**NHS England**

**and**

**Cleo Systems 24 Ltd**

# AGREEMENT for the provision of Electronic Prescription Services in respect of the Independent Prescribing Programme

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**THIS AGREEMENT** is made on 2024

**BETWEEN**

**(1)** **NHS ENGLAND** of **Wellington House, 133-135 Waterloo Road, London, SE1 8UG** ("**Customer**"); and

**(2)** **Cleo Systems 24 Ltd**, company number **07818176**, whose registered office is at **Kingston House The Long Barrow, Orbital Park, Ashford, Kent, TN24 0GP** ("**Supplier**").

**BACKGROUND**

(A) The Customer aims to establish a framework for the future commissioning of NHS community pharmacy clinical services that incorporate independent prescribing for patients in primary care.

(B) Prior to establishing the framework the Customer wishes to establish pathfinder sites across England to identify and test the delivery of pharmacist independent prescribing. The pathfinder sites will assist with, amongst other matters a) identification of the optimal processes, including governance, reimbursement, and digital requirements, required to enable NHS commissioned independent prescribing services in community pharmacy; b) the development of assurance processes for professional and clinical service standards that support independent prescribing activities in the context of NHS community pharmacy services and c) the undertaking of appropriate local and national quantitative and qualitative evaluation and research, including patient experience and the experience of community pharmacy, general practice, community services and secondary care teams with a view to establishing safe and effective community pharmacy clinical services incorporating independent prescribing for patients in primary care.

(C) In order to facilitate the delivery of the IPP Pathfinder Programme the Customer wishes to procure an ICT solution that will enable prescribing pharmacists to issue prescriptions where clinically appropriate and support the expansions of patient care pharmacists without involvement of general practitioners.

(D) Based upon the reliance and expertise of the Supplier, the Customer has appointed the Supplier to provide it with the EPS Solution.

(E) The Supplier has agreed to provide the EPS Solution and associated services on the terms set out herein.

**IT IS AGREED** as follows:

## 1 Interpretation

1.1 In this Agreement the following terms shown in bold shall have the corresponding meaning:

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| **Abandonment** | means the Supplier intentionally ceasing to perform all or substantially all of its material obligations under this Agreement; |
| **Acceptance Criteria** | has the meaning given in clause 7.18; |
| **Acceptance Tests** | has the meaning given in clause 7.18 and "**Acceptance Testing**" shall be construed accordingly; |
| **Achieve** | means in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions |

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| | of clause 7.18 and "**Achieved**" and "**Achieving**" and "**Achievement**" shall be construed accordingly; |
| **Agreement** | means together these terms and conditions, the recitals and the Schedules and Appendices attached hereto including any documents incorporated into any of the aforementioned; |
| **Authorised Representative** | means each of the Supplier Authorised Representative and the Customer Authorised Representative; |
| **Background IP** | means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP; |
| **Beneficiary** | has the meaning given in **Error! Reference source not found.**Schedule 10 (*Conduct of Claims*); |
| **Business Continuity Plan** | has the meaning given in paragraph 2.2.2 of Schedule 11 (*Business Continuity and Disaster Recovery*); |
| **Business Continuity Services** | has the meaning given in paragraph 4.2.2 of Schedule 11 (*Business Continuity and Disaster Recovery*); |
| **Catalogue** | means an agreement to which the Customer is the contracting authority which includes an accreditation regime and sets out key criteria for access by suppliers to primary care procurement frameworks for the provision of digital services to NHS Bodies. The Catalogue can be accessed from https://www.england.nhs.uk/nhs-terms-and-conditions-for-the-procurement-of-non-clinical-goods-and-services/; |
| **Change** | has the meaning given in paragraph 1 of Schedule 6 (*Change Procedure*); |
| **Central Government Body** | means any central Government departments and their arms length bodies: executive agencies, non-departmental public bodies, non ministerial departments, and any other non-market bodies controlled and mainly financed by the aforementioned; |
| **Change Control Notice** | means part A and part B (together or singularly as the context requires) of the change control notice in the form set out in Appendix 1 and Appendix 2 (respectively) of Schedule 6 (*Change Control Procedure*); |
| **Change Control Procedure** | means the procedure set out in Schedule 6 (*Change Control Procedure*); |
| **Charges** | means the charges for the Services and/or Deliverables as specified in Schedule 3 (*Charges*) together with the charges payable in respect of the provision of Exit Assistance Services as calculated in accordance with Schedule 7 (*Exit Management*); |
| **Claim** | has the meaning given in Schedule 10 (*Conduct of Claims*); |
| **Cloud Hosting Environment** | means the IT infrastructure (including all hardware software and middleware) procured by the Supplier to enable the provision of the Services to the Customer, the In Scope Pharmacies and the Onboarding Pharmacies; |
| **Commercially Sensitive Information** | means the information listed in Schedule 9 (*Commercially Sensitive Information*), which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss; |
| **Contract Year** | means a consecutive period of 12 months commencing on the Effective Date and then each consecutive period of 12 months commencing on the anniversary of the Effective Date save that the final "Contract Year" shall end on the expiry or termination (whichever is earlier) of the Term; |
| **Confidential Information** | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated |

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| | to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| **Customer Authorised Representative** | means the duly authorised representative of the Customer appointed by the Customer notified by the Customer to the Supplier in writing from time to time; |
| **Customer Data** | means any data (including personal data), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are:<br><br>(a) supplied to the Supplier by or on behalf of the Customer, the In Scope Pharmacies and/or the Onboarding Pharmacies;<br><br>(b) supplied to the Supplier by a third party which was provided to the third party by or on behalf of the Customer, the In Scope Pharmacies and/or the Onboarding Pharmacies; or<br><br>(c) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; |
| **Customer Dependency** | means any dependency set out in the Implementation Plan which is clearly expressed as relating to a specific Milestone and which identifies the Milestone in question and in respect of which the Supplier is dependent on the Customer performing in order to enable the Supplier to Achieve such Milestone; |
| **Customer Premises** | means any premises occupied by the Customer, an In Scope Pharmacy or an Onboarding Pharmacy; |
| **Customer Systems** | means all of the hardware, software, middleware, networks, components and facilities that are owned by, used by and/or licensed to the Customer, the In Scope Pharmacies and/or the Onboarding Pharmacies but excluding the EPS Solution; |
| **Default** | means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:<br><br>(a) in the case of the Customer, of its employees, servants, agents; or<br><br>(b) in the case of the Supplier, of its Sub-Contractors or any Staff,<br><br>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other; |
| **Deliverables** | means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services and including items set out and/or described in Schedule 1 (*Services Description*) and Schedule 2 (*Implementation Plan*); |
| **Disaster Recovery Plan** | has the meaning given in paragraph 2.2.3 of Schedule 11 (*Business Continuity and Disaster Recovery*); |
| **Disaster Recovery Services** | means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster together with the services provided pursuant to the Disaster Recovery Plan; |

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| **Dispute** | means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure at Schedule 8 (*Dispute Resolution Procedure*); |
| **Dispute Resolution Procedure** | means the procedure set out in Schedule 8 (*Dispute Resolution Procedure*); |
| **DSIC** or **Digital Services for Integrated Care Catalogue** | means the operating environment, under the control of the Catalogue on and/or through which standardised requirements descriptions (including capabilities and epics) and product standards are defined and applied to participating systems; |
| **Effective Date** | means the date on which this Agreement is executed by the Parties; |
| **EIRs** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| **EPS Solution** | means the software applications (together known as "Cleo SOLO EPS") in respect of the prescribing of electronic prescriptions made available by the Supplier to the Customer, In Scope Pharmacies and Onboarding Pharmacies on the Cloud Hosting Environment; |
| **Employee Liabilities** | means all claims, actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:<br>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;<br>(b) unfair, wrongful or constructive dismissal compensation;<br>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;<br>(d) compensation for less favourable treatment of part-time workers or fixed term employees;<br>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;<br>(f) employment claims whether in tort, contract or statute or otherwise; and/or<br>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| **Exit Assistance Notice** | has the meaning given to it in paragraph 6.1 of Schedule 7 (*Exit Management*); |

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| **Exit Assistance Period** | means in relation to an Exit Assistance Notice, the period specified in the Exit Assistance Notice for which the Supplier is required to provide the Exit Assistance Services as such period may be extended pursuant to paragraph 6.2 of Schedule 7 (*Exit Management*) and as applicable to expiry, termination or Partial Termination; |
| **Exit Assistance Services** | means the services provided by the Supplier pursuant to Schedule 7 (*Exit Management*); |
| **Extended Term** | means the period described in clause 3.2; |
| **FOIA** | means the Freedom of Information Act 2000; |
| **Force Majeure Event** | means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, and shall include acts of God, riots, war or armed conflict, acts of terrorism, acts of local government, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier's or a Sub-Contractor's supply chain; |
| **Foreground IP** | means any Intellectual Property Rights in the Deliverables; |
| **Good Industry Practice** | means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services and/or Deliverables to a customer like the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws; |
| **HSSI** or **High Severity Service Incident** | means a high severity service incident as determined in accordance with Schedule 4 (*Service Levels and Service Credits*); |
| **Implementation Plan** | means the Outline Implementation Plan and the detailed implementation plan agreed between the Parties pursuant to clause 7.2 and Schedule 2 (*Implementation Plan*); |
| **Implementation Services** | means the services provided by and activities carried out by the Supplier in respect of the implementation of the Operational Services for an In Scope Pharmacy or an Onboarding Pharmacy; |
| **Indemnified Person** | means the Customer, each In Scope Pharmacy, each Onboarding Pharmacy and each and every person to whom the aforementioned sub licenses, assigns or novates any Intellectual Property Rights in accordance with this Agreement; |
| **Indemnifier** | has the meaning given in Schedule 10 (*Conduct of Claims*); |
| **Information** | has the meaning given under section 84 of the FOIA; |
| **Initial Term** | means the period commencing on the Effective Date and expiring on the Achievement of Milestone M4 (unless otherwise agreed in writing between the Parties); |
| **In Scope Pharmacies** | means the pharmacies included in the list provided to the Supplier by the Customer as referred to in clause 7.2.1 and "**In Scope Pharmacy**" shall be construed accordingly; |
| **Insolvency Continuity Plan** | has the meaning given in paragraph 2.2.4 of Schedule 11 (*Business Continuity and Disaster Recovery*); |
| **Intellectual Property Rights** | means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, |

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| | in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world; |
| **Interim Assurance Standard** | means the set of technical and functional standards and requirements developed and/or created by or on behalf of the Customer forming part of the DSIC and which are applicable to digital services capable of being procured by NHS Bodies through the Catalogue; |
| **IPP Pathfinder Programme** | means the programme described in recital (b); |
| **IPRs Claim** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Intellectual Property Rights used to provide the Services and/or Deliverables or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy in the fulfilment of its obligations under this Agreement; |
| **Key Roles** | means the personnel roles specified in Schedule 5 (*Key Roles*) or otherwise notified as such by the Customer to the Supplier in writing; |
| **Laws** | means any law, statute, subordinate legislation, bye law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union; |
| **Losses** | means all losses, liabilities, damages, compensation, penalties, claims, awards, judgements, orders, taxes, expenses, fees and costs (including all legal costs and other professional adviser's fees) however described or classified; |
| **Milestone** | means the completion of the groups of events and/or tasks and provision of Deliverables as set out in the Outline Implementation Plan and identified as a "milestone"; |
| **Milestone Achievement Certificate** | means a certificate substantially in the form set out in Part B (*Pro Forma Milestone Achievement Certificate*) of Schedule 2 (*Implementation Plan*) which evidences the Supplier's Achievement of a Milestone; |
| **Milestone Date** | means the target date set out against the relevant Milestone in the Implementation Plan by which such Milestone must be Achieved; |
| **NHS Body** | a health service body within the meaning of section 275 of the National Health Service Act 2006 and "**NHS Bodies**" shall be construed accordingly; |
| **Onboarding Pharmacies** | means any pharmacies which have been onboarded pursuant to clauses 7.25 to 7.30 (inclusive) and "**Onboarding Pharmacy**" shall be construed accordingly; |
| **Onboarding Preparatory Information** | has the meaning set out in clause 7.26; |
| **Operational Hours** | has the meaning given in Schedule 4 (*Service Levels and Service Credits*); |
| **Operational Services** | means the services described in Schedule 1 (*Services Description*) excluding the Implementation Services; |
| **Operational Services Commencement Date** | means each date on which the Supplier commences provision of the Operational Services to an In Scope Pharmacy or an Onboarding |

