

Terms and Conditions

THESE TERMS AND CONDITIONS are agreed and entered into on the Start Date by (1) The Supplier; and (2) The Buyer, 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 Supplier 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;
Buyer	means the entity described as such in the Contract Front Sheet;
Buyer Data	means all information provided by the Buyer to the Supplier when using the Service as more fully described in the Data Protection Impact Assessment created for this Service;
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 buyers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
Data Analysis	means the aggregation, analysis and commercial use of Buyer Data by the Supplier for product improvement purposes and research support purposes;
Data Protection Laws	means as applicable and binding on the Buyer, the Supplier 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 Buyer 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 Buyer for identity and access management and to control the permissions and access for the Buyer'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;
Request For Change	means a form that is a formal request to make an amendment to the initially agreed Statement of Work;
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 Buyer;
Service Hours	means 24 hours a day, seven days a week;
SSO	means Single Sign-On - a system operated by the Buyer that provides the capability to authenticate once, and be subsequently and automatically

	authenticated when accessing various target systems including the Pathpoint Software;
Start Date	means the date specified in the Contract Front Sheet;
Software	means the Pathpoint software application(s) developed and supplied by the Supplier, all as described in the Contract Front Sheet ;
Software Training	means the provision by the Supplier of training to the Buyer in relation to the Software;
Subscription Fee	means the fee payable by the Buyer 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;
Supplier	means the entity described as such in the Contract Front Sheet;
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 Provision of Software and Services

- 2.1 The Supplier agrees to provide the Software, the Service and the Additional Services from the Start Date stipulated in the Contract Front Sheet.
- 2.2 The Buyer's attention is required to be drawn to Schedule 1 and the NHS England End User Organisation Acceptable Use Policy which supports the provision of the Supplier's products and Services to the Buyer.
- 2.3 Subject to clause 2.2, the Supplier shall use its reasonable endeavours to make the Service available to the Buyer during the Service Hours excluding:
 - 2.3.1 emergency maintenance; or
 - 2.3.2 downtime caused in whole or part by Force Majeure.

- 2.4 The Buyer 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 Supplier shall have no control over or liability in relation to the availability or uptime of such network.
- 2.5 The Buyer acknowledges that the Supplier shall be entitled to modify the features and functionality of the Service as part of its ongoing development of the Software.
- 2.6 The Buyer acknowledges that the Supplier reserves the right to modify these Terms and Conditions from time to time. Changes will take effect automatically as soon as the modified version of the Terms and Conditions is posted on the Supplier's website. Continued use of the Service will constitute acceptance of the modified Terms and Conditions. If a significant change that might have a negative impact on the Buyer is proposed (such as to pricing), the Buyer will always be given advance notice by email, with a copy of the latest Terms and Conditions. If the Supplier fails to give advance notice of a significant change, the Buyer's Service will continue on the most recent set of Terms and Conditions that the Buyer has been sent.
- 2.7 The Supplier offers general user support including an Emergency Helpline on the following basis:
 - 2.7.1 Weekdays - a response is provided within 8 hours between 7am and 7pm;
 - 2.7.2 Weekends and weekdays outside the hours of 7am to 7pm - a response is provided within 12 hours; and
 - 2.7.3 There is a 24 x 7 x 365 hotline support (0203 322 9823) to resolve high severity live system application related incidents.

