PATHP⊕INT®

SOFTWARE
SERVICE LEVEL AGREEMENT

Contract Front Sheet

1.   PROVIDER:

Open Medical Ltd, a company registered in England under company number 08620208 whose registered office is at CP House (7th Floor Tower), 97 -107 Uxbridge Road, London W5 5TL

2.   CUSTOMER:

Hospital name and address here

3.   SOFTWARE:

Pathpoint® eTrauma Core and Virtual Fracture Clinic

4.   COMMENCEMENT DATE:

2022

Please note that after Commencement there will be a period for Provider and Customer briefings to determine the scope of the work involved in implementing the Service and configuring the service for the Customer. The timeframe for this may vary depending on project complexity, stakeholder cooperation and timely confirmation of customer configuration requirements and will be more accurately determined within 4 weeks of signature of this Agreement. (For guidance only, the typical timeframe is 2-4 weeks for less complex projects, and 8-12 weeks for more complex projects covering multiple sites, with multiple software services and modules, or with significant bespoke configuration requirements).

5.   SUBSCRIPTION PERIOD:

[xx] months from the Commencement Date [renewing automatically] or [Please note that this subscription period does NOT renew automatically - see the terms of the Framework Contract relating to these Services. Where the terms of this Service Level Agreement conflict with the terms of the Framework Contract, the Framework Contract will prevail but the terms of this Service Level Agreement may be used for interpretation in the case of ambiguity or where the Framework Contract is silent.]

6.   SUBSCRIPTION FEE:

(a)   The annual Subscription Fee shall be a total of £xx plus VAT;

(b)   Subscription Fees are fixed for a period of one year from the Commencement Date;

(c)   Subscription Periods renew automatically unless specified otherwise in this Agreement, and Subscription Fees for renewals are calculated in accordance with clause 7 of the Terms and Conditions.

7.   INVOICING:

Frequency: The Provider shall invoice the Customer quarterly [six monthly / annually] in advance against a purchase order which the Customer shall issue on expiry of each previous Subscription Period.

Purchase Order Number: [tba]

Customer's Accounts Department Contact name:
tba
Email address: tba
Telephone number: tba

8.   TRIAL PERIOD:

Insert details of any trial period e.g. 6 months from the Commencement Date; see clause 7.2 for the terms of the trial

9.   DISCOUNT:

[discount if any]

10.   GENERAL

(a)   The Provider and the Customer agree and enter into this Agreement, comprising the terms of this Contract Front Sheet and the Terms and Conditions and Schedule(s) attached, on the Commencement Date set out above.

(b)   Use of the Services and renewal of Subscription(s) will constitute deemed acceptance of these Terms and Conditions whether this document is signed or not.

(c)   These Terms and Conditions also apply to any Services procured via a Framework Agreement. If there is any conflict between this Agreement and any applicable Framework Agreement, the terms of the Framework Agreement will take precedence but these Terms and Conditions may be relied on where the Framework Agreement is silent or unclear.

(d)   The Provider reserves the right to modify these Terms and Conditions from time to time. Most changes made in this way will be administrative changes or in response to changes in legislation. These will take effect automatically as soon as the modified version of the Terms and Conditions is posted on the Provider's website. It is the Customer's responsibility to review the Terms and Conditions regularly to ensure the Customer is aware of the latest Terms and Conditions. If a significant change that might have a negative impact on the Customer is proposed (such as to pricing), the Customer will always be given advance notice. If the Provider fails to give advance notice of a significant change, the Customer's Service will continue on the Terms and Conditions to which it signed up at the start of the Service, or on the last revised version that the Customer was sent, whichever is the most recent. Continued use of the Service will constitute acceptance of the modified Terms and Conditions.

Signed by the duly authorised signatory for:

PROVIDER	CUSTOMER
Signatory:	Signatory:

…………………………………………………

…………………………………………………

Harry Lykostratis Managing Director

Name: Title:

Terms and Conditions

THESE TERMS AND CONDITIONS are agreed and entered into on the Commencement Date by

(1) The Provider; and (2) The Customer, all as described in the Contract Front Sheet above.