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| | Pharmacy, such dates as agreed pursuant to clause 7.1 and/or as set out in the agreed Onboarding Preparatory Information; |
| **Outline Implementation Plan** | means the outline implementation plan set out in Part A (*Outline Implementation Plan*) to Schedule 2 (*Implementation Plan*), which (for the avoidance of doubt) includes the Milestones; |
| **Partial Termination** | means a cessation and/or migration of the Services in respect of an In Scope Pharmacy and/or an Onboarding Pharmacy but excludes any termination of this Agreement in its entirety. Accordingly a "Partial Termination" may occur on multiple occasions in respect of separate In Scope Pharmacies and Onboarding Pharmacies. "**Partially Terminate**" shall be construed accordingly; |
| **Party** | means the Supplier or the Customer (as appropriate) and "**Parties**" shall mean both of them; |
| **Replacement Services** | means the services to be provided in place of the Services upon expiry or termination this Agreement; |
| **Replacement Supplier** | means any one or more organisations that have been engaged by the Customer to deliver the Replacement Services; |
| **Request For Information** | means a request for information relating to this Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs; |
| **Sensitive Claim** | has the meaning given in paragraph 2 of Schedule 10 (*Conduct of Claims*); |
| **Service Continuity Plan** | means the plan prepared pursuant to paragraph 2 of Schedule 11 (*Business Continuity and Disaster Recovery*) which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan; |
| **Service Credits** | means the monetary amounts that the Supplier shall apply against the Charges and calculated in accordance with Schedule 4 (*Service Levels and Service Credits*) in the event of a failure by the Supplier to meet a Service Level; |
| **Service Levels** | means the required levels of performance as set out in Schedule 4 (*Service Levels and Service Credits*); |
| **Services** | means the services to be supplied by the Supplier to the Customer under this Agreement including the Implementation Services, the Operational Services, the Business Continuity Services, the Disaster Recovery Services and the Exit Assistance Services; |
| **Services Description** | means the description of the Services and/or Deliverables (including as to quantity, description and quality) as specified in Schedule 1 (*Services Description*) together with any other functional and non-functional requirements of the Customer provided by it or on its behalf or made known by it or on its behalf to the Supplier from time to time; |
| **Service Period** | means each calendar month, effective upon the first Operational Services Commencement Date; |
| **Service Transfer** | means a transfer of the Services or any service equivalent to, or substantially the same as, or which replaces, the Services or which the Services replaced; |
| **Service Transfer Date** | means the date of the Service Transfer; |
| **Staff** | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor of the Supplier engaged in the performance of the Supplier's obligations under this Agreement; |

**Staffing Information** means in relation to all persons named in the Supplier Staff List, such information as the Customer may reasonably request and where necessary, in an anonymised form:

(a) their ages, dates of commencement of employment or engagement, and gender;

(b) their status, including whether they are an employee (and if so, whether full or part-time), worker, self-employed, consultant, contractor, agency worker or otherwise;

(c) confirmation that any such individual is assigned to the Services and such evidence as the Customer may reasonably require to support such confirmation;

(d) the identity of their employer or relevant contracting party;

(e) their main terms and conditions of employment or engagement;

(f) their notice period and any other terms or procedures relating to the termination of their employment or engagement;

(g) their remuneration and benefits, including any bonus, commission or other incentive arrangements, as well as all medical or other similar insurances, pension or retirement benefits and share or share option schemes;

(h) details of any current or potential claims or disputes, whether individual or collective, including details of any disciplinary matters or grievances;

(i) details of any individuals on long term sickness absence, maternity or other statutory leave or other absence from work;

(j) copies of standard contracts of employment for each category of employee, and any handbook, policies or procedures, together with any collective agreements, recognition agreements or similar collective employee representation arrangements;

(k) details of all consultancy agreements or appointments; and

(l) any other information required to be provided by the Supplier in accordance with regulation 11 of the Transfer Regulations;

**Standards** means the standards set out in or on the DSIC, the Interim Assurance Standard and the standards set out in the Services Description;

**Sub-Contract** means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-Contractor) all or any part of the Services and/or Deliverables or facilities or services which are material for the provision of the Services and/or Deliverables or any part thereof or necessary for the management, direction or control of the Services and/or Deliverables or any part thereof;

**Sub-Contractor** means any third party with whom:

a) the Supplier enters into a Sub-Contract; or

b) a third party under limb (a) above enters into a Sub-Contract, or the servants or agents of that third party;

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| **Supplier Authorised Representative** | means the duly authorised representative of the Supplier appointed by the Supplier notified by the Supplier to the Customer in writing from time to time; |
| **Supplier Staff List** | means the list of all Staff who the Supplier reasonably believes will transfer under the Transfer Regulations on the Service Transfer Date; |
| **Term** | means the period as described in clause 3.1 (as extended in accordance with clause 3.2 and/or clause 3.5) together with the Exit Assistance Period for the last In Scope Pharmacy or Onboarding Pharmacy (as the case may be); |
| **Third Party IPR** | means Intellectual Property Rights owned by a third party including Intellectual Property Rights owned by the third party subsisting in any Third Party Software; |
| **Third Party Software** | means any third party software that is used for the provision of the Services and/or Deliverables; |
| **Transparency Information** | has the meaning given in clause 17.1; |
| **Transfer Regulations** | means the Transfer of Employment (Protection of Employment) Regulations 2006; |
| **VAT** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **Working Day** | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 reference to a gender includes the other gender and the neuter;

1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government or NHS Body;

1.2.4 any reference to a named body or organisation shall include reference to successors of that body or organisation and/or any equivalent bodies or organisations that perform the same or substantially similar functions;

1.2.5 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.2.6 references to clause numbers are references to the relevant clause in these terms and conditions;

1.2.7 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.8 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of this Agreement;

1.2.9 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.10 references to the words "**include**" or "**including**" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "**other**" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.

## 2 Supply of Services and Deliverables

2.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall provide the Services to the Customer for the Term subject to and in accordance with the terms and conditions of this Agreement.

2.2 The Supplier shall make the EPS Solution available to the Customer, each In Scope Pharmacy and each Onboarding Pharmacy (ensuring at all times that the version made available is the latest version available for release) and shall provide operational access to the EPS Solution during the Operational Hours.

2.3 In providing the Services, the Supplier shall:

2.3.1 co-operate with the Customer in all matters relating to the Services and/or Deliverables and comply with all the Customer's reasonable instructions;

2.3.2 perform the Services and/or supply the Deliverables with all reasonable care, skill and diligence in accordance with Good Industry Practice;

2.3.3 ensure that the Services and/or Deliverables shall conform with all descriptions, requirements and specifications set out in the Services Description;

2.3.4 provide the Services in accordance with the Standards and ensure that the Services meet the Standards;

2.3.5 comply with Laws and guidance;

2.3.6 provide all equipment, tools and vehicles and other items as are required to provide the Services and/or Deliverables;

2.3.7 provide the Services in accordance with the Service Levels;

2.3.8 provide the Services in accordance with ISO 27001 and ISO 27002; and

2.3.9 perform the Services and provide the Deliverables promptly and in any event within any time limits as may be set out in this Agreement.

2.4 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Staff also do, or refrain from doing, such act or thing.

2.5 The Supplier shall ensure that the Operational Services meet the Service Levels at all times commencing on each Operational Services Commencement Date for each In Scope Pharmacy and each Onboarding Pharmacy.

2.6 If the Supplier fails to meet any Service Level the Customer shall be entitled to Service Credits calculated in accordance with Schedule 4 (*Service Levels and Service Credits*).

2.7 The Supplier shall automatically credit the Customer with the amount of Service Credits due to it. Service Credits shall be shown as a deduction from the amount due from the Customer to the Supplier in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Supplier shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 30 days of expiry of the immediately prior Service Period.

2.8 The Parties hereby acknowledge and agree that Service Credits are not an estimate of the loss or damage that may be suffered by the Customer as a result of a failure by the Supplier to meet a Service Level.

2.9 The Parties hereby acknowledge and agree that the Service Levels and Service Credits are expressed on a per In Scope Pharmacy and Onboarding Pharmacy basis such that the Service Levels shall be measured on a per In Scope Pharmacy and per Onboarding Pharmacy basis. The Service Credits therefore also apply per In Scope Pharmacy and Onboarding Pharmacy. Accordingly, a failure to meet a Service Level in respect of one In Scope Pharmacy or Onboarding Pharmacy does not automatically mean that the Supplier has failed to meet the same Service Level for another In Scope Pharmacy or Onboarding Pharmacy.

2.10 Subject to any contrary provisions in Schedule 4 (*Service Levels and Service Credits*) and subject to and without prejudice to clause 4.7, or where the Supplier can reasonably demonstrate that an immediate cyber security event or threat necessitated such action, in no event and under no circumstances whatsoever during the Term shall the Supplier interrupt or delay the provision of the Services to the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy; disable the EPS Solution or perform any other action that prevents, slows down, or reduces in any way the provision of Services, unless the Supplier has obtained the Customer's prior written consent not to be unreasonably withheld or delayed, then the Supplier may take any such action to which and only to the extent and for such period such consent has been given.

2.11 By no later than 1 April 2025 the Supplier shall exercise reasonable endeavours to ensure:

2.11.1 it shall have been appointed to the Catalogue;

2.11.2 it is compliant with all of the requirements and standards set out in the Catalogue, save to the extent agreed between the Parties; and

2.11.3 it is able to evidence compliance with the capability and standards set out in the Catalogue save to the extent agreed between the Parties, including the terms of this Agreement upon request by the Customer.

## 3 Term

3.1 This Agreement shall take effect on the Effective Date and shall, subject to earlier termination, continue in full force and effect until the expiry of the Initial Term or where extended in accordance with clause 3.2 or clause 3.5, the expiry of the Extended Term or further extended term respectively.

3.2 At any time prior to the expiry of the Initial Term, the Customer may by written notice extend this Agreement for a period of 9 months or such longer or shorter period as may be specified in the notice. The Supplier hereby agrees to any such extension by the Customer.

3.3 Not used.

3.4 Not used.

3.5 The Extended Term may be further extended by mutual agreement between the Parties for a further period of 6 months, subject to termination by at least 28 days' notice in writing by the Customer. The Charges for any Extended Term and further extended term shall be as set out in Schedule 3 (*Charges*).

3.6 Not used.

## 4 Charges, Payment and Recovery of Sums Due

4.1 The Charges for the Services and Deliverables shall be as set out Schedule 3 (*Charges*) and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services and Deliverables. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and provision of the Deliverables.

4.2 Not used.

4.3 The Supplier shall invoice the Customer in accordance with this Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number and a breakdown of the Services and/or Deliverables supplied in the invoice period.

4.4 In consideration of the supply of the Services and Deliverables by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid and undisputed invoice which includes a valid purchase order number.

4.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.

4.6 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 4.6 shall be paid in cleared funds by the Supplier to the Customer not less than 20 Working Days before the date upon which the tax or other liability is payable by the Customer.

4.7 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services and/or Deliverables unless the Supplier is entitled to terminate the Services in accordance with clause 23.2. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 25.

4.8 If a payment of an undisputed amount is not made by the Customer by the due date, then Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

4.9 The Customer may set off any amount owed by the Supplier to the Customer against any amount due to the Supplier under this Agreement.

4.10 If the Customer wishes to set off any amount owed by the Supplier to the Customer against any amount due to the Supplier pursuant to clause 4.9 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges.

4.11 If the Supplier enters into a Sub-Contract for the purpose of performing this Agreement, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice subject to having received payment on the due date from the Customer.

**5 Staff and Supply Chain**

5.1 The provisions of clause 11 of the Agreement shall apply in respect of the appointment and management of any Sub-Contractors related to Services and/or Deliverables to be provided under this Agreement.

5.2 At all times the Supplier shall:

5.2.1 be solely responsible for the conduct of the Staff;

5.2.2 use adequate numbers of qualified Staff who are appropriately and suitably trained, educated, experienced and skilled to provide the Services;

5.2.3 use reasonable endeavours to ensure the continuity of Staff providing the Services is maintained, ensuring that the turnover rate of its Staff is at least as good as the prevailing industry norm for similar services, locations and requirements;

5.2.4 ensure Staff comply with any restrictions or prohibitions in respect of the use of or access to any of the Confidential Information and the Intellectual Property Rights; and

5.2.5 ensure Staff have the legal right to work in the country in which they are assigned to work.

5.3 The Supplier shall appoint a Services manager who shall be responsible for the co-ordination of all matters relating to the provision of the Operational Services. The Supplier shall notify the Customer in writing promptly if there is any proposed change to this appointment.

