



Fulford Grange, Micklefield Lane, Rawdon, Leeds LS19 6BA

Tel: 0330 024 1269 **Web:** www.emishealth.com

Billing customer:	NHS Midlands and Lancashire Commissioning Support Unit - 25380	Date:	08/09/2021	Requested By:	
Billing address:	PHOENIX HOUSE, TOPCLIFFE LANE, WAKEFIELD, WF3 1WE, United Kingdom England WF3 1WE United Kingdom	Customer no:	25380	Delivery Customer:	NHS Midlands and Lancashire Commissioning Support Unit - 25380
		Unique ID:	OCX	Delivery Address:	PHOENIX HOUSE, TOPCLIFFE LANE, WAKEFIELD, WF3 1WE, United Kingdom England WF3 1WE United Kingdom
		Quote reference:	82357 08/09/2021 10:22		
		Created by:	[REDACTED]		
		Sales Contact:			

QUOTE

Description of Goods and Services

Item number	Description	Qty	Unit price	Amount
EWSAR1	EMIS Web Enterprise Search and Reports (Per Patient, Per Annum)			
EWSARC	Annual Support [REDACTED]			

Invoice Period: 02 11 2021 to 01 11 2022

LD15643-Enterprise Search and Reports Agreement Lancashire Commissioning Support Unit
[REDACTED]

VAT No. 927 1492 14
Terms: This quote is valid for 30 days.

Net amount	£21,754.07
VAT @ 20.00%	£4,350.81
Grand total	£26,104.88



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Tel: 0330 024 1269 **Web:** www.emishealth.com

Quote confirmation acceptance form

Invoice Address:

PHOENIX HOUSE, TOPCLIFFE LANE, WAKEFIELD, WF3 1WE, United Kingdom

England

WF3 1WE

United Kingdom

Purchase order number: (Please complete if applicable).....

Quote acceptance:

By signing this quote, I accept quote reference 82357 without any changes

Acceptance of this quote constitutes an offer from you to purchase the relevant goods and/or services from us subject to our Terms and Conditions (as set out at the end of this quote (further copies are also available at www.emishealth.com). If we accept your offer (by either confirming this in writing or, if sooner, starting to deliver the relevant goods and/or services) then the Contract which will govern our delivery of the relevant goods and/or services will be subject to those Terms and Conditions.

I confirm that I have read, understood and have accepted the Terms and Conditions.

If this quote is incorrect or requires an amendment, please contact us on 0330 024 1269 where upon agreement the quote will be updated and reissued by return for your quote acceptance.

Name: [REDACTED]

(please print in block capitals)

Date: 14.09.2021

Signature: [REDACTED]

For and on behalf of the Customer

These Terms and Conditions shall apply to the supply of goods or services by members of the EMIS Group (as defined below and as may be trading under the name EMIS Health) in the following circumstances:

- these Terms and Conditions are expressly referred to in respect of the relevant order (including, within an invoice); or
- any goods or services are delivered in the absence of a separate formal agreement being in effect between the relevant parties.

For the avoidance of doubt, if the parties have entered into a separate formal agreement for the delivery of the relevant goods or services (or both) or the supplier has provided any alternative terms and conditions then those terms shall apply.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

All sales are subject to the following Terms and Conditions. The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

1.1. **Definitions** In these Conditions, the following definitions and rules of interpretation apply (unless the context requires otherwise):

Affiliate: means any business entity from time to time controlling, controlled by, or under common control with, either party, whereby a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Business Day: means a day, other than a Saturday, a Sunday, a public holiday or a statutory holiday in England.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: means these terms and conditions (as may be amended by the Supplier from time to time).

Contract: means the contract between the Supplier and the Customer for the supply of Goods or Services (or both, as appropriate) in accordance with these Conditions.

Contract Year: means: (a) a period of 12 months commencing on the Commencement Date; and (b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Contract.

Customer: means the person or firm who purchases the Goods or Services (or both) from the Supplier as detailed in the relevant Order.

Data Protection Legislation: means (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR.