1   Definitions and interpretation

1.1   In this Agreement:

Additional Services	means the provision by the Provider of access to (i) Software Training; and (ii) the Emergency Helpline;
Agreement	means the Contract Front Sheet and these Terms and Conditions and the Schedule(s) to this Agreement;
Applicable Law	means any and all applicable laws, statutes, orders, rules, treaties, decree, regulations, directives, edicts, bye-laws, schemes, warrants, other instruments made under or to be made under any statute, any exercises of the royal prerogative and codes of conduct and regulatory rules or guidelines, whether local, national, international or otherwise existing from time to time, together with any other similar instrument having legal effect in the relevant circumstances;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;

Commencement Date means the date specified in the Contract Front Sheet;

Contract Front Sheet means the contract front sheet to which these Terms and Conditions are appended;

Confidential Information	means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
Customer	means the entity described as such in the Contract Front Sheet;
Customer Data	means all information provided by the Customer to the Provider when using the Service as more fully described in the Data Protection Impact Assessment created for this Service;
Data Analysis	means the aggregation, analysis and commercial use of Customer Data by Provider;

Data Protection Laws means as applicable and binding on the Customer, the Provider and/or the Service:

(a)   in the United Kingdom: all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended; and

(b) in member states of the European Union (EU) and/or European Economic Area (EEA): the EU GDPR and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with any of the EU GDPR; and

any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

Emergency Helpline	means the emergency telephone helpline available to the Customer in relation to the Service;
EU GDPR	means in EU and EEA member states the EU law version of the General Data Protection Regulation ((EU) 2016/679);
Framework Contract	Where applicable, the contract, agreement, statement of works or order form entered into between the Parties under a separate framework agreement or other contractual structure and into which this Agreement is incorporated by reference;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lockouts or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;
IAM System	a third-party cloud service used by the Customer for identity and access management and to control the permissions and access for the Customer's users and cloud resources; see also SSO - Single Sign On;
Intellectual Property Rights	means copyright, patents, rights in inventions, rights in confidential information, know-how, trade secrets, trademarks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semiconductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any software to protect or register such rights, (iii) including all renewals and extensions of such rights or software, (iv) whether vested, contingent or future and (v) wherever existing;
Provider	means the entity described as such in the Contract Front Sheet;
RPI	means the "all items" Retail Prices Index published by the Office for National Statistics or any successor or replacement agency or government department;
Service	means the remote provision of the Software to the Customer;
Service Hours	means 24 hours a day, seven days a week;

SSO	means Single Sign-On - a system operated by the Customer that provides the capability to authenticate once, and be subsequently and automatically authenticated when accessing various target systems including the Pathpoint Software;
Software	means the Pathpoint software application(s) developed and supplied by the Provider, all as described in the Contract Front Sheet ;
Software Training	means the provision by the Provider of training to the Customer in relation to the Software;
Subscription Fee	means the fee payable by the Customer in respect of the Service for the relevant Subscription Period set out in the Contract Front Sheet or as amended in accordance with clause 7 of this Agreement;
Subscription Period	means the fixed period during which the Service is provided which shall automatically renew for the same period unless or until amended or terminated in accordance with this Agreement;

Terms and Conditions means these terms and conditions and any schedules to this Agreement;

UK GDPR   means the UK General Data Protection Regulation.

1.2   Interpretation

In this Agreement:

1.2.1   a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.2   a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.3   any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.4   a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement.

2   Service and availability

2.1   Subject to clause 2.2, the Provider shall use its reasonable endeavours to make the Service available to the Customer during the Service Hours excluding:

2.1.1   emergency maintenance; or

2.1.2   downtime caused in whole or part by Force Majeure.

2.2   The Customer acknowledges and accepts that where the Service is made available to it and hosted on and via any organisational or internal network (including, without limitation, networks such as N3 or the Health and Social Care Network used and operated by the National Health Service), the Provider shall have no control over or liability in relation to the availability or uptime of such network.

2.3   The Customer acknowledges that the Provider shall be entitled to modify the features and functionality of the Service as part of its ongoing development of the Software.

2.4 The Customer's attention is drawn to Schedule 1 and the NHS Digital End User Organisation Acceptable Use Policy which supports the provision of the Provider's products and services to the Customer.