5.4 In the absence of the Services manager for any reason (including the replacement of such person at the request of the Customer), the Supplier shall supply a replacement person who is appropriately trained and competent.

**6 Income Tax and National Insurance Contributions**

6.1 Where the Supplier or any Staff are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration under any Agreement, the Supplier shall:

6.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

6.1.2 indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services and/or Deliverables by the Supplier or any Staff.

**7 Implementation**

7.1 The Outline Implementation Plan is set out in Part A (*Outline Implementation Plan*) to Schedule 2 (*Implementation Plan*), which (for the avoidance of doubt) includes the Milestones.

7.2 By no later than the Milestone Date for M2 and as a Deliverable for Milestone M2, the Supplier shall provide to the Customer, subject to and in accordance with the provisions of Schedule 2 (*Implementation Plan*) the detailed Implementation Plan setting out:

7.2.1 an operational services commencement date for each In Scope Pharmacy (a list of which will have been provided by the Customer at least 10 Working Days prior to the Milestone Date for Milestone M2 subject always to the right of the Customer to substitute a listed In Scope Pharmacy with another pharmacy provided that the Supplier has not already engaged the In Scope Pharmacy noted by the Customer for substitution);

7.2.2 all tasks and activities to be carried out or performed by the Supplier in respect of implementation of the Operational Services;

7.2.3 proposed milestones which shall in any event include the Milestones set out in the Outline Implementation Plan;

7.2.4 proposed dates for when a Milestone is intended to be met;

7.2.5 any pre-requisite and technical requirements that In Scope Pharmacies will need to meet; and

7.2.6 identified risks and issues in respect of implementation of Operational Services and the steps that will be taken in mitigation.

7.3 Not used.

7.4 The Parties shall comply with their respective obligations set out in the Implementation Plan.

7.5 The Supplier shall perform all tasks and provide the outputs set out in the Implementation Plan and/or as required so that the Supplier is ready to perform the Operational Services commencing on each Operational Services Commencement Date and shall minimise any disruptive impact to the Customer and the In Scope Pharmacies.

7.6 The Supplier shall conduct internal tests ("**Supplier Tests**") on each of the Deliverables in accordance with Good Industry Practice to ensure that each Milestone is Achieved on or before the associated Milestone Date.

7.7 The Supplier shall ensure that each Milestone is Achieved on or before the associated Milestone Date. The Supplier shall have completed all Supplier Tests prior to the submission by the Supplier of any Deliverable for Acceptance Testing.

7.8 Time shall be of the essence regarding each of the Milestone Dates.

7.9 The Supplier shall notify the Customer in writing immediately upon becoming aware of any event or circumstance that has or may cause a delay or failure in Achieving any Milestones ("**Delay Notification"**) and such notification shall include details of:

7.9.1 the reasons for the delay or failure;

7.9.2 in the event of a delay, the estimated duration of the delay;

7.9.3 the impact of the delay or failure on the overall Implementation Plan and on the completion of the Deliverables;

7.9.4 proposals to remedy the delay or failure and to mitigate the impact of the delay or failure on Implementation Plan ("**Remediation Plan"**); and

7.9.5 if the Supplier claims that the delay or failure is caused by the Customer, the reason for making that claim.

7.10 A Delay Notification will not of itself relieve the Supplier of any of its obligations under this Agreement. The Supplier shall promptly in writing notify the Customer of any further information relating to the delay or failure including to the extent that such further information renders any previous notified information inaccurate or misleading.

7.11 If the Customer accepts the reasons for the delay or failure and the proposed Remediation Plan, it will notify the Supplier of its decision as soon as reasonably practicable and the Supplier shall implement the Remediation Plan, subject to clause 7.20 at its own cost and expense (including assigning further resources including personnel, software and hardware (as required)), irrespective of the cause of delay or failure, as soon as practicable taking into account the Implementation Plan and the Milestone Dates.

7.12 If the Customer (acting reasonably):

7.12.1 rejects the reasons for the delay or failure, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure but any such referral shall not relieve the Supplier from its obligations under this Agreement including the implementation of the Remediation Plan to the extent it has been accepted by the Customer; or

7.12.2 rejects the proposed Remediation Plan, it shall notify the Supplier in writing of that decision and the reasons for its decision as soon as reasonably practicable. Upon receipt of such notification the Supplier shall prepare a revised Remediation Plan taking the Customer's reasons into account for the initial rejection and shall submit this to the Customer within no more than 10 Working Days of receipt of the aforementioned notification.

7.13 If the Customer rejects the revised Remediation Plan, it shall notify the Supplier in writing of that decision and the reasons for its decision as soon as reasonably practicable. Upon receipt of such notification the Supplier shall prepare a further revised Remediation Plan taking the Customer's reasons into account

for the rejection and shall submit this to the Customer within no more than 10 Working Days of receipt of the aforementioned notification.

7.14 If the Customer rejects (acting reasonably) the further revised Remediation Plan provided by the Supplier pursuant to clause 7.13, it shall notify the Supplier in writing of that decision and the reasons for its decision as soon as reasonably practicable and the Customer shall be entitled to terminate this Agreement in accordance with clause 23.1 as breach by the Supplier not capable of remedy.

7.15 The Supplier hereby acknowledges that the reasons which the Customer may give for rejecting a proposed Remediation Plan, a revised Remediation Plan or a further revised Remediation Plan may include that:

7.15.1 it is insufficiently detailed to be capable of proper evaluation;

7.15.2 it will take too long to complete;

7.15.3 will not prevent a reoccurrence of the relevant delay or failure;

7.15.4 will remediate the delay or failure but in a manner which is unacceptable to the Customer,

and that any such reasons shall be given in the Customer's' sole discretion.

7.16 If the Customer accepts a revised Remediation Plan or a further revised Remediation Plan, it will notify the Supplier of its decision as soon as reasonably practicable and the Supplier shall implement such Remediation Plan, subject to clause 7.20 at its own cost and expense unless it is a Relief Event under clause 7.20 (including assigning further resources including personnel, software and hardware (as required)), irrespective of the cause of delay or failure, as soon as practicable taking into account the Implementation Plan and the Milestone Dates.

7.17 If the Supplier:

7.17.1 having completed the actions in an accepted Remediation Plan is not able to remediate the relevant delay or failure to Achieve the relevant Milestone; or

7.17.2 fails to comply with the Remediation Plan including a delay or failure to meet any of the timescales set out therein, then the Customer shall be entitled to:

(a) terminate this Agreement in accordance with clause 23.1 as breach by the Supplier not capable of remedy; or

(b) remove the relevant In Scope Pharmacy from the Implementation Plan but require the Supplier to continue to implement the Operational Services in accordance with the Implementation Plan in respect of all other In Scope Pharmacies. In such circumstances the Supplier shall provide all services and activities to decommission any services and Deliverables in respect of the In Scope Pharmacy being removed, in each case at its own cost.

7.18 All criteria which shall be used to assess the quality of the Deliverables and to determine whether the relevant Milestone has been Achieved shall be agreed between the Parties (both Parties acting reasonably and in good faith) no later than 20 Working Days prior to the relevant Milestone Date and added to the Implementation Plan ("**Acceptance Criteria**"). If the Customer is satisfied that each Deliverable in respect of the relevant Milestone meets the Acceptance Criteria, then the Customer will confirm in writing that the Acceptance Criteria has been met by issuing a Milestone Achievement Certificate. If the Supplier has not received a Milestone Achievement Certificate from the Customer within 10 Working Days of the request from the Supplier (such request not being made prior to the Customer having completed its tests and activities to determine whether the Acceptance Criteria for the relevant Milestone have been met ("**Acceptance Tests**")) then:

7.18.1 provided that the Customer has not stated to the Supplier that the Acceptance Criteria have not been met; and

7.18.2 provided that the Supplier has given notice in writing to the Customer that it believes that the Acceptance Tests have been carried out by the Customer setting out details of the Supplier's justification for such belief including the date on which it believes such Acceptance Tests were completed by the Customer,

the Milestone Achievement Certificate for the relevant Milestone shall be deemed to have been issued.

7.19 If a Deliverable does not meet the Acceptance Criteria such that the relevant Milestone is not Achieved by its Milestone Date, then without prejudice to the Customer 's right to terminate this Agreement and any other rights it may have:

7.19.1 the Supplier shall provide the Customer with a plan for how the Supplier will rectify the delay;

7.19.2 the Customer shall be entitled (acting reasonably) to:

(a) refuse to accept a proposed rectification plan and/or any subsequent performance of the Services and/or delivery of the Deliverables which the Supplier attempts to make;

(b) purchase substitute services and/or deliverables from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services and/or deliverables from a third party instead of the Supplier;

(c) have any sums previously paid by the Customer to the Supplier in respect of the affected Services and/or Deliverables refunded by the Supplier;

(d) terminate this Agreement in accordance with clause 23.1 as breach by the Supplier not capable of remedy; and/or

(e) remove the relevant In Scope Pharmacy from the Implementation Plan but require the Supplier to continue to implement the Operational Services in accordance with the Implementation Plan in respect of all other In Scope Pharmacies. In such circumstances the Supplier shall provide all services and activities to decommission any services and Deliverables in respect of the In Scope Pharmacy being removed, in each case at its own cost.

7.20 If the reason for a delay or failure or likely delay or failure by the Supplier in Achieving any Milestone by its corresponding Milestone Date is caused directly by the Customer or an In Scope Pharmacy or an Onboarding Pharmacy failing to perform a Customer Dependency ("**Relief Event**") and only if the Supplier has given a Delay Notification in accordance with clause 7.9 and has materially complied with its obligations set out in this clause 7 then:

7.20.1 clause 7.17 shall not apply;

7.20.2 the Customer will amend the Milestone Dates and other affected dates set out in the Implementation Plan to such later date to reflect the length of delay caused by the Customer failing to perform the Customer Dependency, such later date to be a reasonable date to ensure that the Implementation Plan can be implemented as originally intended as far as reasonably possible; and

7.20.3 the Customer shall pay the reasonable additional costs incurred by the Supplier in rectifying, minimising and/or mitigating the effects of the delay or failure to the extent caused by a Relief Event which in any case shall not exceed [redacted] in aggregate and only to the extent these have been agreed in writing with the Customer prior to being incurred; and

7.20.4 the Customer shall bear the Supplier's reasonable costs incurred in the preparation of a Remediation Plan, to the extent that these have been approved in advance by the Customer in writing and provided that the Supplier provides to the Customer on request all supporting information in respect of such aforementioned costs.

7.21 The remedies set out in clause 7.20 are the Supplier's sole remedy in respect of a failure by the Customer in failing to perform a Customer Dependency.

7.22 Without prejudice to clause 7.21, any change that is required to the Implementation Plan pursuant to clause 7.20 shall be made in accordance with the Change Control Procedure.

7.23 Where a delay or failure or likely delay or failure by the Supplier in Achieving any Milestone by its corresponding Milestone Date is attributable in part to the Supplier's Default and in part to a Relief Event, the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay or failure or likely delay or failure.

7.24 In respect of implementation of the Operational Services at any one or more In Scope Pharmacy, if within a period of 2 months commencing on the date which is 3 months after the date of the Operational Services Commencement Date in respect of an In Scope Pharmacy there are 4 or more Critical Service Level Failures (as defined in Schedule 4 (*Service Levels and Services Credits*)) or 5 HSSIs the Customer shall be entitled:

7.24.1 to require the Supplier to cease implementation of the Operational Services in respect of any one or more other In Scope Pharmacies. To the extent that any changes are required to the Implementation Plan, the Charges or otherwise as a result of such request, the Parties shall agree such changes in accordance with the Change Control Procedure;

7.24.2 to require the Supplier to provide all services and activities to decommission any services and Deliverables in respect of the relevant In Scope Pharmacy, at its own cost. In such circumstances the relevant In Scope Pharmacy shall not longer form part of the Implementation Plan; and/or

7.24.3 terminate this Agreement in accordance with clause 23.1 as breach by the Supplier not capable of remedy.

**Onboarding**

7.25 The Customer may require the Supplier to provide any or all of the Services to any other pharmacy which is not an In Scope Pharmacy at any time after the agreement of the Implementation Plan by giving notice in writing to the Supplier ("**Onboarding Notice**") setting out the name of the pharmacy organisation requiring provision of the Operational Services and the target commencement date for such Operational Services provision.