3 Onboarding of Software and Service

- 3.1 The Supplier will commence scoping the Buyer's requirements in advance of the Start Date stipulated in the Contract Front Sheet, with a view to agreeing the full scope of the project through the creation of a Statement of Work prior to the Start Date, and a Project Initiation Document shortly thereafter.
- 3.2 Project scoping will include, but may not be limited to, the following:
 - 3.2.1 Supplier stakeholder engagement with Buyer's clinical, administrative, IT, and divisional teams;
 - 3.2.2 Collection by the Supplier of technical details required for its engineering team, such as which teams within the Buyer's organisation will use the Services, what access rights and permissions will be required for the Buyer's personnel, which IT pathways are required, whether any bespoke customisations are required;
 - 3.2.3 Preparation of a copy of the Buyer's IT system/map requirements;
 - 3.2.4 Understanding the steps required for integration with the Buyer's systems;
 - 3.2.5 Agreeing a timetable for implementation of the Services within the Buyer site(s) specified in any Framework Agreement or Scope of Works;
- 3.3 Following the initial pre-contract scoping exercise, the Supplier will liaise with the Buyer as to a mutually convenient time frame for the installation and activation of the Software. This shall be as soon as reasonably possible after payment of the Subscription Fee.
- 3.4 After the Start Date, there will be further Supplier and Buyer briefings to finalise the scope of the work involved in implementing the Services and configuring the Software for the Buyer before the Supplier can issue a "go live" date for the Services. The timeframe from Start

Date to the “go live” date may vary depending on project complexity, stakeholder cooperation and timely confirmation of any Buyer configuration requirements and will be more accurately determined within 4 weeks of signature of the Service Level Agreement. For guidance only, the typical timeframe from Start Date to “go live” is 4-6 weeks for less complex projects, and 12-24 weeks for more complex projects covering multiple sites, with multiple software services and modules, or with significant bespoke configuration requirements.

- 3.5 During the project internal champions of the system should be allocated. These internal champions are vital for the success of the system and the launch. The Supplier will provide the champions with extra training to enable them to assist colleagues with basic questions and correct usage according to organisational standard operating procedures established prior the system launch. The champions help embed the new system into their team and are vital for making the digital transformation a success.
- 3.6 The Supplier will provide the Buyer’s staff with Software Training, training materials and access to a dummy system for training purposes prior to the “go live” date. The UAT system will be accessible to the project team only until the system “go live”. The training materials will explain how to:
 - 3.6.1 create a secure login;
 - 3.6.2 navigate through the IT pathways within the Services;
 - 3.6.3 access, update and download patient records;
 - 3.6.4 how to send documents or links to patients using the Services;
 - 3.6.5 how to understand and utilise the full capabilities and functionality of the Services;
 - 3.6.6 where to find 24 x 7 x 365 support;
- 3.7 In order to ensure the smooth-running and success of the Software installation and Software Implementation the Buyer shall:
 - 3.7.1 allow the Supplier reasonable access to its premises and personnel for the purposes of the Software installation; and
 - 3.7.2 co-operate with the Supplier’s reasonable requirements in relation to the Software Training of the Buyer’s staff; and
 - 3.7.3 nominate at least one individual within the Buyer’s staff who will receive in-depth Software Training from the Supplier 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 Buyer’s organisation or the department using the Software. This is intended to supplement, not replace, the Supplier’s Additional Services of Software Training and the Emergency Helpline which are available to the Buyer 24 x 7 x 365.
- 3.8 The Buyer can request an additional change from the agreed full scope of the Statement of Work by completing a Request For Change form:
 - 3.8.1 It may incur additional charges
 - 3.8.2 It may impact the original timeline of the initial full scope
 - 3.8.3 It may be rejected with a given explanation to the rejection
- 3.9 The Request For Change form will document the Impact Analysis with the areas covered such as:
 - 3.9.1 the Project timeline impact;
 - 3.9.2 the Functionality;

- 3.9.3 the Performance;
 - 3.9.4 the Clinical Safety;
 - 3.9.5 the Information Governance;
 - 3.9.6 the Maintenance and support;
 - 3.9.7 the Complexity; and
 - 3.9.8 any of the other terms of the Statement of Work in question.
- 3.10 Upon the Buyer's request for a Request for Change Form, the Supplier shall provide a copy of the form within a reasonable time and in any event not more than ten (10) Business Days.
- 3.11 If either the Supplier or Buyer does not wish to process, there shall be no change to the relevant Statement of Work.
- 3.12 If the Supplier and Buyer mutually agree to proceed with the change(s) set out in the Request For Change form, then the relevant provisions to the Statement of Work shall be amended accordingly.
- 3.13 The parties acknowledge that changes in Applicable Laws and Regulations may require a change in the Services. Where required, the parties (acting reasonably) will cooperate to agree to such a change, which will not be unreasonably conditioned, delayed or withheld.