Deliverables: means the deliverables (if any) set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

EMIS Group: means EMIS Group Plc (a company registered in England and Wales (Registered number: 06553923) and whose registered office is at Fulford Grange, Micklefield Lane, Rawdon, Leeds LS19 6BA) and any company in which it (directly or indirectly) owns or controls the voting rights attaching to not less than 51% of the issued share capital, or controls directly or indirectly the appointment of a majority of the board of management.

Force Majeure Event: means any circumstance not within a party's reasonable control including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; and any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.

Goods: means the goods (or any part of them) set out in the Order.

Goods Specification: means the specification for the Goods as provided in writing by the Supplier to the Customer (and which may include a reference to the Supplier's catalogues).

Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: means the Customer's order for the supply of Goods or Services (or both), as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: means the services, including the Deliverables (if any), supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: means the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: means the relevant member of the EMIS Group (as identified in the Order) which is supplying the Goods or delivering the Services (or both) to the Customer under the Contract.

Supplier Materials: has the meaning set out in clause 8.1(g).

1.2. **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to: (i) a party includes its personal representatives, successors or permitted assigns; (ii) a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted; (iii) a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (c) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (d) a reference to **writing** or **written** includes e-mails; and
- (e) the language of the Contract will, in all cases, be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Customer to purchase Goods or Services (or both) in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (or, if earlier, it commences delivery of the relevant Goods or Services) at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Goods or Services contained in the Supplier's catalogues or brochures (including online) are (unless expressly referred to in the relevant Goods Specification or Service Specification) issued or published for the sole purpose of giving an approximate idea of the Services and Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue.

2.7. The Supplier reserves the right to accept or reject any Order for any reason whatsoever. No order will be considered binding unless and until it is accepted by the Supplier in accordance with clause 2.2.

2.8. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document (whether hard or electronic copy) or any other information issued by the Supplier is subject to correction by the Supplier without liability. If any correction would have a material adverse impact on the Customer such that it wishes to cancel any relevant Order then it may do so (without any liability) by giving notice to the Supplier within ten (10) days of being notified of the relevant change.

2.9. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1. The Goods are described in the relevant Goods Specification.

3.2. All Goods are offered subject to stock and availability. If for any reason the relevant Goods are no longer available, the Supplier will try to offer an alternative product, otherwise the Supplier reserves the right to cancel the Contract (and will refund any sums already paid in respect of Goods not delivered).

3.3. The Supplier reserves the right to amend the Goods Specification from time to time (including, if required by any applicable statutory or regulatory requirements).

4. DELIVERY OF GOODS

- 4.1. The Supplier shall include with each delivery of the Goods a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and special storage instructions (if any).
- 4.2. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the “**Delivery Location**”). Please note that any delivery prices quoted are for UK mainland addresses only.
- 4.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location and the Customer shall be responsible for ensuring the safe unloading of the Goods (unless the Order expressly provides otherwise).
- 4.4. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. If the Supplier fails to deliver the Goods, its liability shall be limited to the direct costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods (and subject always to clause 12).
- 4.5. The Supplier shall have no liability for any failure or delay to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6. If the Customer fails to accept or take delivery of the Goods within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If five (5) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay

in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1. The Supplier warrants that on delivery the Goods shall:
 - (i) conform in all material respects with the relevant Goods Specification; and (ii) be free from material defects in design, material and workmanship.
- 5.2. Subject to clause 5.3, if:
 - (a) the Customer gives notice (within five (5) Business Days from the date of delivery via the Supplier's support helpline (as notified to the Customer from time to time)) upon discovering that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity to examine the relevant Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier,then the Supplier shall, as the Customer's sole remedy, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any instructions or specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from the relevant Goods Specification as a result of changes made to ensure compliance with applicable statutory or regulatory standards.
- 5.4. The Supplier offers no guarantee or warranty with respect to the precise compatibility or suitability of the Goods to meet the needs or requirements of the Customer (whether or not they have been communicated to the Supplier). It is the Customer's responsibility to check this prior to ordering.

5.5. Except as expressly provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

5.7. The Supplier shall use its reasonable endeavours to pass to the Customer the benefit of any warranty or guarantee provided in respect of the Goods by the relevant third party manufacturer.

