

A decorative horizontal bar with a blue gradient, wider at the ends and tapering towards the center.

DATED

**SOFTWARE DEVELOPMENT AGREEMENT FOR PHARMACY API INTEGRATION
RELATING TO THE ADVANCED SERVICES**

between

NHS BUSINESS SERVICES AUTHORITY

and

POSITIVE SOLUTIONS LIMITED

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This Agreement is dated

BETWEEN

- (1) **NHS BUSINESS SERVICES AUTHORITY** of Stella House, Goldcrest Way, Newcastle upon Tyne NE15 8NY (**Authority**) which term shall include its successors and permitted assigns; and
 - (2) **POSITIVE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 02843818 whose registered office is at Number Three, South Langworthy Road, PO BOX 18, Salford M50 2PW (**Supplier**),
- each a **Party** and together the **Parties**.

BACKGROUND

- A. The Authority is a Special Health Authority and an arm's length body of DHSC. It provides a range of critical central services to NHS organisations, NHS contractors, patients and the public. The Supplier is a supplier of point of care software used Pharmacy Contractors.
- B. The Authority needs to receive data from Pharmacy Contractors via the MYS System. Such data relates to the Advanced Services as outlined in the CPCF and as referenced in the Drug Tariff. The Authority is collecting this data to enable the reimbursement of Pharmacy Contractors in England for the provision of the Advanced Services, and also to provide the requisite reporting to the Authority, NHSE and DHSC.
- C. As well as providing software to Pharmacy Contractors, the Supplier has developed, or will develop, under the terms of this Agreement the Bespoke Software in order to provide data feeds to the Authority via the API. The Supplier has agreed to make changes to the Software to develop the Bespoke Software, which will facilitate delivery of the Advanced Services for those Pharmacy Contractors that wish to use it. The facilitation will enable the transmission of required data from the Software to the MYS System via the API and enable the receipt into the Software of Response Data from the Authority via the MYS System.
- D. The Parties have agreed to enter into this Agreement for the purpose of recording the arrangement between them.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Acceptance Certificate: the certificate provided by the Authority under clause 5.

Acceptance Date: the date on which the Acceptance Certificate is issued by the Authority.

Acceptance Tests: the tests of the Bespoke Software after installation to be agreed in accordance with clause 4 and the specification of such tests to be annexed at ANNEX B.

Acceptance Tests Specification: the specification provided by the Authority which sets out the Authority's business requirements regarding the Acceptance Tests, contained in ANNEX B, as updated and amended from time to time.

Advanced Services: together the Blood Pressure Checking Service, New Medicines Service and Smoking Cessation Service and each described separately as an Advanced Service, as more particularly described in the CPCF and the Drug Tariff.

Agreement: this Agreement including the Schedules and Annexes.

API: the application programming interface that has been developed by and is owned by the Authority to facilitate the feed of data between the Software and the MYS System.

Authority Representative: a person duly authorised by the Authority to act on its behalf for the purposes of this Agreement and identified to the Supplier by written notice from the Authority.

Bespoke Software: the code/technology which the Supplier has developed or will develop to implement the Services Specification under this Agreement to enable:

- (i) the real-time transmission of Pharmacy Contractor Data from the Software to the MYS System, and
- (ii) the real-time receipt into the Software of Response Data.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the Party to the other Party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to pricing and marketing and, for clarity, including (in the case of the Supplier's information) information relating to the Bespoke Software or any such parts.

CPCF: the Community Pharmacy Contractual Framework published 22 July 2019, as updated and amended from time to time and including any period extending the term of its application.

DHSC: the Department of Health and Social Care of His Majesty's Government.

Drug Tariff: the NHSE Electronic Drug Tariff compiled on behalf of DHSC by NHSBSA as updated and amended from time to time.

Funding: the funding contribution for the Services as specified in Schedule 2.

Generally Accepted Accounting Principles: all generally accepted accounting principles including UK generally accepted accounting principles comprising the Financial Reporting Standards and:

- (i) International Accounting Standards as adopted by the International Accounting Standards Board;
- (ii) International Accounting Standards within the meaning of Council Regulation (EC) 1606/2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation; and
- (iii) SSAE 16 Statement on Standards for Attestation Engagements No. 16, published by the American Institute of Certified Public Accountant (AICPA).

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.

MYS System: the Authority's 'Manage Your Service' portal used by Pharmacy Contractors to submit claims for services provided by them to NHS patients.

NHSE: the executive non-departmental public body NHS Commissioning Board known as NHS England.

Non-Processor Agreement: a non-processor agreement signed by the Parties on or around the date of this Agreement setting out the terms under which any personal data is processed in the provision of the Services under this Agreement.

Permitted Purposes: has the meaning given to it in clause 9.1.

Pharmacy Contractor: a contractor providing services to NHS patients, and who the Supplier supports in connecting to the MYS System via the Software. These may include GP practices, pharmacies and dental practices as appropriate.

Ready for Service: installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 4.