4 Supplier warranties

- 4.1 The Supplier Warrants to the Buyer that:
- 4.1.1 the Supplier has the right, power and authority to enter into this Agreement and grant to the Buyer 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 2.6, in accordance in all material respects with the description of the Service and the Additional Services provided in any supporting documentation provided to the Buyer;
- 4.2 The Supplier 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 Buyer giving notice to the Supplier as soon as it is reasonably able upon becoming aware of the breach of any warranty. When notifying the Supplier of a breach the Buyer shall use its reasonable endeavours to provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.
- 4.4 The Supplier will not be liable or be required to remedy any problem arising from or caused by the Buyer's use of the Service in a manner other than as directed by the Supplier .
- 4.5 The Buyer acknowledges and agrees that:
- 4.5.1 the Supplier is not and cannot be aware of the extent of any potential loss resulting from any failure by the Supplier to discharge its obligations under this Agreement;
 - 4.5.2 the Service has not been designed to meet the Buyer's individual requirements and can not be tested in every operating environment; and

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

5 Use of the Service

- 5.1 The Supplier grants the Buyer 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 Buyer'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 Buyer 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 Buyer shall not be permitted to frame or mirror any part of the Software.

6 Withholding or Suspension of access

- 6.1 The Supplier may withhold or suspend access to the Service and the Additional Services to the Buyer if:
- 6.1.1 the Supplier suspects that there has been any misuse of the Service or breach of this Agreement; or
 - 6.1.2 the Buyer fails to pay any sums due to the Supplier by the due date for payment.
- 6.2 The Supplier will notify the Buyer 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 Supplier will take steps to investigate the issue and may grant, restore or permanently suspend access at its discretion. If the Supplier considers it appropriate to permanently withhold or suspend access to the Buyer, it will notify the Buyer 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 Supplier receives payment in full and cleared funds.
- 6.5 Subscription Fees shall remain payable during any period of withholding or suspension notwithstanding that the Buyer may not have access to the Service.

7 Subscription Fee

- 7.1 The Buyer shall pay the Supplier the Subscription Fee for use of the Service and access to the Additional Services.
- 7.2 [Subject to any trial period agreed between the Supplier and the Buyer 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 Supplier in respect of any Subscription Period following the termination date. [Where a trial period has been agreed, and the Buyer 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 Start Date, not the end of the trial period. If the Buyer 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] The Supplier may, without requiring agreement from the Buyer, increase the Subscription Fee on the following terms only:
- 7.3.1 not within the first 12 months from the Start Date; and
- 7.3.2 not more than once in any 12-month period following the first 12 months from the Start Date; 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 Supplier shall invoice the Buyer for all sums due under this Agreement at such intervals as shall be agreed between the Supplier and the Buyer, 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 Buyer at the rate and in the manner from time to time prescribed by law.
- 8.3 The Buyer 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 Supplier may withhold or suspend access to the Service and Additional Services in accordance with clause 6 of this Agreement;
- 8.4.2 the Supplier may, without limiting its other rights, charge statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time in force; and

- 8.4.3 the Supplier may, without limiting its other rights, recover additional sums on top of the statutory interest charged depending on the amount owed by the Buyer;
- (a) £0 - £999.99 = £40 per invoice
 - (b) £1,000 - £9,999.99 = £70 per invoice
 - (c) £10,000 or more = £100 per invoice
- 8.4.4 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 Supplier 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 Supplier . To the extent that the Buyer acquires any Intellectual Property Rights in the Software or any part of the Service, the Buyer 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 Supplier . The Buyer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause.