5.8. The Supplier may agree to extend the warranty period set out in clause 5.1 upon payment by the Customer of the sums due in respect of the relevant "support pack", such services may in addition include additional services and features which shall form part of, and be delivered in accordance with, the terms of the Contract (as may be amended by the terms of the relevant support pack).

6. TITLE AND RISK

6.1. The risk in the Goods shall pass to the Customer on completion of delivery.

6.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment.

6.3. Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(c); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(c), then, without limiting any other right or remedy it may have, the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; or

- (b) enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1. The Supplier shall use its reasonable endeavours to:

- (a) provide the Services to the Customer in accordance with the Service Specification in all material respects;
- (b) meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services; and
- (c) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 8.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its other obligations under the Contract.

7.2. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and it shall notify the Customer in any such event.

7.3. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.4. The Supplier shall not be liable in respect of any defective Services if:

- (a) the defect arises as a result of the Supplier following any instructions or specification supplied by the Customer; or
- (b) the Services differ from the relevant Service Specification as a result of changes made to ensure compliance with applicable statutory or regulatory standards.

8. CUSTOMER'S OBLIGATIONS

8.1. The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Contract;
- (c) provide access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services (or, where appropriate, deliver the Goods);

- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any relevant premises;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (g) keep and maintain all materials, equipment, documents and other property of the Supplier (the “**Supplier Materials**”) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2. If the Supplier's performance of any of its obligations in respect of the Services are prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (each a “**Customer Default**”):
- (a) the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising from the Customer Default.
- ## 9. CHARGES AND PAYMENT
- 9.1. The price for the Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2. In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Order, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 9.3 applies if the Services are provided on a time and materials basis and clause 9.4 shall apply if the Services are provided for a fixed price. The remainder of this clause 9 shall apply in either case.
- 9.3. Where Services are provided on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the relevant quote (or as otherwise detailed in the Supplier's standard price list from time to time);
 - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.30 pm worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of one hundred and fifty per cent (150%) of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.3(b); and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.4. Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Order. The Customer shall pay the total price to the Supplier (without deduction or set-off) in full upon receipt of the invoice that the Supplier shall issue for the charges that are then payable, together with expenses, the costs of materials, where appropriate.
- 9.5. The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the reasonable control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs and increases imposed by any third party manufacturer of the relevant Goods);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

- 9.6. Unless the relevant Order expressly provides otherwise, in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery and in respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 9.7. The Customer shall pay each invoice submitted by the Supplier within thirty (30) days of the date of the invoice; and in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 9.8. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.9. Without prejudice to any other right or remedy that it may have, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, interest shall accrue on such due amounts at an annual rate equal to four percent (4%) over the then current base lending rate of Clydesdale Bank Plc (trading as Yorkshire Bank) at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.10. All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This clause 9.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.11. All amounts due to the Supplier under the Contract shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. All Intellectual Property Rights in or arising out of or in connection with the Goods or Services (or both) shall be owned by the Supplier (or the relevant third party licensor as appropriate). All Supplier Materials are the exclusive property of the Supplier.
- 10.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods or the Services (or both), the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

11. CONFIDENTIALITY

A party (the “**receiving party**”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (the “**disclosing party**”), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

12.2. Subject to clause 12.1, if the Supplier provides any defective Services then it may, at its option and as the Customer's sole remedy in respect of the relevant Services, either: (i) repeat (in accordance with the terms of the Contract) the relevant Services; or (ii) refund to the Customer any fees paid in respect of the defective Services.

12.3. Subject to clause 12.1, the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence or breach of statutory duty), or otherwise, for any:

- (a) loss (whether direct or indirect) of revenue or profits;
- (b) loss (whether direct or indirect) of business opportunity;
- (c) loss (whether direct or indirect) of anticipated savings;
- (d) loss (whether direct or indirect) of goodwill or injury to reputation;
- (e) loss (whether direct or indirect) of or corruption to data or information; or

(f) indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Contract.