7.26 Within 10 Working Days of receipt of an Onboarding Notice, the Supplier shall provide to the Customer:

7.26.1 a draft onboarding plan setting out all the tasks and activities to be carried out by the Supplier in order to carry out the onboarding with associated timescales and including appropriate milestones;

7.26.2 the proposed charges for the onboarding including milestone payments and service charges;

7.26.3 an impact assessment setting out details of any impact of the onboarding to the current Service provision which shall include any proposed adjustment to the Charges together with reasons for such proposed adjustment and proposals to mitigate such adjustment where the adjustment would result in an increase to the Charges,

("**Onboarding Preparatory Information**").

7.27 Upon receipt by the Customer of the Onboarding Preparatory Information the Parties shall enter into discussions to agree the Onboarding Preparatory Information.

7.28 The Parties shall record any agreement of the Onboarding Preparatory Information in writing and hereby agree that such agreement shall be deemed to be incorporated in and governed by this Agreement and includes agreement by the Supplier to the application (mutatis mutandis) of clauses 7.1 to 7.24 (inclusive) and Schedule 4 (*Service Levels and Service Credits*) to the onboarding together with all such

associated rights and remedies of the Customer. The Parties shall comply with their respective obligations set out in such agreement.

7.29 If the implementation of the Onboarding Preparatory Information would also require a Change, the Parties shall also agree a Change Control Notice in accordance with the Change Control Procedure. In these circumstances, for the purposes of expediency, the entirety of the agreement of the Onboarding Preparatory Information may be recorded in the same Change Control Notice for agreement in accordance with the Change Control Procedure.

7.30 The Supplier acknowledges that the Customer is not obliged to take any Services from the Supplier and that nothing shall prevent the Customer from receiving services that are the same as or similar to the Services from any third party.

**8 Premises and equipment**

8.1 If necessary, the Customer shall procure that In Scope Pharmacies and the Onboarding Pharmacies provide the Supplier with reasonable access at reasonable times to their premises for the purpose of providing the Services and/or Deliverables, such access to be non-exclusive (as licensee and not tenant) and revocable. All equipment, tools and vehicles brought onto the premises of In Scope Pharmacies or the Onboarding Pharmacies by the Supplier or the Staff shall be at the Supplier's risk.

8.2 If the Supplier provides all or any of the Services and/or Deliverables at or from the In Scope Pharmacies' or Onboarding Pharmacies' premises, on cessation of the Services in respect of such In Scope Pharmacy or Onboarding Pharmacy, or termination or expiry of this Agreement (whichever is the earlier) the Supplier shall vacate such premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and/or Deliverables and leave such premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to such premises and/or any objects contained on such premises which is caused by the Supplier or any Staff, other than fair wear and tear.

8.3 If the Supplier supplies all or any of the Services and/or Deliverables at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services and/or Deliverables are provided at or from the relevant premises.

8.4 While on the In Scope Pharmacies' or Onboarding Pharmacies' premises the Supplier shall, and shall procure that all Staff shall, comply with all the security requirements, health and safety requirements and such other reasonable instructions, notices, policies and procedures as may be notified to the Supplier by or on behalf of the relevant In Scope Pharmacy or Onboarding Pharmacy.

8.5 Where all or any of the Services and/or Deliverables are provided from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements set out in the Standards and as may be specified from time to time by the Customer in writing.

8.6 Without prejudice to clause 2.3.6, any equipment provided by the Customer, an In Scope Pharmacy or an Onboarding Pharmacy for the purposes of this Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out this Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of this Agreement (whichever is earlier).

8.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer, an In Scope Pharmacy or an Onboarding Pharmacy shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing by the Supplier within 5 Working Days of receipt of such equipment.

8.8 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services and Deliverables) in accordance with all applicable Law regarding health and safety.

8.9 The Supplier shall notify the relevant In Scope Pharmacy and/or Onboarding Pharmacy as soon as practicable of any health and safety incidents or material health and safety hazards at such In Scope Pharmacy's or Onboarding Pharmacy's premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## 9 Staff

9.1 The Supplier shall ensure that Key Roles are fulfilled at all times during the Term to assist with the fulfilment of the Supplier's obligations. Schedule 5 (*Key Roles*) lists the Key Roles that must be fulfilled as at the Effective Date.

9.2 The Supplier shall:

9.2.1 provide in advance of any admission to Customer Premises a list of the names of all Staff requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy may reasonably require;

9.2.2 ensure that all Staff:

(a) are appropriately qualified, trained and experienced to provide the Services and/or Deliverables with all reasonable skill, care and diligence;

(b) are vetted in accordance with Good Industry Practice; and

(c) comply with all reasonable requirements of the Customer, the relevant In Scope Pharmacy and/or Onboarding Pharmacy concerning conduct at the Customer Premises;

9.2.3 be liable at all times for all acts or omissions of Staff, so that any act or omission of a member of any Staff which results in a Default under this Agreement shall be a Default by the Supplier;

9.2.4 ensure that any Key Role is not vacant for any longer than 10 Working Days; and

9.2.5 give as much notice as is reasonably practicable of its intention to remove or replace any Key Role, except in the case of death, unexpected ill health or a material breach of the Staff fulfilling the Key Role's employment contract.

9.3 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Agreement, it may:

9.3.1 refuse admission to the relevant person(s) to the Customer Premises; and/or

9.3.2 direct the Supplier to end the involvement in the provision of the Services and/or Deliverables of the relevant person.

## 10 Staff Transfers

10.1 The Customer and the Supplier agree that they do not anticipate or intend that there will be a Service Transfer on either the Effective Date or any Operational Services Commencement Date, which shall have the effect of transferring the employment of any of the Customer's, and In Scope Pharmacy's and/or an Onboarding Pharmacy's employees or workers to the Supplier or any Sub-Contractor.

10.2 The Customer and the Supplier agree that they do not anticipate or intend that there will be a Service Transfer on the expiry or termination (including Partial Termination) of this Agreement which shall have the effect of transferring the employment of any Staff to the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy.

10.3 The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination (including Partial Termination) of this Agreement or otherwise, on request from the Customer at any time, and at such times as required by the Transfer Regulations, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier Staff List and the Staffing Information together with any additional information required by the Customer, including information as to the application of the Transfer Regulations to the employees. The Supplier shall notify the Customers of any material changes to this information as and when they occur, and as and when requested by the Customer.

10.4 The Customer shall be permitted to use and disclose the Supplier Staff List and the Staffing Information for informing any tenderer or prospective replacement supplier for any services that are substantially the same type of services as the Services (or any part of the Services).

10.5 The Supplier warrants to the Customer that the Supplier Staff List and the Staffing Information will be true and accurate in all material respects at the time of providing the information and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier Staff List.

10.6 If, on the expiry or termination of this Agreement, any contract of employment relating to any Staff has effect or is claimed to have effect as if originally made between the i) Customer, an In Scope Pharmacy and/or and Onboarding Pharmacy and ii) that Staff member or any liability regarding the employment and/or dismissal of any Staff is deemed or alleged to have transferred to the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy as a result of the Transfer Regulations, the following shall apply:

10.6.1 the Customer shall within 30 days of becoming aware of that effect or alleged effect notify the Supplier;

10.6.2 the Supplier shall, within 14 days of being so notified, find suitable alternative employment for and make an offer of employment to such Staff member;

10.6.3 if no such offer is made, or is made and not accepted, following the expiry of the period stated in clause 10.6.2, the Customer may (and/or where applicable and the relevant In Scope Pharmacy and/or the relevant Onboarding Pharmacy may), at their option, either offer the relevant Staff employment or terminate such contracts of employment within 30 days thereafter; and

10.6.4 in consideration of the Customer complying with the terms of this clause the Supplier shall indemnify and hold harmless the Customer, each In Scope Pharmacy and each Onboarding Pharmacy from and against all Employee Liabilities in respect of any Staff arising from or in relation to:

(a) the employment and/or termination of the Staff's employment including but not limited to the normal costs of employment of the Staff to the date of termination of their employment and the costs of termination;

(b) any act or omission of the Supplier and/or any Sub-Contractor arising before, on or after the Effective Date, whether pursuant to the Transfer Regulations or otherwise; and

(c) any liability for failure on the part of the Supplier or any Sub-Contractor of the Supplier to inform or consult pursuant to regulations 13 or 14 of the Transfer Regulations.

## 11 Assignment and sub-contracting

11.1 The Supplier shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Customer.

11.2 The Customer may at its discretion assign, novate, sub-contract or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

11.2.1 any Central Government or NHS Body; or

11.2.2 to a body other than a Central Government or NHS Body (including any private sector body) which performs any of the functions that previously had been performed by the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this clause 11.2.

11.3 The Customer may not assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to a body other than as set out in clause 11.2 without the consent of the Supplier (such consent not to be unreasonably withheld or delayed).

11.4 A change in the legal status of the Customer such that it ceases to be a Central Government or NHS Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Customer.

11.5 If the Supplier enters into any Sub-Contract it shall:

11.5.1 remain responsible to the Customer for the performance of its obligations under this Agreement and be responsible for the acts omissions and neglects of Sub-Contractors;

11.5.2 impose on the Sub-Contractor the same or substantially similar terms and conditions as in this Agreement (insofar as such terms are relevant to the services provided by the Sub-Contractor) and shall procure that the Sub-Contractor complies with such terms; and

11.5.3 impose on the Sub-Contractor the same or substantially similar terms and conditions as in clause 19 and therefore Schedule 12 (*Data Processing*) (if the Sub-Contractor will be processing personal data) and shall procure that the Sub-Contractor complies with such terms; and

11.5.4 provide a copy (subject to any reasonable confidentiality redactions), at no charge to the Customer, of any such Sub-Contract if requested by the Customer.

## 12 Intellectual Property Rights

12.1 All Foreground IP shall vest in in the Supplier.

12.2 All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.

12.3 The Customer hereby grants to the Supplier a royalty free and non-exclusive licence for the Term to use the Background IP owned by the Customer and the Intellectual Property Rights in the Standards to the extent reasonably required to enable the Supplier to perform its obligations under this Agreement including the obligation to provide the Services.

12.4 The Supplier hereby grants the Customer, each In Scope Pharmacy and each Onboarding Pharmacy during the Term a royalty-free, irrevocable, non-exclusive licence from the Effective Date to use Background IP and Foreground IP that is owned by the Supplier to the extent necessary for the purposes of the benefit of the use of the Services for the IPP Pathfinder Programme and to use all Third Party IPR, including any modifications to or derivative versions thereof, which the Customer, each In Scope Pharmacy and/or each Onboarding Pharmacy reasonably requires in order to exercise its rights under and to take the full benefit of the Services and/or Deliverables provided and in the case of the Customer, to enable it to perform its obligations under this Agreement.

12.5 Not used.

12.6 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in this Agreement, each Party hereby assigns to the other Party, by way of present and future assignment, ownership of such Intellectual Property Rights which it has acquired in order to give effect to title of Intellectual Property Rights as set out in this Agreement.

12.7 The Supplier warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

12.8 Not used.

12.9 Subject to clause 12.10 below, neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

12.10 Each Party hereby grants the other Party a royalty-free, non-exclusive, non-transferable, revocable licence during the Term of this Agreement to use its relevant names, logos or trade marks for the sole purpose and to the extent necessary, for the proper exercise of the other Party's rights and obligations under this Agreement.

**13 IPR Indemnity**

13.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer and each other Indemnified Person, and keep the Customer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim, but only to the extent that the IPRs Claim is not a direct result of a breach by the relevant Indemnified Person of licence terms (as referred to in this Agreement) for the relevant IPRs.

13.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

13.2.1 procure for the Customer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

13.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

(a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(b) the replaced or modified item does not have an adverse effect on any other services or the Customer's IT environment;

(c) there is no cost or expense to the Customer or relevant Indemnified Person (as the case may be); and

(d) the terms and conditions of this Agreement shall apply to the replaced or modified services and/or deliverables.

13.3 If the Supplier elects to procure a licence in accordance with clause 13.2.1 or to modify or replace an item pursuant to clause 13.2.2, but this has not avoided or resolved the IPRs Claim, then the Customer may terminate this Agreement with immediate effect by written notice to the Supplier.

**14 Business Continuity and Disaster Recovery**

14.1 The Parties shall comply with the provisions of the Service Continuity Plan and the provisions of Schedule 11 (*Business Continuity and Disaster Recovery*).

14.2 The Supplier shall ensure that it is able to implement the Service Continuity Plan at any time in accordance with Schedule 11 (*Business Continuity and Disaster Recovery*).