10 Buyer Data

- 10.1 The Buyer grants an irrevocable, perpetual, royalty-free, non-exclusive, worldwide licence to the Supplier to use the Buyer Data for the purposes of Data Analysis, provided that such Buyer Data is fully anonymised, and does not therefore constitute personal data for the purposes of the Data Protection Laws.
- 10.2 The Buyer 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 Supplier .
- 10.3 The Buyer acknowledges that the Supplier has no control over any Buyer 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 Buyer 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 Buyer is the data controller in respect of any personal data that the Supplier processes in the course of providing services for the Buyer (other than contact data processed by the Supplier to allow it to manage the Buyer's account).
- 11.4 Accordingly, the Supplier agrees that it shall:
- 11.4.1 only carry out processing of the Buyer's personal data on the Buyer'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;
 - 11.4.4 not engage another processor (Sub-Processor) to carry out processing activities on behalf of the Buyer without the Buyer's prior consent (it being acknowledged that if the Buyer refuses consent, the Supplier may terminate this Agreement);
 - 11.4.5 make available to the Buyer a list of any Sub-Processors engaged in the processing of the Buyer's personal data and include in any contract with any subcontractors who shall process personal data directly or indirectly on the Buyer's behalf, provisions which are equivalent to those in this clause 11.4;
 - 11.4.6 as soon as reasonably practicable refer to the Buyer any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority or relevant supervisory authority, for the Buyer to resolve;
 - 11.4.7 provide such reasonable assistance as the Buyer reasonably requires (taking into account the nature of processing and the information available to the Supplier) to the Buyer in ensuring compliance with the Buyer'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 Buyer in response to any breach of security relating to personal data
- provided the Buyer shall pay the Supplier for all work, time, costs and expenses incurred in connection with providing such assistance.
- 11.4.8 at the option of the Buyer, delete or return all personal data to the Buyer 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 Buyer such information as is reasonably required to demonstrate the Supplier 's compliance with this clause 11.4.
- 11.5 The Supplier will not transfer any personal data (excluding clinical data) outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - 11.6 (i) the Supplier has provided appropriate safeguards in relation to the transfer;
 - 11.7 (ii) the data subject has enforceable rights and effective legal remedies;
 - 11.8 (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 11.9 (iv) the Supplier complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the personal data.

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 Supplier's total liability shall not exceed:
- 13.2.1 an amount equal to the Subscription Fees paid to the Supplier 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 Supplier shall not be liable for consequential, indirect or special losses.
- 13.4 Subject to clause 13.6, the Supplier 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 Start Date and shall continue unless and until terminated earlier in accordance with the provisions of this Agreement.
- 14.2 The Supplier may terminate this Agreement at any time by giving notice in writing to the Buyer if:
 - 14.2.1 the Buyer commits a material breach of this Agreement and such breach is not remediable;
 - 14.2.2 the Buyer 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 Buyer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the Buyer has received notification that the payment is overdue; or
 - 14.2.4 any consent, licence or authorisation held by the Buyer 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 supplier 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 Buyer may terminate this Agreement on 30 days' written notice to the Supplier . 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 Supplier in respect of any subscription period following the termination date.
- 14.7 The Buyer 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 Buyer 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 Buyer;
 - (iii) when the Buyer has provided notification that any data migration is complete, in compliance with Data Protection Laws, the Supplier will then provide certification of deletion of all personal data from the system.
 - (e) 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.

- 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 Supplier and the Buyer] 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 Supplier and the Buyer] 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.
- 15.3 The Supplier shall be entitled to name the Buyer as a customer of Open Medical® within Open Medical's own marketing and promotional materials and to refer generically to the Services provided to the Buyer without specifically identifying the Buyer in connection with such Services. Open Medical may also create a case study relating to the Services for distribution to third parties or publishing on its website, in relation to which it will seek approval from the Buyer prior to such distribution or publishing (such approval not to be unreasonably withheld, conditioned or delayed by the Buyer).

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 England

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

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

Schedule 2

Data Protection Impact Assessment

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

The Buyer acknowledges and accepts that where the Buyer 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:

- Access and Authentication:** The Buyer 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 Buyer 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).
- IAMS/ SSO management and cooperation:** The Buyer agrees that the Supplier's responsibilities do not extend to the internal management or administration of the IAMS or SSO system which gives access to processing the Service for the Buyer's users. The Buyer will inform the Supplier of the identity of the person/team within the Buyer'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 Supplier to enable the implementation to proceed on schedule.