2.5 The Provider offers general user support including an Emergency Helpline on the following basis:

2.5.1 Weekdays - a response is provided within 8 hours between 7am and 7pm;

2.5.2 Weekends and weekdays outside the hours of 7am to 7pm - a response is provided within 12 hours; and

2.5.3 There is a 24 x 7 x 365 hotline support (0203 322 9823) to resolve high severity live system application related incidents;

3 Software and Service

3.1 The Provider agrees to provide the Software, the Service and the Additional Services from the Commencement Date stipulated in the Contract Front Sheet.

3.2 The Provider will liaise with the Customer as to a mutually convenient time frame for the installation and activation of the Software and this shall be as soon as reasonably possible after payment of the Subscription Fee.

3.3 In order to ensure the smooth-running and success of the Software installation and Software Training the Customer shall:

3.3.1 allow the Provider reasonable access to its premises and personnel for the purposes of the Software installation; and

3.3.2 co-operate with the Provider's reasonable requirements in relation to the Software Training of the Customer's staff; and

3.3.3 nominate at least one individual within the Customer's staff who will receive in-depth Software Training from the Provider so as to understand the full capabilities and functionality of the Software, and who will be responsible for internal support and knowledge management within the Customer's organisation or the department using the Software. This is intended to supplement, not replace, the Provider's Additional Services of Software Training and the Emergency Helpline which are available to the Customer 24 x 7 x 365.

4 Provider warranties

4.1 The Provider warrants to the Customer that:

4.1.1 the Provider has the right, power and authority to enter into this Agreement and grant to the Customer the rights contemplated in this Agreement and to supply the Service and the Additional Services; and

4.1.2 the Service and the Additional Services will be supplied:

(a) with reasonable care and skill; and

(b) subject to clause 2.4, in accordance in all material respects with the description of the Service and the Additional Services provided in any supporting documentation provided to the Customer;

4.2 The Provider does not warrant or represent that the Service will be free from errors and interruptions.

4.3   The warranties in this clause are subject to the Customer giving notice to the Provider as soon as it is reasonably able upon becoming aware of the breach of any warranty. When notifying the Provider of a breach the Customer shall use its reasonable endeavours to provide the Provider with such documented information, details and assistance as the Provider may reasonably request.

4.4   The Provider will not be liable or be required to remedy any problem arising from or caused by the Customer's use of the Service in a manner other than as directed by the Provider.#

4.5   The Customer acknowledges and agrees that:

4.5.1   the Provider is not and cannot be aware of the extent of any potential loss resulting from any failure by the Provider to discharge its obligations under this Agreement;

4.5.2   the Service has not been designed to meet the Customer's individual requirements and can not be tested in every operating environment; and

4.5.3   it is the Customer's responsibility to ensure the facilities and functions of the Service meet the Customer's requirements and will not cause any error or interruption in the Customer's own software or systems.

5   Use of the Service

5.1   The Provider grants the Customer a non-transferable, non-exclusive right for the term of this Agreement to use and have access to the Service and the Additional Services.

5.2   Except to the extent such activities are expressly agreed by the parties, the Customer's rights to benefit from the Service does not permit it to:

5.2.1   copy, cut and paste, email, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store, archive, publicly display, sell or in any way commercially exploit any part of the Software;

5.2.2   use the Service to provide outsourced services to third parties or make it available to any third party or allow or permit a third party to do so;

5.2.3   combine, merge or otherwise permit the Software (or any part of it) to become incorporated in any other program, nor arrange or create derivative works based on it;

5.2.4   attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the underlying software (or any part of it) that is used to provide the Software, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and

5.2.5   to observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Service, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988.

5.3   The Customer shall not introduce any software virus or other malware (including any bugs, worms, logic bombs, trojan horses or any other self-propagating or other such program) that may infect or cause damage to the Software or otherwise disrupt the provision of the Service.

5.4   The Customer shall not be permitted to frame or mirror any part of the Software.

6   Withholding or Suspension of access

6.1   The Provider may withhold or suspend access to the Service and the Additional Services to the Customer if:

6.1.1   the Provider suspects that there has been any misuse of the Service or breach of this Agreement; or

6.1.2   the Customer fails to pay any sums due to the Provider by the due date for payment.

6.2   The Provider will notify the Customer as soon as possible after withholding or suspending the Service.

6.3   Where the reason for withholding or suspending access is suspected misuse of the Service or breach of this Agreement, without prejudice to its rights under clause 14 (Term and termination), the Provider will take steps to investigate the issue and may grant, restore or permanently suspend access at its discretion. If the Provider considers it appropriate to permanently withhold or suspend access to the Customer, it will notify the Customer in writing and this Agreement will terminate immediately on service of such notice.