14.3 The Supplier shall undertake a risk assessment in relation to the provision of the Services not less than once every 6 months and, upon request, shall provide the results of, and any recommendations in relation to those risk assessments to the Customer promptly in writing.

14.4 The Supplier shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

**15 Warranties**

15.1 The Supplier warrants that:

15.1.1 it is properly constituted and incorporated and has full capacity and authority and all necessary licences, permits and consents (including but not limited to, where its circumstances and procedures so require, the consent of its parent company) to enter into and to perform this Agreement;

15.1.2 as of the Effective Date, there are no actions, suits, or proceedings or regulatory investigations pending or threatened against it that might adversely affect the Supplier's ability to perform its obligations under this Agreement;

15.1.3 for any Services which do not have specified timescales or standards, that those Services shall be performed promptly and in accordance with Good Industry Practice;

15.1.4 not used; and

15.1.5 has a security strategy that is sufficient to enable auditing of and identification of access and use of its IT systems.

15.2 Except in respect of the covenant implied under Section 3 (1) of the Law of Property (Miscellaneous Provisions) Act 1994 or as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

**16 Governance and Records**

16.1 The Supplier shall:

16.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings;

16.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer; and

16.1.3 submit management information reports to the Customer at the times and in the format and including such content specified by the Customer but in any event at least weekly from the Effective Date and including:

(a) information of the numbers and types of medicines prescribed by an In Scope Pharmacy and/or an Onboarding Pharmacy using the EPS Solution ("**Prescribed Medicine Information**") since the previous management information report; and

(b) all Prescribed Medicine Information since the Effective Date, broken down by each week in which the medicines were prescribed by each In Scope Pharmacy and/or an Onboarding Pharmacy using the EPS Solution.

16.2 The Supplier shall keep and maintain until 6 years after the end of this Agreement, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the

Services and/or Deliverables supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with this Agreement.

## 17 Transparency and Freedom of Information

17.1 The Parties acknowledge that the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

17.1.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and

17.1.2 Commercially Sensitive Information,

shall be the **"Transparency Information"** and shall not be treated as Confidential Information.

17.2 Notwithstanding any other provision of this Agreement and without prejudice to clause 17.8, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).

17.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information.

17.4 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Parties acknowledge that the Customer will only exclude Transparency Information from publication in exceptional circumstances.

17.5 The Supplier acknowledges that the Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

17.6 The Supplier agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from the provision of the Supplier's obligations under this Agreement, the Services and/or Deliverables shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject always to the Customer's over-riding rights of disclosure of Supplier's Confidential Information as set out at clause 18.2.6(c)) also publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

17.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

17.7.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

17.7.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

17.7.3 provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request For Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer 's request for such Information; and

17.7.4 not respond directly to a Request For Information addressed to the Customer unless authorised in writing to do so by the Customer.

17.8 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. However where reasonably practicable and unless prohibited by law, the Customer shall consult with the Supplier prior to publication but shall determine in its sole discretion the extent to which any Information is to be disclosed in compliance with FOIA and EIRs.

**18 Confidentiality**

18.1 Subject to clause 18.2, each Party shall:

18.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

18.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement.

18.2 Notwithstanding clause 18.1, a Party may disclose Confidential Information which it receives from the other Party:

18.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

18.2.2 to its auditors or for the purposes of regulatory requirements;

18.2.3 on a confidential basis, to its professional advisers;

18.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

18.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 18.2.5 shall observe the Supplier's confidentiality obligations under this Agreement; and

18.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clauses 18.2.6(a) for any purpose relating to or connected with this Agreement;

(e) excluding any Commercially Sensitive Information, which the Customer determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Customer's re-procurement process for the Services and/or Deliverables, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;

(f) on a confidential basis for the purpose of the exercise of its rights under this Agreement;

(g) on a confidential basis to a proposed successor body to the Customer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; and/or

(h) on a confidential basis to all and any Central Government Body, NHS Body, In Scope Pharmacies and/or Onboarding Pharmacies as required in order to best serve the objectives of the IPP Pathfinder Programme, accordingly the Supplier hereby acknowledges and agrees that such Confidential Information may include any information and/or data to assist any of the aforementioned with learnings, knowledge sharing and technical and operational information in respect of the EPS Solution and/or the Services and/or the provision thereof,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on this Customer under this clause 18.

18.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion acting reasonably taking due regard of the competitive position of the Supplier whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

18.4 Further provisions in relation to transparency and disclosure of information are set out in this Agreement.

**19 Protection of Personal Data and Security**

19.1 The Parties shall comply with their respective obligations set out in Schedule 12 (*Data Processing*) in respect of all Processing (as defined in Schedule 12 (*Data Processing*)) under this Agreement.

19.2 The Supplier shall not:

19.2.1 disclose, use, modify, store, copy or adapt the Customer Data;

19.2.2 merge or combine the Customer Data with other data; or

19.2.3 remove any proprietary or copyright notices contained within or relating to any Customer Data,

except as may be necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised by the Customer.

19.3 Upon receipt or creation by the Supplier of any Customer Data and during any collection, processing, storage and transmission of the Customer Data, the Supplier shall take all necessary precautions to preserve the integrity of the Customer Data and to prevent its corruption or loss.

19.4 In the event that the Customer Data is corrupted or lost or sufficiently degraded as to be unusable due to any breach, act or omission of the Supplier after its receipt or creation by the Supplier or during any collection, processing, storage and transmission of the Customer Data by the Supplier, the Customer shall have the option to:

19.4.1 require the Supplier, at the Supplier's own expense, to restore or procure the restoration of the Customer Data to the Customer's satisfaction that the Supplier has made good such corruption, loss or degradation of the Customer Data; or

19.4.2 itself restore or procure the restoration of the Customer Data and in such circumstances the Supplier shall reimburse the Customer's reasonable costs and expenses incurred in carrying out such restoration.

19.5 In the event that the Customer Data is corrupted or lost or sufficiently degraded as to be unusable otherwise than due to a breach, act or omission of the Supplier, the Supplier shall nevertheless carry out such remedial actions as may be necessary to restore the Customer Data as the Customer may require and the cost of the said remedial actions or the said other actions shall be agreed between the Parties and borne by the Customer.

19.6 The Supplier shall at all times maintain virus protection in accordance with Good Industry Practice on the Cloud Hosting Environment and shall take into account comments and requests of the Customer and/or third party vendor advice in the maintenance of such protection. Furthermore the Supplier shall:

19.6.1 notify the Customer as soon as it becomes aware of any viruses in the Cloud Hosting Environment and shall promptly provide a report to the Customer describing the incident involving the virus and what measures it has taken to prevent any re-occurrence of such incident; and

19.6.2 ensure appropriate patch management procedures are in place for remaining current with security fixes, performing adequate testing.

19.7 The Supplier shall maintain the Customer Data in such a manner as shall enable the Customer, the In Scope Pharmacies and the Onboarding Pharmacies and their authorised agents to have access to such Customer Data, and any reports on such Customer Data which are maintained by the Supplier, at all reasonable times.

19.8 The Customer shall procure that the In-Scope Pharmacies and the Onboarding Pharmacies have entered into data sharing agreements and have obtained all other necessary permissions for the purposes of the IPP Pathfinder Programme and the Customer shall indemnify the Supplier with a full and sufficient indemnity in the event of a claim arising out of the implementation and use of the Services in accordance with this Agreement.

19.9 The Supplier may rely on the instructions given by the Customer and the In Scope Pharmacies and the Onboarding Pharmacies with respect of the use of the data is as set out in the Appendix A of Schedule 12.

19.10 In the event that any of the In Scope Pharmacies or the Onboarding Pharmacies issue instructions other than as set out in Appendix A of Schedule 12 (other than as required by law) prior to implementation the Supplier may not implement the Services to such pharmacy and such pharmacy shall cease to be an In Scope Pharmacy or Onboarding Pharmacy in accordance with paragraph 1.3 of Part A of Schedule 2. If such instructions are issued post implementation then, unless the Customer provides the Supplier with an acceptable solution, the Services shall be terminated to that pharmacy by the Supplier, but the Services shall be deemed to have been implemented for the purposes of Schedule 1 and Schedule 2 in respect of such pharmacy notwithstanding the termination.

**Security**

19.11 The Supplier shall not carry out any act or make any omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services, the EPS Solution or any Customer Systems.

19.12 The Supplier shall, fully co-operate with any investigation relating to security of any of the Services, the EPS Solution and/or Customer Systems which is carried out by or on behalf of the Customer, an In Scope Pharmacy or an Onboarding Pharmacy. The Supplier understands the importance and seriousness of any investigation relating to security and as a result shall make any member of Staff identified by the Customer available to be interviewed by the Customer for the purpose of any investigation relating to security.

19.13 The Supplier shall, subject to any legal restriction on their disclosure, provide copies of all documents, records or other material, that relate to the provision of the Services, which may be reasonably required by the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy for the purposes of an investigation relating to security of any of the Services, EPS Solution or Customer Systems. The Customer shall have the right to retain any such material for use in connection with such investigation and shall provide the Supplier with a copy of any material retained.

19.14 Updates, modifications or changes to security policies with which the Supplier is required to comply under this Agreement must be in accordance with the Change Control Procedure, except, where such alteration, addition or replacement has been made to provide protection against an imminent security threat or a security threat which is perceived by the Customer, an In Scope Pharmacy and/or an Onboarding Pharmacy to be imminent, the Supplier shall comply, at risk, with the alteration, addition or replacement within such period as is appropriate in the circumstances (to be determined by the Customer in its reasonable discretion) to be subsequently agreed in accordance with the Change Control Procedure.

**20 Liability**

20.1 Subject to clauses 20.3, 20.4 and 20.5 neither Party shall be liable for:

20.1.1 any indirect or consequential Loss; or

20.1.2 any loss of, turnover, business opportunities, or sales (in each case whether direct or indirect).

20.2 The maximum aggregate liability of the Customer under this Agreement shall be limited to the payment of the Charges under and in accordance with this Agreement. The Parties hereby acknowledge and agree that no further liability shall accrue in respect of the Customer and accordingly, subject to clause 20.3 all such further liability is hereby expressly excluded.

20.3 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:

20.3.1 death or personal injury caused by its negligence or that of its Staff;

20.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

20.3.3 any other matter which, by law, may not be excluded or limited.

20.4 The indemnity in clause 13.1 shall not be subject to any limitation.

20.5 The Supplier’s liability shall also be unlimited in respect of any Losses relating to:

20.5.1 disclosure of Confidential Information which is not permitted by clause 18;

20.5.2 any Abandonment by the Supplier; and

20.5.3 any willful Default of the Supplier.

20.6 Subject to clauses 20.3 to 20.5 the Supplier's aggregate liability in each Contract Year in respect of Losses incurred under or in connection with this Agreement, shall in no event exceed [redacted] save that in the case of the Supplier’s liability in respect of data processing this shall be as set out in Schedule 12 (*Data Processing*).

20.7 The Supplier shall not be liable for the consequences of any Losses arising out of a Personal Data Breach (as defined in Schedule 12) to the extent arising:

20.7.1 out of a failure of the Customer, In-Scope Pharmacy or Onboarding Pharmacy to notify the Supplier within 12 hours of knowledge of a Personal Data Breach; or

20.7.2 out of a failure of an In-Scope Pharmacy or Onboarding Pharmacy to install software updates in respect of the EPS Solution, provided that the Supplier has issued three written notifications

to the relevant In Scope Pharmacy and/or Onboarding Pharmacy (each written notification to be issued on a Business Day and no less than 48 hours of the previous written notice being issued) informing them of the nature of the update, timescales and instructions for the installation of the update and the consequences of failure to install the update and any such exclusion of liability shall only apply to the extent of Losses of the Supplier arising from the relevant In Scope Pharmacy and/or Onboarding Pharmacy not installing the software update (subject always to the aforementioned).

20.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement.

**21 Conduct of indemnity claims**

Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 10 (*Conduct of Claims*) in relation to the conduct of any claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

**22 Force Majeure**

22.1 Subject to the remaining provisions of this clause 22, either Party may claim relief under this clause 22 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

22.2 The affected Party shall as soon as reasonably practicable following the occurrence of a Force Majeure Event issue a notice in writing, which shall include details of the Force Majeure Event, its effect on the obligations of the affected Party, and any action the affected Party proposes to take to mitigate its effect.

22.3 If the Supplier is the affected Party, it shall not be entitled to claim relief under this clause 22 to the extent that consequences of the relevant Force Majeure Event:

22.3.1 are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or

22.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

22.4 Subject to clause 22.5, as soon as practicable after the affected Party issues the notice pursuant to clause 22.2, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services and/or Deliverables affected by the Force Majeure Event.