3. **Compliance:** The Buyer 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 Buyer is solely responsible for monitoring, responding to, and otherwise processing any alerts relating to potential abuse or unauthorised access to the Service and the Buyer will promptly notify the Supplier if the Buyer becomes aware of any abuse /unauthorised use; and
- (d) the Supplier shall have the right to investigate any potential violation, abuse or unauthorised use of the Service, which may include reviewing Buyer Data and administrator logs relating to IAMS or SSO management.

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

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

- (a) the Supplier bears no liability for that third-party IAM System's acts or omissions;
- (b) the Supplier has no responsibility for the operation of the third-party IAM System; and
- (c) the Supplier will not be liable or be required to remedy any problem arising from or caused by the Buyer's use of an IAM or SSO system.

The Buyer's attention is drawn to the Buyer 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 Supplier and the Buyer'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 Buyer acknowledges and agrees that:

- (a) The Supplier is not and cannot be aware of the extent of any potential loss resulting from any failure by the Supplier to discharge its obligations under this Agreement;
- (b) The Service has not been designed to meet the Buyer's individual requirements and can not be tested in every operating environment; and
- (c) It is the Buyer's responsibility to ensure the facilities and functions of the Service meet the Buyer's requirements and will not cause any error or interruption in the Buyer's own software or systems.

7. **Configuration:**

- (a) The Buyer is responsible for configuring each user's access which will include, by way of SSO, access to the Service. The Buyer 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 Supplier will support the Buyer to set up the initial configuration process according to the Buyer'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 Supplier's role is limited to ensuring that the Buyer's authorised persons have access to the relevant areas of the Pathpoint Service. Thereafter, the Buyer is solely responsible for managing the identification, authentication and access processes.

Schedule 4

Service Levels, Descriptions, and Key Performance Indicator Targets

KPI/SLA*	Service Area	KPA/SLA description	Target
1	Priority 1 - Business critical issues having the potential to lead to a critical patient safety risk which may result in immediate, significant harm to one or many patients.	Call acknowledgement to user and ongoing updates	30 minutes for call acknowledgement, every hour thereafter for ongoing updates.
		Fix problem or supply workaround	4 hours or sooner wherever possible - all priority 1 calls are considered extremely urgent/important.
		Long term solution, either via Emergency release / hot fix / or deferred until the next Major / Minor release as agreed with the AUTHORITY service manager	24 hours for emergency release / hot fix
2	Priority 2 - High priority issue	Call acknowledgement to user	Call 1 hour
		Fix problem or supply workaround	8 hour
		Long term solution, either via Emergency release / Hot fix or deferred until the next Major/Minor release as agreed with the AUTHORITY service manager	48 hours for Emergency release / hot fix
3	Priority 3 - Medium priority issue	Call acknowledgement to user	Call 1 hour, email 8 hours
		Fix problem or supply workaround	20 hours
		Long term solution	Next Major / Minor release
4	Priority 4 - Low Priority - a low priority issue that can be worked around	Call acknowledgement to user	Call 1 hour, email 12 hours
		Fix problem or supply workaround	1 working week, or as agreed
		Long term solution	Next Major / Minor release
5	Application availability	Application to be available for user	99% or greater per month

*KPI levels are *subject to OM interpretation and acceptance, and can be re-assigned if deemed appropriate. Client may challenge OM Grading, and if so, this is escalated to OM Lead Engineer for final Grading within 15 days.

*Issues addressed within this SLA include **only** those that were part of contractual agreement and/or Statement of Works, including any regressions or bugs. Product enhancements and features that are outside the scope of work are not included, and would require an updated Commercial Proposal.

*If you believe that these SLA KPIs are not being met by Open Medical, or you would like to lodge a complaint in relation to these KPIs, please email complaints@openmedical.co.uk, and a member of the team will be in touch to discuss this further.