6.4   In relation to withholding or suspending access to the Services under clause 6.1, access to the Service will be granted or restored promptly after the Provider receives payment in full and cleared funds.

6.5   Subscription Fees shall remain payable during any period of withholding or suspension notwithstanding that the Customer may not have access to the Service.

7   Subscription Fee

7.1   The Customer shall pay the Provider the Subscription Fee for use of the Service and access to the Additional Services.

7.2   [Subject to any trial period agreed between the Provider and the Customer in the Contract Front Sheet, the] The Subscription Fee is payable in advance and may be paid quarterly, six-monthly or annually as stipulated in the Contract Front Sheet. In the event of early termination properly effected in accordance with clause 14 of this Agreement, a pro rata refund will be made by the Provider in respect of any Subscription Period following the termination date. [Where a trial period has been agreed, and the Customer elects to continue with the Service on expiry of the trial period, the Subscription Fee shall become payable immediately on expiry of the trial period. The Subscription Period shall be calculated from the Commencement Date, not the end of the trial period. If the Customer does not elect to continue with the Service, the Service will be terminated in accordance with clause 14 with immediate effect from the last day of the trial and no Subscription Fee is payable.]

7.3   Subject to the terms of any Framework Contract to the contrary, The Provider may, without requiring agreement from the Customer, increase the Subscription Fee on the following terms only:

7.3.1   not within the first 12 months from the Commencement Date; and

7.3.2   not more than once in any 12-month period; and

7.3.3   not exceeding the increase (if any) in retail prices as identified by the RPI twelve-month percentage change figure published by the Office for National Statistics that is in place as at December of the year immediately preceding the Subscription Period in respect of which the price increase will operate.

8   Invoicing

8.1   The Provider shall invoice the Customer for all sums due under this Agreement at such intervals as shall be agreed between the Provider and the Customer, and as are set out in the Contract Front Sheet.

8.2   All prices are exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes (VAT), which is payable by the Customer at the rate and in the manner from time to time prescribed by law.

8.3   The Customer shall pay such sums in full within 30 days from the date of invoice.

8.4   If sums due under this Agreement are not paid in full by the due date:

8.4.1   the Provider may withhold or suspend access to the Service and Additional Services in accordance with clause 6 of this Agreement;

8.4.2   the Provider may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force; and

8.4.3   interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgement.

9   Provider Intellectual Property Rights

All Intellectual Property Rights in and to the Software or any part of the Service (or any documentation relating to the Additional Services) belong to and shall remain vested in the Provider. To the extent that the Customer acquires any Intellectual Property Rights in the Software or any part of the Service, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Provider. The Customer shall execute all such documents and do such things as the Provider may consider necessary to give effect to this clause.

10   Customer Data

10.1   The Customer grants an irrevocable, perpetual, royalty-free, non-exclusive, worldwide licence to the Provider to use the Customer Data for the purposes of Data Analysis, provided that such Customer Data is fully anonymised, and does not therefore constitute personal data for the purposes of the Data Protection Laws.

10.2   The Customer acknowledges and agrees that all results, insights, reports, work product and documentation arising from the Data Analysis (and all Intellectual Property Rights relating thereto) belong to and shall remain vested in the Provider.

10.3   The Customer acknowledges that the Provider has no control over any Customer Data hosted as part of the provision of the Service and, save where it conducts any Data Analysis, does not actively monitor the content of the Customer Data.

11   Data protection

11.1   Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of all Data Protection Laws.

11.2   For the purpose of this clause 'data controller', 'data processor', 'data subject', 'Information Commissioner', 'personal data' and 'processing' shall have the meanings given to them in the Data Protection Laws.

11.3 The parties agree that the Customer is the data controller in respect of any personal data that the Provider processes in the course of providing services for the Customer (other than contact data processed by the Provider to allow it to manage the Customer's account).