22.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

22.6 Where, as a result of a Force Majeure Event, but subject to clause 22.3:

22.6.1 an affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

(a) the other Party shall not be entitled to exercise any rights to terminate this Agreement as a result of such failure including pursuant to clause 23; and

(b) neither Party shall be liable for any Default arising as a result of such failure; and

22.6.2 the Supplier fails to perform its obligations in accordance with this Agreement, the Supplier shall be entitled to receive payment of the Charges only to the extent that the Services and/or Deliverables (or part of the Services and/or Deliverables) continue to be performed or supplied in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

22.7 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement.

22.8 Relief from liability for the affected Party under this clause 22 shall end as soon as the Force Majeure Event no longer causes the affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 22.7.

**23 Termination**

23.1 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement or Partially Terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:

23.1.1 (without prejudice to clause 23.1.4), is in material breach of any obligation under this Agreement which is not capable of remedy;

23.1.2 repeatedly breaches any of the terms and conditions of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Agreement;

23.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

23.1.4 breaches any of the provisions of clauses 17 and/or 19;

23.1.5 is the affected Party in respect of a Force Majeure Event and such Force Majeure Event continues for a period of more than 30 Working Days;

23.1.6 accrues 13 Service Points (as defined in Schedule 4 (*Service Levels and Service Credits*)) or more in any rolling period of 3 Service Periods; or

23.1.7 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 23.1) in consequence of debt in any jurisdiction.

23.2 The Supplier may terminate this Agreement by written notice to the Customer:

23.2.1 if the Customer has not paid any undisputed amounts within 60 days of them falling due;

23.2.2 not used.

23.3 Termination, Partial Termination or expiry of this Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 10.2, 10.3, 10.6, 12, 13, 16.2, 17, 19, 20, 23.4, 24, 25 and 27 or any other provision of this Agreement that either expressly or by implication has effect after termination.

23.4 Upon termination, Partial Termination or expiry of this Agreement, the Supplier shall:

23.4.1 return all requested documents, information and data which is the property of the Customer or was intended to be in the custody of the Customer, to the Customer as soon as reasonably practicable; and

23.4.2 comply with its obligations set out at Schedule 7 (*Exit Management*).

**24 Non-Solicitation**

The Parties shall not (except with the prior written consent of the other Party) directly solicit or entice away (or attempt to solicit or entice away) from the employment of the that other Party any person employed or engaged by that Party in relation to this Agreement (including any contractors) at any time during the Term. For the avoidance of doubt, this restriction shall not prevent either Party from employing or engaging any of the other Party's employees following a bona fide recruitment process where a public advertisement has been placed to seek to recruit new employees or staff.

**25 Dispute Resolution**

The Parties shall comply with the provisions of Schedule 8 (*Dispute Resolution Procedure*) in relation to any Dispute under this Agreement.

**26 Change Control Procedure**

The Parties shall comply with the provisions of Schedule 6 (*Change Control Procedure*) in relation to any Change to this Agreement.

**27 General**

27.1 Not used.

27.2 The Supplier acknowledges that the Customer enters into this Agreement for its own benefit and for the benefit of each In Scope Pharmacy and each Onboarding Pharmacy and the Supplier shall perform its obligations under this Agreement (including under clause 19 and Schedule 12 (*Data Processing*)) for the benefit of the Customer and each such In Scope Pharmacy and each such Onboarding Pharmacy.

27.3 Subject to clauses 27.2 and 27.4, a person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

27.4 In relation to any action, claim, right or demand that any In Scope Pharmacy and/or Onboarding Pharmacy may have pursuant to this Agreement including pursuant to the Contracts (Rights of Third Parties Act 1999) to enforce their rights and remedies under clause 10.6.4, clause 19 and/or Schedule 12 (*Data Processing*) directly against the Supplier no such claim, right or demand shall be brought directly by any In Scope Pharmacy and/or Onboarding Pharmacy but shall be brought by the Customer on behalf of such In Scope Pharmacy and/or Onboarding Pharmacy provided that the Customer has taken an assignment from such In Scope Pharmacy and/or Onboarding Pharmacy in order to enforce such action, claim, right or demand. The Customer shall use its reasonable endeavours to procure such assignment is obtained from each In Scope Pharmacy and Onboarding Pharmacy.

27.5 If the Authority is not in possession of an assignment for the relevant In Scope Pharmacy and/or Onboarding Pharmacy as envisaged in clause 27.4 above, such In Scope Pharmacy and/or Onboarding Pharmacy shall be entitled to bring any action, claim, right or demand itself.

27.6 Any amendments or modifications to this Agreement may be made, and any rights created under clause 27.2 may be altered or extinguished, by the Parties without the consent of any In Scope Pharmacy and/or Onboarding Pharmacy.

27.7 This Agreement cannot be varied except in accordance with Schedule 6 (*Change Control Procedure*).

27.8 This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

27.9 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

27.10 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

27.11 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

27.12 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

**28 Notices**

28.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by email, hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

28.2 Any notice or communication shall be deemed to have been received:

28.2.1 if sent by email, instantaneously if sent during normal working hours or the following day if sent outside of normal working hours;

28.2.2 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

28.2.3 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

28.3 Any notice or other communication given by either Party under or in connection with Schedule 12 (*Data Processing*) shall be given to each in writing and expressly marked for the attention as follows (and at the following email address to the extent set out below):

28.3.1 for the Customer: the "Senior Information Responsible Officer/Data Protection Officer" being as at the Effective Date [redacted];

28.3.2 for the Supplier: [redacted] and

28.3.3 for an In Scope Pharmacy and/or an Onboarding Pharmacy: the "Data Protection Officer" and any such other person as notified in writing to the Supplier from time to time.

28.4 This clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.

## 29 Governing Law and Jurisdiction

The validity, construction and performance of this Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties hereby submit.

## 30 Counterparts

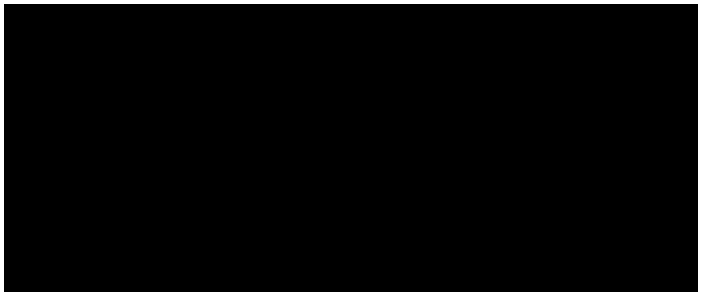
30.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

30.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS** of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

**SIGNED** for and on behalf of the **NHS ENGLAND**

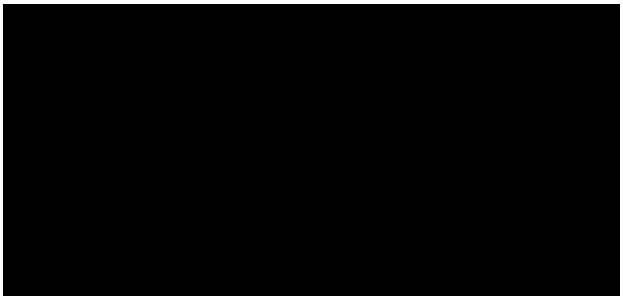
Buyer Signature



Date Signed: 16 August 2024

**SIGNED** for and on behalf of **CLEO SYSTEMS 24 LIMITED**

Supplier Signature



Date Signed: 12/08/2024

## Schedule 1

## Services Description

### 1. Objective of the Agreement

The objective of this Agreement is set out in the recitals.

### 2. Part A – Service Requirements

2.1 The Supplier shall deliver the following Services:

2.1.1 install of a standalone EPS Solution (known as "**CLEO SOLO EPS**" the version at the Effective Date being version 1.4.0) into 210 pathfinder pharmacies, being the In Scope Pharmacies (as agreed between the Parties pursuant to Milestone M1a in the Outline Implementation Plan);

2.1.2 beneficial access to the EPS Solution during the course of the Term (see Part B for system functional scope and requirements);

2.1.3 provision of training and training materials to each of the In Scope Pharmacies and Onboarding Pharmacies. The Supplier agrees and acknowledges that the training content will be approved by the Customer in accordance with the Implementation Plan in respect of the In Scope Pharmacies, prior to delivery;

2.1.4 helpdesk support for In Scope Pharmacies and Onboarding Pharmacies, in accordance with the Service Levels;

2.1.5 provision of reports in line with agreed data set as requested; data set can be updated by agreement for the duration of the project, as requested by the Customer on the prescribing activities of the In Scope Pharmacies and Onboarding Pharmacies including the management information reports in accordance with clause 16.1.3; and

2.1.6 provision of IPP Pathfinder Programme support, as described in paragraph 3 below.

### 3. IPP Pathfinder Programme specific support requirements

3.1 The Supplier shall ensure the EPS Solution includes the following features and functionality:

**EPS Features**

3.1.1 the implementation of new "EPS Prescription Type" codes for pharmacist users; and

3.1.2 cost centre models that are applicable to In Scope Pharmacies, to include prescribing cost centres, prescriber codes and pharmacy site codes;

**Customer Requirements**

3.1.3 ability to use 210 cost centres across the 210 In Scope Pharmacies to support local charging models; and

3.1.4 without prejudice to the requirements set out in clauses 16.1.2 and 16.1.3, activity reporting to the level of detail required by the Customer from time to time (to be agreed between the Parties as part of Services delivery and formalised into future DSIC requirements); and

3.1.5 In Scope Pharmacies and Onboarding Pharmacies shall be able to view prescribing history of other In Scope Pharmacies and Onboarding Pharmacies

within the instance of the EPS Solution at the time of access for the purposes of ensuring access to complete prescription history (specifically including recently prescribed items by a pathfinder participant) to support safe prescribing by the pharmacists.

3.2 The Supplier shall support and assist In Scope Pharmacies with:

3.2.1 any technical requirements related to the installation of the EPS Solution;

3.2.2 RA profile guidance for user access to the EPS Solution;

3.2.3 the configuration of EPS Solution and user profiles;

3.2.4 user training via video conference and supporting documents;

3.2.5 testing including user acceptance testing of the EPS Solution; and

3.2.6 resolution of incidents which shall be through the provision of a Help Desk (as defined in Schedule 4 (Service Levels and Service Credits)) and in accordance with Schedule 4 (*Service Levels and Service Credits*).

3.3 The Supplier shall:

3.3.1 in addition to the progress meetings referred to in clause 16.1.1, attend daily participation and attendance of stand-up meetings ("**Technical Review Meetings**") during the Initial Term and monthly thereafter;

3.3.2 provide information and updates on the status (open/resolved) of any:

(a) defects in the EPS Solution, since the last Technical Review Meeting;

(b) incidents, since the last Technical Review Meeting;

(c) planned or completed changes to the EPS Solution, since the last Technical Review Meeting;

3.3.3 provide general feedback on the "discovery/evaluation" process;

3.3.4 provide such other management information as may be requested by the Customer from time to time in respect of the EPS Solution; and

3.3.5 provide such information as may be requested by the Customer from time to time on test activities carried out by the Supplier.

3.4 The Customer shall:

3.4.1 provide, in accordance with the timescales set out in clause 7.2.1, a list with contact details of the In Scope Pharmacies and any other stakeholders at ICBs ("Integrated Care Boards") and pharmacy system suppliers

3.4.2 be responsible for providing the Supplier with non-technical support or a subject matter expert in relation to the Customer's intended use of the EPS Solution to support with business change;

3.4.3 facilitate the Technical Review Meetings; and

3.4.4 act as an escalation point of contact for issues with Operational Services provision.

3.5 The Supplier shall provide the Customer with an outcome report within 30 days of the expiry of the Initial Term and again within 30 days of expiry of any Extended Term which shall include:

3.5.1 details of how the EPS Solution was used including use frequency and such other information as may be requested by the Customer;

3.5.2 which areas in the setting used the EPS Solution;

3.5.3 a safety hazard log setting out the number of safety hazards;

3.5.4 any knowledge sharing and other lessons learned from the IPP Pathfinder Programme; and

3.5.5 statistics in relation to the number of prescriptions per user type and such other statistics as may be requested by the Customer.