Ready for Service Date(s): each date specified by the Authority in the Services Specification for Services relating to each Advanced Service, by which the Bespoke Software for the relevant Advanced Service must have been accepted by the Authority under clause 5.

Response Data: confirmation as to whether a specified Pharmacy Contractor has completed their declaration to be reimbursed based on the data provided by the Supplier.

Services: the works, duties and obligations to be carried out by the Supplier under this Agreement, as set out in Schedule 1.

Services Specification: the specification provided by the Authority which sets out the Authority's requirements regarding the Bespoke Software and Advanced Services, contained in ANNEX A, as updated and amended from time to time.

Software: the software and/or services provided by the Supplier to each Pharmacy Contractor, including the front-end user interface.

Tools: any tools and know-how developed and methods invented by the Supplier in the course of, or as a result of, carrying out the Services, whether or not developed or invented specifically or used exclusively to carry out the Services.

Updates: any modification, enhancement, revision, update, further function or functions required by the Authority to the Bespoke Software which does not contain such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this Agreement.
- 1.7 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.8 A reference to **writing** or **written** includes fax and email.
- 1.9 The schedules and annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules and annexes.
- 1.10 If there is an inconsistency between any of the provisions in the main body of this Agreement and the schedules and annexes, the provisions in the main body of this Agreement shall prevail.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. SCOPE

- 2.1 The Supplier shall provide the Services in accordance with this Agreement.
- 2.2 The scope under clause 2.1 and Funding are subject to the terms and conditions set out in this Agreement.

3. SUPPLIER OBLIGATIONS

- 3.1 The Supplier shall carry out the Services with reasonable diligence and despatch, and with reasonable skill and expertise,
- 3.2 The Supplier agrees that it will fully fund the Services except for the Funding to be paid by the Authority in accordance with clause 6.
- 3.3 Time shall be of the essence regarding:
 - (a) the Supplier presenting the Software to the Authority in confirmation that it has incorporated all fields and captured all data required by the Authority in the Services Specification, and that are necessary to enable the Pharmacy Contractor to provide the Advanced Services to citizens; and
 - (b) each of the Ready for Service Dates.
- 3.4 In performing the Services, the Supplier shall comply with the Authority's reasonable instructions to ensure minimal disruption to the Supplier or any Pharmacy Contractor.

4. ACCEPTANCE TESTS

- 4.1 No later than 30 days from the date of signature of this Agreement, the Authority shall deliver to the Supplier proposed user acceptance criteria and test data for the Acceptance Tests for the Bespoke Software. The Supplier shall provide the Authority with reasonable assistance to

prepare such user acceptance criteria and test data at the Authority's request. The Parties shall use all reasonable endeavours to agree the Acceptance Tests for the Bespoke Software within ten days from the date of delivery to the Supplier of the proposed criteria and data.

- 4.2 The Supplier shall carry out the agreed Acceptance Tests for the Bespoke Software within the timescales set out in the Services Specification and the Acceptance Tests. The Supplier shall give the Authority at least 24 hours' notice of the start of the Acceptance Tests and permit the Authority to observe all or any part of the testing.
- 4.3 If the Bespoke Software fails to pass the Acceptance Tests, the Authority shall, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated to ensure that the timescales set out in the Services Specification are met.
- 4.4 If the Bespoke Software fails to pass any repeated Acceptance Tests within the timescales set out in the Services Specification, then the Authority may, by written notice to the Supplier, choose to reject the Bespoke Software as not being in conformity with this Agreement, in which event the Authority may terminate this Agreement in accordance with clause 18.

5. ACCEPTANCE

- 5.1 Acceptance of the Bespoke Software shall be deemed to have occurred on the provision by the Authority of an Acceptance Certificate for the Bespoke Software following successful completion of the testing under clause 4.
- 5.2 For the avoidance of doubt, the Parties acknowledge and agree that the Acceptance Certificate cannot be issued and therefore the Acceptance Date cannot fall nor be deemed to fall after each of the Ready for Service Dates.

6. FUNDING

- 6.1 The Funding will be paid as set out in Schedule 2.
- 6.2 The Funding is exclusive of VAT. The Authority shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT which the Supplier is obliged to pay and/or collect from the Authority in respect of any supply under the agreement (other than tax on the Supplier's income).
- 6.3 The Supplier shall submit an invoice in accordance with Schedule 2. The Authority shall make payment of such invoice within 30 days of receipt of the invoice, provided that the invoice may not be submitted until the Authority has accepted the Bespoke Software under clause 5, and further the relevant invoice is an appropriate and properly issued invoice.
- 6.4 For the duration of this Agreement, and for a period of seven years from termination or expiry of this Agreement, the Supplier shall maintain full and accurate records, in accordance with Generally Accepted Accounting Principles.
- 6.5 The Authority may withhold payment against any invoice not submitted in accordance with this Agreement and shall immediately notify the Supplier in writing of its reason for so doing.
- 6.6 For the avoidance of doubt, the Parties agree that no payment shall be made under this Agreement if the Authority has not issued an Acceptance Certificate in accordance with clause 5 before any of the Ready for Service Dates.