11.4 Accordingly, the Provider agrees that it shall:

11.4.1 only carry out processing of the Customer's personal data on the Customer's documented instructions from time to time, such instructions at the date of this Agreement being to process the personal data in order to provide the Service;

11.4.2 ensure that all persons authorised by it to process personal data are subject to a binding written contractual obligation to keep the personal data confidential (except where disclosure is legally required;

11.4.3 implement appropriate technical and organisational measures to protect personal data against unauthorised or unlawful processing and accidental destruction or loss, so as to (i) allow the Customer to comply with the seventh data protection principle, and (ii) comply with the requirements of Article 32 of GDPR;

11.4.4 not engage another processor (Sub-Processor) to carry out processing activities on behalf of the Customer without the Customer's prior consent (it being acknowledged that if the Customer refuses consent, the Provider may terminate this Agreement);

11.4.5 make available to the Customer a list of any Sub-Processors engaged in the processing of the Customer's personal data and include in any contract with any subcontractors who shall process personal data directly or indirectly on the Customer's behalf, provisions which are equivalent to those in this clause 11.4;

11.4.6 as soon as reasonably practicable refer to the Customer any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority or relevant supervisory authority, for the Customer to resolve;

11.4.7 provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to the Provider) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

(a) security of processing;

(b) data protection impact assessments (as such term is defined in Data Protection Laws);

(c) prior consultation with a supervisory authority regarding high risk processing; and

(d) notifications to the relevant supervisory authority and/or communications to data subjects by the Customer in response to any breach of security relating to personal data

provided the Customer shall pay the Provider for all work, time, costs and expenses incurred in connection with providing such assistance.

11.4.8 at the option of the Customer, delete or return all personal data to the Customer after the end of the provision of the Service, and delete existing copies unless legally required to store it; and

11.4.9 on reasonable notice make available to the Customer such information as is reasonably required to demonstrate the Provider's compliance with this clause 11.4.

11.5 The Customer acknowledges and agrees that the Provider may be required to transfer personal data which it processes on the Customer's behalf to countries outside the

European Economic Area. The Provider shall ensure that any such transfer will be undertaken in accordance with the Data Protection Laws.

12 Confidentiality

12.1 Each party agrees that it may use the other party's Confidential Information only in the performance of its rights and obligations under this Agreement and that it shall not disclose the other party's confidential information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 12.

12.2 Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's confidential information in order to perform the disclosing party's rights and obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom confidential information is disclosed is aware of its confidential nature and complies with this clause 12 as if it were a party.

12.3 Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

13 Limitation of liability

13.1 [Subject to the terms of any applicable Framework Contract to the contrary, the] The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.

13.2 Subject to clause 13.6, the Provider's total liability shall not exceed:

13.2.1 an amount equal to the Subscription Fees paid to the Provider in the 12−month period immediately preceding the first incident giving rise to the loss, or

13.2.2 for incidents occurring in the first 12 months of this Agreement, an amount equal to the paid and projected Subscription Fees for that period.

13.3 Subject to clause 13.6, the Provider shall not be liable for consequential, indirect or special losses.

13.4 Subject to clause 13.6, the Provider shall not be liable for any of the following (whether direct or indirect):

13.4.1 loss of profit;

13.4.2 loss of data;

13.4.3 loss of use;

13.4.4 loss of production;

13.4.5 loss of contract;

13.4.6 loss of opportunity;

13.4.7 loss of savings, discount or rebate (whether actual or anticipated);

13.4.8 harm to reputation or loss of goodwill.

13.5 Except as expressly stated in this Agreement, and subject to clause 13.6, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

13.6 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:

13.6.1 death or personal injury caused by negligence;

13.6.2 fraud or fraudulent misrepresentation;

13.6.3 any other losses which cannot be excluded or limited by applicable law.

14 Term and termination

14.1 [Subject to the terms of any Framework Contract to the contrary, this] This Agreement will begin on the Commencement Date and shall continue unless and until terminated earlier in accordance with the provisions of this Agreement.