## 4. Part B – EPS Solution description

4.1 The Supplier shall meet and provide the Services in accordance with the following criteria. The following criteria shall be assessed by the Customer's capability and standards development team and shall be published within the DSIC capability and standards model with the intention of enabling a determination to be made by the Customer as to whether the Supplier has achieved formal compliance against this Services description in order to be eligible for potential future DSIC procurement vehicles.

| | |
|---|---|
| **Supplier name** | Cleo Systems 24 Ltd |
| **Solution name** | CLEO SOLO EPS |
| **Standards and non-functional requirements (see DSIC C & S Model for detail):** | **Interop Standards**<br>PDS (FHIR);<br>EPS (FHIR);<br>NHS Directory of Services (DoS);<br>GP Connect HTML Record View;<br>EPS Cancellation, Nominated Pharmacy (including Distance Selling Pharmacies),<br>**Data Standards**<br>dm+d<br>First Data Bank<br>**NFR**<br>DSIC Baseline Assurance Standard |
| **Outcome(s) met:** | Independent Prescribing |
| **Brief description- (of the Supplier-defined capability)** | Ability for users in a pharmacy setting to send electronic prescriptions to the patients preferred pharmacy to be dispensed (including prescription ID(s)) |
| **Epic 1 – access/search prescribable items** | As a prescribing pharmacist user |
| | I want to access/search prescribable items |
| | So that prescribable items can be accessed |
| **Acceptance criterion 1: access/search prescribable items** | Given the pharmacist user is permitted to access prescribable items |
| | When the pharmacist user chooses to access/view/search prescribable items |
| | Then the prescribable items are displayed |
| **Acceptance criterion 2: access prescribable item information** | Given the pharmacist user is permitted to access prescribable item information |
| | When the pharmacist user chooses to access information for a prescribable item |

| | |
|---|---|
| | Then the information is displayed |
| **Epic 2 - set default formulary for pharmacist users (NB local formulary is out of scope) DM+D search** | As a pharmacist user |
| | I want to access all drugs within dm+d |
| | So that I can prescribe any appropriate drug within dm+d |
| **Acceptance criterion 2: "Access Controlled Drugs"** | Given the pharmacist user has to prescribe "Controlled Drugs"<br>When the "Controlled Drug" filter button is toggled<br>Then the prescribable items are displayed |
| **Acceptance criterion 3: access "High Risk Medications"** | Given the pharmacist user has to prescribe "High Risk Medications" |
| | The user must receive a notification to advise that they are prescribing a "High Risk Medications" |
| | When prescribable items accessed and confirmation prompt has been accepted |
| | Then the prescribable high-risk items are displayed |
| **Acceptance criterion 4: access to "Branded Medications"** | Given the pharmacist user has to prescribe "Branded Medications" |
| | When the "include brands" filter button is toggled and the confirmation prompt has been accepted |
| | Then the prescribable branded items are displayed |
| **Acceptance criterion 5: access to "ACBS Endorsed Medications"** | Given the pharmacist user has to prescribe "ACBS Endorsed Medications" |
| | When prescribable items accessed |
| | Then the prescribable items are displayed with the endorsement value selected but the pharmacist user has the ability to de-select the endorsement if not required |
| **Acceptance criterion 6: access to "CC Endorsed Medications"** | Given the pharmacist user has to prescribe "CC Endorsed Medications" |
| | When prescribable items accessed |
| | Then the prescribable items are displayed with the endorsement value unselected but the pharmacist user has the ability to select the endorsement if it is required |
| **Acceptance criterion 7: access to "SLS Endorsed Medications"** | Given the pharmacist user has to prescribe "SLS Endorsed Medications" |
| | When prescribable items accessed |
| | Then the prescribable items are displayed with the endorsement value selected AND the pharmacist user is NOT able to de-select the endorsement |
| **Acceptance criterion 8: access to "AF Endorsed Medications"** | Given the pharmacist user has to prescribe "AF Endorsed Medications" |
| | When prescribable items accessed |
| | Then the prescribable items are displayed with the endorsement value selected but the pharmacist user has the ability to de-select the endorsement if not required |
| **Acceptance criterion 9: access to "FS Endorsed Medications"** | Given the pharmacist user has to prescribe "AF Endorsed Medications" |
| | When prescribable items accessed |
| | Then the pharmacist user is able to select the "FS Endorsement Medication" |
| **Epic 3 - manage prescribed "Acute Medication"** | As a pharmacist user |
| | I want to manage prescribed "Acute Medication" |
| | So that patient's "Acute Medication" is managed |

| | |
|---|---|
| **Acceptance criterion 1: add "Acute Medication"** | Given the pharmacist user is permitted to manage prescribed medication |
| | When the pharmacist user chooses to add an "Acute Medication" |
| | Then any interactions and duplicates are displayed/flagged |
| | And inappropriate prescribing warnings are displayed |
| | And the user can choose if adding or removing the medication |
| **Acceptance criterion 2: remove "Acute Medication"** | Given the pharmacist user is permitted to manage prescribed medication |
| | When the pharmacist user chooses to remove an "Acute Medication" |
| | Then the medication is removed |
| **Acceptance criterion 3: maximum of 12 items to be prescribed** | Given the pharmacist user is permitted to manage prescribed medication |
| | When the pharmacist user attempts to add a 13th item |
| | Then they will receive the prompt to advise that a maximum of 12 items can be prescribed per episode of care |
| | On sending the items will be automatically separated into 3 prescriptions and each prescription will have its own prescription ID |
| **Acceptance criterion 4: ability to move prescribed items between EPS and FP10 print prescriptions** | Given the pharmacist user is permitted to manage prescribed medication |
| | When the pharmacist user chooses to move the medication item between FP10 and the EPS Solution |
| | Then the medication is moved as appropriate |
| **Epic 4 - display patient's nominated pharmacy** | As a pharmacist user |
| | I want a patient's nominated pharmacy to be displayed |
| | So that their nominated pharmacy preference can be selected |
| **Acceptance criterion 1: ability to search the national EPS DoS services for available pharmacies** | Given the pharmacist user is permitted to select the patient's nominated pharmacy or select an alternative pharmacy |
| | Then the nominated pharmacy will display at the top of the list with other pharmacies near the patient's location being presented below |
| | The pharmacist user is able to search for alternative available pharmacies within a selected timeframe and location or pharmacy name and location to select as the preferred one of nomination |
| | Then the returned available pharmacy list is displayed |
| **Acceptance criterion 2: demographic and contact details of the returned pharmacies are available for the pharmacist user** | Given the pharmacist user is permitted to select the patient's nominated pharmacy or select an alternative pharmacy |
| | The name, address, distance from current postcode and the telephone number will display for each of the pharmacies returned |
| | The returned pharmacy list is displayed in nearest to patient's postcode location order |
| **Acceptance criterion 3: select patient's pharmacy preference** | Given the pharmacist user is permitted to select the patient's nominated pharmacy or select an alternative pharmacy |
| | When the pharmacist user chooses to select a patient's pharmacy preference |
| | Then the patient's preferred pharmacy is highlighted as selected |
| **Epic 5 – N/A** | |

| | |
|---|---|
| **Epic 6 - signing and transmitting the electronic prescription** | As a pharmacist user |
| | I want to preview the medication list |
| | So that I can confirm all is correct before I sign and send the electronic prescription |
| **Acceptance criterion 1: preview of prescribed medications and selected pharmacy** | Given the pharmacist user is permitted to send prescriptions electronically |
| | When the pharmacist user reviews the detail |
| | The pharmacist user will be able to continue on to sign the electronic prescription |
| **Acceptance criterion 2: signing the electronic prescription** | Given the pharmacist user is permitted to send prescriptions electronically |
| | When the pharmacist user enters their smartcard PIN and submits |
| | Then the electronic prescription will be sent |
| **Acceptance criterion 3: successful electronic transmission** | Given the pharmacist user is permitted to send prescriptions electronically |
| | When the pharmacist users submit has completed |
| | Then a successful message and prescription ID will display |
| **Acceptance criterion 4: unsuccessful transmission** | Given the pharmacist user is permitted to send prescriptions electronically |
| | When the pharmacist users submit has completed |
| | Then an unsuccessful message will display and all items will be automatically transferred to FP10 print |
| **Epic 7 - generate "FP10 Prescriptions"** | As a pharmacist user |
| | I want to generate an "FP10 Prescriptions" |
| | So that "FP10 Prescriptions" for patients are generated |
| **Acceptance criterion 1: generate "FP10 Prescription"** | Given the pharmacist user is permitted to generate "FP10 Prescriptions" |
| | When the pharmacist user chooses to generate an "FP10 Prescription" |
| | Then the "FP10 Prescription" is generated |
| **Acceptance criterion 2: print "FP10 Prescription"** | Given the pharmacist user is permitted to generate "FP10 Prescriptions" |
| | When the pharmacist user chooses to print an "FP10 Prescription" |
| | Then the "FP10 Prescription" is printed |
| **Acceptance criterion 3: view "FP10 Prescription"** | Given the pharmacist user is permitted to generate "FP10 Prescriptions" |
| | When the pharmacist user chooses to view a "FP10 Prescription" |
| | Then the "FP10 Prescription" is displayed |
| **Acceptance criterion 4: reprint "FP10 Prescription"** | Given the pharmacist user is permitted to generate "FP10 Prescriptions" |
| | When the pharmacist user chooses to reprint a "FP10 Prescription" |
| | Then the "FP10 Prescription" is printed with it clearly displaying re-print on the prescription |
| **Epic 8 - cancelling and re-issuing electronic prescriptions** | As a pharmacist user |
| | I want to be able to cancel an electronic prescription as a non-clinical user or a clinical user |
| | So that prescriptions can be cancelled and re-issued if required |

| | |
|---|---|
| **Acceptance criterion 1: cancel Prescription for non-clinical user** | Given the non-clinical pharmacist user is permitted to cancel electronic prescriptions |
| | When the non-clinical pharmacist user chooses to cancel a prescription |
| | Then the prescription cancellation status is recorded |
| **Acceptance criterion 2: cancel prescription for clinical user** | Given the clinical pharmacist user is permitted to cancel electronic prescriptions |
| | When the clinical pharmacist user chooses to cancel a prescription |
| | Then the prescription cancellation status is recorded |
| **Acceptance criterion 3: re-issue prescription for clinical user** | Given the clinical pharmacist user is permitted to manage patients' medications |
| | When the clinical pharmacist user has successfully cancelled a prescription |
| | Then the new prescription option will display |
| **Epic 10 - access Patient's episode of care** | As a pharmacist user |
| | I want to access the patient's episode of care |
| | So that I can access the patient's episode of care |
| **Acceptance criterion 1: accessing patient's episode of care where identified** | Given a patient's episode of care is identified |
| | And the pharmacist user is permitted to view the patient's episode of care |
| | When the pharmacist user chooses to access the patient's episode of care |
| | Then the patient's episode of care is accessed |

## 5. Part C – Operational Services prerequisites – software, hardware and equipment information

5.1 CLEO SOLO

5.1.1 The suite of software applications provided as part of the EPS Solution by the Supplier is known as "Cleo SOLO EPS" and the current version released at the Effective Date, which the Supplier hereby undertakes and represents is the latest version available, is version 1.4.0 and includes the database of drugs provided by the Supplier in conjunction with EPS Solution.

5.1.2 Not used.

5.1.3 The Supplier shall inform the Customer of any potential changes to the specifications set out in this Schedule and the Parties shall agree such changes and their schedule of release in accordance with the processes and procedures set out in the DSIC.

5.2 Provision of the EPS Solution as a SaaS

5.2.1 The Operational Services shall be provided as "SaaS". Accordingly the Supplier shall be responsible for the provision of Implementation Services and delivery of the Operational Services in a manner that are directly consumable from end user devices.

5.2.2 The Customer, in conjunction with the In Scope Pharmacies and Onboarding Pharmacies, shall be responsible for ensuring each In Scope Pharmacy's and each Onboarding Pharmacy's:

(a) devices;

(b) networks;

(c) security; and

(d) general desktop support services,

are capable of being delivered in the normal manner to those sites.

