will adhere to the Customer's complaints policy for the management of all complaints (to be specified by the Customer).

#### **6. REVIEW OF THE DATA SHARING AGREEMENT**

- 6.1 This DSA will be reviewed at the anniversary of each contractual period.

#### **7. CLOSURE/TERMINATION OF AGREEMENT**

- 7.1 The Customer and/or ATT can suspend this DSA for 60 days if security has been seriously breached. This should be in writing and be evidenced.

Any suspension will be subject to a Risk Assessment and Resolution meeting, the panel of which will be made up of the signatories of this agreement, or their nominated representative. This meeting is to take place within 14 days of any suspension.

#### **8. APPROPRIATE SIGNATORIES**

- 8.1 Organisation(s) should identify who is the most appropriate individual(s) within their agency to sign the DSA having taken account of their organisational policy and the fact that the signatory must have delegated responsibility to commit their organisation to the indemnity. It is the responsibility of the individuals identified at 3.2 to ensure that copies of the DSA are made available as necessary to ensure adherence to the DSA.

**IN WITNESS WHEREOF the Parties or their duly authorised representatives have signed this Agreement**

**Signed for and on behalf of ATT by:**

Signed: .....

Name:

Position: Director

Date: 12 November 2019

**Signed for and on behalf of the Customer by:**

Signed.....

Name.....

Position.....

Date.....