14.2 The Provider may terminate this Agreement at any time by giving notice in writing to the Customer if:

14.2.1 the Customer commits a material breach of this Agreement and such breach is not remediable;

14.2.2 the Customer commits a material breach of this Agreement which is not remedied within 30 days of receiving written notice of such breach;

14.2.3 the Customer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the Customer has received notification that the payment is overdue; or

14.2.4 any consent, licence or authorisation held by the Customer is revoked or modified such that it is no longer able to comply with its obligations under this Agreement or access and use the Service;

14.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:

14.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

14.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;

14.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

14.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

14.3.5 has a resolution passed for its winding up;

14.3.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

14.3.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 14 days of that procedure being commenced;

14.3.8 has a freezing order made against it;

14.3.9 is subject to any recovery or attempted recovery of items supplied to it by a Provider retaining title to those items;

14.3.10 is subject to any events or circumstances analogous to those in clauses 14.3.1 to 14.3.9 in any jurisdiction;

14.3.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.3.1 to 14.3.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

14.4 The right of a party to terminate the Agreement pursuant to clause 14.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.

14.5 If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate this Agreement under this clause 14, it shall immediately notify the other party in writing.

14.6 The Customer may terminate this Agreement on 30 days' written notice to the Provider. In the event of early termination, where notice has been properly given in accordance with this clause 14, a pro rata refund will be made by the Provider in respect of any subscription period following the termination date.

14.7 The Customer may also terminate this Agreement by electing not to continue with the Service upon the expiry of any agreed trial period. In those circumstances, the date of termination shall be the final day of the trial period.

14.8 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

14.9 In the event of termination of this Agreement for any reason:

14.9.1 the right to access the Service and the Additional Services provided under this Agreement shall terminate immediately, save for the limited read-only access detailed in clause 14.10 below;

14.9.2 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

14.10 The off-boarding plan for the Service provided under this Agreement is as follows:

14.10.1 Termination of this Agreement shall result in termination of the provision of the Service and Additional Services, but the system via which the Service is provided will remain live in a read-only state for 12 months to permit the Customer to utilise the following features:

(a) The native application interface;

(b) Printout production;

(c) Data list downloads; and

(d) Exports of all data as required:

(i) exported SQL files and binary archives are generated and provided automatically;

(ii) a full export of all data is produced in a readable format (SQL/XML) and a secure HSCN/N3-hosted download link is sent to the Customer;

<table>
<tr><td>(iii)</td><td>when the Customer has provided notification that any data migration is complete, in compliance with Data Protection Laws, the Provider will then provide certification of deletion of all personal data from the system.</td></tr>
<tr><td>(e)</td><td>All data backup regimes remain in place in accordance with the backup policy and retention periods dictated by the relevant Data Protection Laws and the Records Management Code of Practice for Health and Social Care 2016 retention protocols.</td></tr>
</table>

14.11 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

15   Entire agreement

15.1 The parties agree that this Agreement together with the Data Protection Impact Assessment applicable to this Service [and any Framework Contract between the Provider and the Customer] together constitute the entire agreement between them and supersede all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. [Where the terms of this Service Level Agreement conflict with the terms of the Framework Contract, the Framework Contract will prevail but the terms of this Service Level Agreement may be used for interpretation in the case of ambiguity or where the Framework Contract is silent.]

15.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement [or any Framework Contract between the Provider and the Customer] or the Data Protection Impact Assessment applicable to this Service. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

16   Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than 2 months, either party may terminate this Agreement by written notice to the other party.

17   No partnership or agency

The parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

18   Notices

18.1 Notices under this Agreement shall be in writing and sent to a party's address, email address or fax number (as such details are notified by each party to the other from time to time). Notices may be given, and shall be deemed received:

18.1.1   by first-class post: two Business Days after posting;

18.1.2   by hand: on delivery;

18.1.3   by fax: on receipt of a successful transmission report; and

18.1.4   by email on acknowledgement.

18.2   This clause does not apply to notices given in legal proceedings or arbitration.

19   Severability

19.1   Each clause of this Agreement is severable and distinct from the others. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced):

19.1.1   the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable; and

19.1.2   without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

20   Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

21   Set off

Each party must pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

22   Assignment

No party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent (such consent not to be unreasonably withheld or delayed).

23   Third party rights

Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

24   Governing law

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

25   Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, is subject matter or formation (including non-contractual disputes or claims).