5.3 In Scope Pharmacies' and Onboarding Pharmacies' prerequisites

5.3.1 In order for the Operational Services to be provided by the Supplier to the In Scope Pharmacies and the Onboarding Pharmacies, the Customer shall ensure that the In Scope Pharmacies' and Onboarding Pharmacies' end user devices comply with the following requirements and specifications:

(a) Windows 10 1709 onwards;

(b) Dual Core 2Ghz processor or faster;

(c) minimum memory dedicated to CLEO CORE 512MB (usually uses 240mb);

(d) optimal resolution of 1920x1080 (lower resolutions are supported but involve scrolling);

(e) install space of 100MB per user;

(f) .net Framework 4.8 runtime;

(g) NHS Digital Identity Agent V2 onwards;

(h) SessionLockPersistence_Enabled should be set to false in the Identity Agent Registry Settings here: HKEY_LOCAL_MACHINE\Software\WOW6432Node\HSCIC\Identity Agent;

(i) Java Runtime Environment V8 32 bit (requirement of NHS Identity Agent);

(j) Gemalto Middleware (requirement of NHS Identity Agent);

(k) Health and Social Care Network ("HSCN") Connectivity;

(l) Microsoft Visual C++ Redistributable for Visual Studio 2019;

(m) any intel graphics drivers updated to the latest version (e.g. v 30.0.100.9955) – known issue with some earlier Intel drivers and Windows Presentation Foundation / Chromium Embedded Framework applications (https://github.com/dotnet/wpf/issues/3817);

(n) "Medium Scale Integration" shall be provided for automated installation of the EPS Solution via the relevant In Scope Pharmacy's and/or Onboarding Pharmacy's endpoint management software;

(o) any other third party applications that interact with smart cards, which are not recommended for use with the EPS Solution as notified in writing in advance by the Supplier, should be removed completely from the end user device;

(p) if Fast Healthcare Interoperability Resources ("**FHIR**") messaging is enabled, "NHS Credential Management Software" is required to be installed on all end user devices intended to use the EPS Solution;

(q) access to the destination addresses on the ports defined below via a HSCN connection to access “CLEO CORE” should be enabled:

| Service | Destination IP Addresses | TCP Ports | Connectivity |
|---|---|---|---|
| CLEO CORE | 10.196.132.0/24, 10.220.59.64/26 | 443, 51637 | HSCN |
| Reporting | 10.196.132.0/24, 10.220.59.64/26 | 443 | HSCN |

(r) access to standard HSCN connection, simplified firewall ports should be enabled;

(s) source IP address for each In Scope Pharmacy and Onboarding Pharmacy provided to the Supplier;

(t) In Scope Pharmacies and Onboarding Pharamacies must have access to the third party software known as “NHS Spine Applications”; and

(u) the smart card requirements are as follows:

| Role | Requirements |
|---|---|
| • R8003 - health professional access role activities | • B0278 - perform prescription preparation<br>• B0401 - view patient medication<br>• B0420 - independent prescribing<br>• B0468 - cancel prescription |
| • R8001 – nurse access role (full prescribing rights) activities | • B0278 - perform prescription preparation<br>• B0401 - view patient medication<br>• B0420 - independent prescribing<br>• B0468 - cancel prescription |
| • R8000 – clinical practitioner access role activities | • B0278 - perform prescription preparation<br>• B0401 - view patient medication<br>• B0420 - independent prescribing<br>• B0468 - cancel prescription |
| • R8008 – admin/clinical support access role activities | • B0401 - view patient medication<br>• B0468 - cancel prescription |

5.3.2 The Customer shall be responsible for ensuring that its agent/smart card management team is responsible for adding the appropriate smart card role to each relevant smart card. The Customer shall refer to the above table at paragraph 5.3.1(u) for:

(a) details regarding specific identity agent registry settings; and

(b) a description of the additional third party software requirements for smart card interactions if the FHIR messaging protocol is enabled.

## Schedule 2

## Implementation Plan

### Part A

### Outline Implementation Plan

**1. Implementation Plan**

1.1. The Implementation Plan is set out below. The Outline Implementation Plan identifies progress acceptance triggers taking place during the period of the provision of the Implementation Services which are hereby agreed to not exceed 4 months commencing on the Effective Date.

1.2. Subject to paragraph 3, the Outline Implementation Plan will be superseded as a contractual document by a detailed Implementation Plan which shall be agreed between the parties and which shall be provided by the Supplier as set out in Milestone M1a below and by the corresponding Milestone Date and shall include the Deliverables as set out below in respect of the aforementioned Milestone.

1.3. The Milestones shall not be amended unless such amendments are agreed in accordance with the Change Control Procedure. In particular, either Party is entitled to issue a Change Control Notice in respect of the first Deliverable for Milestone M4 for agreement in accordance with the Change Control Procedure, as soon as possible after either Party becomes aware that the Site Implementation 1 (as described below) Deliverable for Milestone M4 is not capable of being met due to:

1.3.1. a technical issue with the In Scope Pharmacy's legacy ICT infrastructure such that it is not compatible with the EPS Solution;

1.3.2. if the designated prescribing pharmacist is no longer at the relevant In Scope Pharmacy; and/or

1.3.3. an In Scope Pharmacy decides that it no longer wishes to participate in the IPP Pathfinder Programme,

and the Parties shall agree (acting reasonably and in good faith and as soon as possible bearing in mind the Milestone Date for Milestone M4 with the intention of mitigating any delay to the Achievement of that Milestone) the number of In Scope Pharmacies required to have completed Site Implementation 1 (as described below).

| Milestone Ref No. | Milestone | Milestone Date | Deliverables |
|---|---|---|---|
| M1 | Contract signed | Effective Date | Execution of this Agreement |
| M2 | Set Up | Effective Date + 4 weeks | • All of the In Scope Pharmacies' details have been set up on the EPS Solution;<br>• Training materials completed, ready for publication on "Future NHS"; and<br>• In person training sessions are prepared with content sign off by the Customer's (or its authorised representatives') implementation team |
| M3 | Implementation Commenced | Effective Date + 6 weeks | • Site Implementation 1 (as described below) has been achieved in at least 20 In Scope Pharmacies. |

| | | | |
|---|---|---|---|
| M4 | Implementation Achieved | Effective Date + 3 months and 2 weeks | • Site Implementation 1 (as described below) has been achieved at all In Scope Pharmacies; and<br><br>• Site Implementation 2 (as described below) has been achieved in at least 20 In Scope Pharmacies. |

**2. Site 1 Deliverables**

2.1. Wherever the Supplier is required to provide "Site Implementation 1" as a Deliverable in respect of a Milestone or otherwise pursuant to the Implementation Plan, the Supplier shall confirm the following in respect of each site identified for implementation under the Implementation Plan:

2.1.1. that the Implementation Services (including the training provided) have been implemented, provided and carried out in the manner expected within the Implementation Plan;

2.1.2. that users can access and utilise the Operational Services in accordance with the systems scope outlined in Schedule 1 (Services Description); and

2.1.3. that the Operational Services are functionally available to users, in accordance with the Services Description,

(hereinafter referred together as "**Site Implementation 1 Confirmation**").

2.2. The Supplier shall provide to the Customer the Site Implementation 1 Confirmation expressly and in writing in respect of each site for each relevant In Scope Pharmacy. The Supplier hereby acknowledges and agrees that there are intended to be 210 In Scope Pharmacies to which the Implementation Services are to be provided pursuant to the Implementation Plan.

**3. Site Implementation 2 Deliverables**

3.1. Wherever the Supplier is required to provide "Site Implementation 2" as a Deliverable in respect of a Milestone or otherwise pursuant to the Implementation Plan, the Supplier shall confirm the following in respect of each site identified for implementation under the Implementation Plan:

3.1.1. that the Operational Services have consistently operated in accordance with user and Customer expectations and the Services Description over at least a 2 week period and that all functional requirements set out in the Services Specification are available to users, sufficient for the delivery and provision of the Operational Services); and

3.1.2. that the Operational Services are stable and operating in accordance with Service Levels and that no Service Credits have accrued in respect of service desk support measures (ie. response and fix times) specifically,

(hereinafter referred together as "**Site Implementation 2 Confirmation**").

3.2. The Supplier shall provide to the Customer the Site Implementation 2 Confirmation expressly and in writing in respect of each site for each relevant In Scope Pharmacy. The Supplier hereby acknowledges and agrees that there are intended to be 210 In Scope Pharmacies to which the Implementation Services are to be provided pursuant to the Implementation Plan.

3.3. This confirmation can be centrally monitored but will be confirmed with active sites.

**Part B**

**Pro Forma Milestone Achievement Certificate**

To: **Cleo Systems 24 Limited**

FROM: **NHS England**

[***Date***]

Dear Sirs,

**MILESTONE ACHIEVEMENT CERTIFICATE**

Milestone: [***insert description of Milestone***]

We refer to the agreement (the **"Agreement"**) relating to the provision of the Services between NHS England (the **"Customer"**) and Cleo Systems 24 Limited (the **"Supplier"**) dated [***date***].

Capitalised terms used in this certificate have the meanings given to them in the Agreement.

We confirm that all the Deliverables relating to Milestone [***number***] have been tested and have successfully met the Acceptance Criteria.

Yours faithfully

[***Name***]

[***Position***]

acting on behalf of **NHS England**

## Schedule 3

## Charges

**1.**

1.1. The Customer shall (subject to the Supplier performing its obligations under this Agreement) pay to the Supplier the Charges set out in this Schedule.

1.2. The Charges shall be as set out below in paragraph 2 for the Initial Term and if this Agreement is extended, as set out below in paragraph 3 for the Extended Term.

**2. Charges for Initial Term**

2.1. The Charges for the Initial Term comprise any hosting support charges calculated and chargeable in accordance with paragraph 2.4 below together with the following being the Charges for the provision of the Implementation Services:

2.1.1. the "Pathfinder License Fee" of [redacted];

2.1.2. the "Set Up Fee" of [redacted];

2.1.3. the "Implementation Fee" of [redacted]; and

2.1.4. training for users of [redacted] per session.

"**Total Charges for the Initial Term**" therefore amount to [redacted] (and which the Parties hereby agree include one training session).

2.2. The Charges for the Initial Term shall be payable by the Customer in respect of the Achievement of the relevant Milestone by the Supplier in the sums set out in the following table. The Supplier shall be entitled to issue its invoice in respect of the Achievement of a Milestone upon receipt of a Milestone Achievement Certificate from the Customer in respect of the relevant Milestone save the no Milestone Achievement Certificate will be issued in respect of Milestone M1, in respect of which the Supplier shall be entitled to raise its invoice within 5 Working Days of the Effective Date.

| Milestone Ref No. | Milestone Heading | Description of charges | Percentage of Total Charges for the Initial Term payable | Charge payable (£) |
|---|---|---|---|---|
| M1 | Contract signed | Pathfinder License Fee | [redacted] | |
| M2 | Set Up | Tranche 1 Set Up Fee | | |
| M4 | Implementation Achieved | Implementation Fee | | |

2.3. For the avoidance of doubt, there are no Charges which become payable on the Achievement of Milestone M3. The Supplier shall be entitled to issue its invoice for training provided for the sum set out in paragraph 2.1.4 upon completion of the provision of the relevant training session, which shall be such time as determined by agreement in writing between the Parties.

2.4. If the Supplier achieves the Site Implementation 1 Deliverables and the Site Implementation 2 Deliverables in respect of an In Scope Pharmacy prior to the Achievement of Milestone M4 and commences provision of the Operational Services in respect of such In Scope Pharmacy, the Supplier

shall be entitled to charge the hosting and support charges set out in the table in paragraph 3 below for such In Scope Pharmacy in blocks of 20 provided that during the Initial Term, the charges paid and payable by the Customer do not at any time exceed the **Total Charges for the Initial Term** (as defined above). Accordingly, in the event that the Supplier Achieves Milestone M4 having commenced provision of Operational Services to In Scope Pharmacies as aforementioned, the charges for Milestone M4 as set out above shall be reduced accordingly to ensure that the Customer is not liable to pay any sums in excess of the **Total Charges for the Initial Term**.

2.5. The Supplier shall be entitled to issue its invoices for any Operational Services provided during the Initial Term pursuant to paragraph 2.4 above monthly in arrears with the final invoices for Services being provided during the Initial Term being raise no later than 30 days after the expiry of the Initial Term.

**3. Charges for the Extended Term**

3.1. The Charges for the Extended Term and for any further extended term pursuant to clause 3.5 are set out in the following table and comprise the fixed recurring Charges for the provision of the Operational Services in respect of each In Scope Pharmacy and each Onboarding Pharmacy.

| **Service** | **Monthly Charge (£)** |
|---|---|
| Pathfinder 'as a Service' Provision (central hosting and support services) for a maximum of 210 pharmacies | The charges set out in the table below subject to a total of [redacted] |

[redacted]

3.2. The Supplier shall, provided that this Agreement is extended in accordance with clause 3.2 and 3.5 (as applicable), be entitled to issue its invoices for the Operational Services monthly in arrears with the first such invoice being issued no earlier than 30 days of the expiry of the Initial Term or if this Agreement is extended pursuant to clause 3 no earlier than 30 days after the date of extension.