12.4. Subject to clause 12.1 and clause 12.3, the Supplier's (and its Affiliates and sub-contractors) total liability to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise, arising out of or in connection with the Contract in respect of all claims (including, under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total charge(s) paid and/or due to be paid under the Contract by the Customer in that Contract Year (or in respect of any and all claims arising after the Contract has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the charges paid and/or due to be paid in the final Contract Year of the Contract).

12.5. Subject to clause 12.1, to the fullest extent permitted by law, all implied terms, conditions, warranties and representations howsoever arising are excluded from the Contract.

13. DATA PROTECTION AND SECURITY

13.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.2. The parties acknowledge that for the purposes of the Data Protection Legislation and the delivery of the Services, where the Supplier is processing personal data on behalf of the Customer then the Customer is the data controller and the Supplier is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

13.3. Annex 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update Annex 1 to reflect any changes to the scope of the processing.

13.4. Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.

13.5. The Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data on the written instructions of the Customer (unless otherwise required by law);

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) take all reasonable steps to ensure the reliability and integrity of personnel who have access to and/or process Personal Data;

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(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

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by law to store the Personal Data; and

(h) allow for audits by the Customer or the Customer's designated auditor in respect of the Supplier's data processing activities under the Contract.

13.6. The parties may, acting reasonably, agree to amend the Contract to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.

13.7. The Supplier is given general authorisation to engage third-parties to process the Personal Data ("**Sub-Processors**") without obtaining any further written,

specific authorisation from the Customer. The Supplier shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under this agreement. The Supplier is accountable to the Customer for any Sub-Processor in the same way as for its own actions and omissions. A list of the Supplier's material sub-processors as at the later date of 25th May 2018 or the date of this agreement is set out on the Supplier's website (or will otherwise be notified to the Customer). Any objection to an amendment to the list of Sub-Processors may be escalated for discussion within 10 days after receipt of a notification of any change. If the parties are (acting reasonably) unable to resolve the objection and the Supplier informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate this agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, the Supplier will refund any unused prepaid fees).

13.8. The Supplier acknowledges that the Customer has duties and obligations under the Freedom of Information Act 2000 (FOIA) and the Supplier will upon request give reasonable assistance to the Customer where appropriate or necessary in relation to the Customer's compliance with such duties.

14. TERMINATION

14.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any undisputed amount due under the Contract on the due date for payment and it remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any obligation under the Contract provided, if such breach is remediable, the party in breach fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so;
- (c) the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause); or
- (d) the circumstances set out in clause 15.3 should arise in respect of any Force Majeure Event.

14.2. On expiry or termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices

and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
- (c) clauses 6.4, 10, 11, 12 and 16 and those which by implication have effect after termination shall continue in full force and effect.

14.3. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15. FORCE MAJEURE

15.1. If the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event it shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.2. The Supplier shall as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and use its reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

16. GENERAL

16.1. **Assignment and other dealings.** The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

16.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract,

declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

- 16.3. **Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next Business Day delivery service, or by commercial courier, or in the case of notices issued to the Supplier by e-mail, to ContractBidsandFulfilment@emisgroupplc.com.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

- 16.4. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that,

as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.5. **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 16.6. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.7. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 16.8. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

- 16.9. **Governing law.** These Conditions, and each Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

- 16.10. **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

ANNEX 1 – Processing, Personal Data and Data Subject

1. Processing by the Supplier

Purpose of Processing:	for the purposes of delivering the relevant Goods and/or Services and meeting other obligations specified in the Contract.
Duration of the Processing:	for the term of the Contract (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the relevant services).
Nature:	such processing as is necessary to enable the Supplier to provide the Goods and/or Services provided for under the Contract (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).
Types of Personal Data:	data which may be processed under the Contract includes (without limitation): names, addresses, telephone numbers, email addresses and other contact details together, where relevant dependent on the relevant services being delivered, with data concerning health.
Categories of Data Subject:	data subjects may include: members of the Customer's staff (including those of its associated entities or third party suppliers) and, where relevant dependent on the relevant Goods and/or Services being delivered, patients (and members of the patients' family).