Schedule 1

End User Acceptable Use Policy in relation to Patient Demographic Service Connection Agreement between Open Medical Ltd and NHS Digital

The Customer acknowledges that the Provider's Services are made available to it subject to the NHS Digital End User Organisation Acceptable Use Policy Appendix 1A as updated from time to time. A pdf copy is available on the NHS Digital website and may be downloaded at:

https://digital.nhs.uk/services/operations

Schedule 2

Data Protection Impact Assessment

If the Customer wishes us to include its DPIA, it may be attached or incorporated into this document by reference or hyperlink here

Schedule 3

Identity Access Management

Systems and Single Sign-On

Systems

If the Customer is operating an IAMS and/or SSO system, this Schedule will be included in the SLA

The Customer acknowledges and accepts that where the Customer has chosen to implement a third-party IAM or SSO System to control access to and use of the Pathpoint Service, the following additional terms will apply:

1.   **Access and Authentication**: The Customer is solely responsible for maintaining the confidentiality and security of its user accounts and associated passwords (for example, it must ensure that a strong and secure password is created and that its users understand this must be protected from unauthorised access). The Customer must therefore determine as part of its implementation process which areas of the Pathpoint platform each user is permitted to access (for example, certain staff grades do not have the ability to view/ alter certain records within the Pathpoint platform, and certain teams can/cannot access data relating to other teams).

2.   **IAMS/ SSO management and cooperation**: The Customer agrees that the Provider's responsibilities do not extend to the internal management or administration of the IAMS or SSO system which gives access to the Service for the Customer's users. The Customer will inform the Provider of the identity of the person/team within the Customer's organisation that is responsible for IAM or SSO management prior to any Service implementation and Software installation, and will ensure that the administrator provides reasonable cooperation to the Provider to enable the implementation to proceed on schedule.

3.   **Compliance**: The Customer will ensure that:

(a)   all its users use the Service correctly and in compliance with this Agreement;

(b)   all its users take commercially reasonable efforts to prevent and terminate any unauthorised use of, or access to, the Services; and

(c)   the Customer is solely responsible for monitoring, responding to, and otherwise processing any alerts relating to potential abuse or unauthorised access to the Service and the Customer will promptly notify the Provider if the Customer becomes aware of any abuse /unauthorised use; and

(d)   the Provider shall have the right to investigate any potential violation, abuse or unauthorised use of the Service, which may include reviewing Customer Data and administrator logs relating to IAMS or SSO management.

4.   **Limitation of Support Function**:Where the Customer has chosen to implement a third-party IAM or SSO System to control access to and use of the Pathpoint Service, the Customer acknowledges that any queries in relation to logins and user authentication will be the sole responsibility of the Customer's IAMS or SSO system administrator.

5.   **Exclusion of Liability**: The Customer acknowledges and accepts that where the Customer has chosen to implement a third-party IAM or SSO System to control access to and use of the Pathpoint Service:

(a)   the Provider bears no liability for that third-party IAM System's acts or omissions;

(b)   the Provider has no responsibility for the operation of the third-party IAM System; and

(c)   the Provider will not be liable or be required to remedy any problem arising from or caused by the Customer's use of an IAM or SSO system.

The Customer's attention is drawn to the Customer warranties at clause 2.3 of this Agreement. Any user accessing the Software platform after a hiatus of more than 30 days will be flagged up automatically by the Provider and the Customer's administrator will be informed by email and will be required to take its own steps to ensure that there has been no unauthorised access of the Software Service.

6.   The Customer acknowledges and agrees that:

(a)   the Provider is not and cannot be aware of the extent of any potential loss resulting from any failure by the Provider to discharge its obligations under this Agreement;

(b)   the Service has not been designed to meet the Customer's individual requirements and can not be tested in every operating environment; and

(c)   it is the Customer's responsibility to ensure the facilities and functions of the Service meet the Customer's requirements and will not cause any error or interruption in the Customer's own software or systems.

7.   **Configuration**:

(a)   The Customer is responsible for configuring each user's access which will include, by way of SSO, access to the Service. The Customer must therefore determine as part of its configuration process which areas of the Pathpoint Service each user is permitted to access by means of their SSO (for example, certain staff grades do not have the ability to view/ alter certain records within the Pathpoint platform, and certain teams can/cannot access data relating to other teams).

(b)   The Provider will support the Customer to set up the initial configuration process according to the Customer's specific needs and instructions. The terms of that cooperation and support are set out in the Open Medical Authorisation and Authentication Standard Operating Procedure. The Provider's role is limited to ensuring that the Customer's authorised persons have access to the relevant areas of the Pathpoint Service. Thereafter, the Customer is solely responsible for managing the identification, authentication and access processes.