7. CHANGE CONTROL AND TECHNOLOGY SUBSTITUTION

The Authority may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change to the Bespoke Software. The Supplier shall not make the requested change until the Parties have agreed and signed a written agreement.

8. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP

8.1 The Parties agree that, except as expressly provided to the contrary, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in:

- (a) the API and MYS System, which are owned by the Authority; or
- (b) the Bespoke Software, which will be owned by the Supplier.

9. CONFIDENTIALITY

9.1 Each Party undertakes not to use the other Party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (**Permitted Purposes**).

9.2 In relation to the Authority's Confidential Information:

- (a) the Supplier shall treat as confidential all Confidential Information of the Authority supplied under this Agreement. The Supplier shall not divulge any such Confidential Information to any person except to its own employees and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 9;
- (b) this clause 9.2 shall remain in full force and effect in the event of any termination of this Agreement.

9.3 In relation to the Supplier's Confidential Information:

- (a) the Authority shall treat as confidential all Supplier Confidential Information contained or embodied in the Bespoke Software, or otherwise supplied to the Authority during the performance of this Agreement;
- (b) the Authority shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
 - (i) the Authority Representative; and
 - (ii) other employees of the Authority who need to know it;
- (c) the Authority undertakes to ensure that the persons mentioned in clause 9.3(b) are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Supplier.

9.4 The restrictions imposed by clause 9.1, clause 9.2 and clause 9.3 shall not apply to the disclosure of any Confidential Information which:

- (a) is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 9;

- (b) before any negotiations or discussions leading to this Agreement was already known by the receiving Party and was obtained or acquired in circumstances under which the receiving Party was not bound by any form of confidentiality obligation; or
 - (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing Party to limit disclosure to such authorised person to the extent necessary).
- 9.5 Each Party shall notify the other Party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, at that other Party's reasonable cost, in connection with any enforcement proceedings which that other Party may elect to bring against any person.
- 9.6 Nothing in this Agreement shall prevent either Party from using any Tools (knowledge of which is contained in the unaided memory of such Party's personnel) developed or disclosed under this Agreement, provided that in doing so such Party does not breach its obligations of confidentiality under this clause 9 or breach any Intellectual Property Rights of the other Party. An individual's memory is only unaided with respect to any information if the individual has not retained a copy of the information and has not intentionally memorised that information other than is required to perform the Services.
- 9.7 The Supplier may not refer to the Authority or this Agreement in any publicity or advertising material without first obtaining the Authority's written consent.
- 9.8 This clause 9 shall remain in full force and effect in the event of any termination of this Agreement.

10. DATA PROTECTION

The Parties agree that any personal data processed under this Agreement will be processed in accordance with the Non-Processor Agreement.

11. ANTI-BRIBERY

- 11.1 The Supplier shall:
- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - (b) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement; and
 - (c) within 3 months of the date of this Agreement, certify to the Authority in writing signed by an officer of the Supplier, compliance with this clause 11.1 by the Supplier. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 11.2 Without prejudice to clause 16.1 the Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 11 (**Relevant Terms**). The Supplier shall in all circumstances be responsible for the observance and performance by such

persons of the Relevant Terms, and shall in all circumstances be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

- 11.3 Breach of this clause 11 shall be deemed a material breach, which is irredeemable, under clause 18.1(a).

12. EXPORT

- 12.1 Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

- 12.2 Each Party undertakes:

- (a) contractually to oblige any third Party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

13. WARRANTIES AND COMPLIANCE

- 13.1 The Supplier acknowledges that the Authority has entered into this Agreement in reliance upon the Supplier's expertise in selecting and supplying goods and services fit to meet the Services Specification.

- 13.2 The Supplier warrants and represents that:

- (a) none of the Software or Bespoke Software infringes the Intellectual Property Rights of any third Party;
- (b) it will meet the key milestones set out in Schedule 1;
- (c) the Software will meet the requirements set out in this Agreement;
- (d) the Bespoke Software will meet all the requirements of the Services Specification;
- (e) the Bespoke Software will be Ready for Service by the relevant Ready for Service Dates;
- (f) the Software will perform in accordance with the requirements set out in this Agreement and the Bespoke Software will perform in accordance with the Services Specification and that it will provide support and maintenance to the Authority for the duration of this Agreement;
- (g) it will incorporate Updates in the Bespoke Software for the duration of this Agreement;
- (h) it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent personnel with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements; and

- (i) it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations.

13.3 Each Party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Agreement and that those signing this Agreement are duly authorised to bind the Party for whom they sign.

13.4 In performing its obligations under this Agreement, the Supplier shall comply with all applicable laws, statutes, regulations from time to time in force.

14. LIMITATION OF LIABILITY

14.1 Neither Party excludes or limits liability to the other Party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the Parties to exclude liability.

14.2 Subject to clause 14.1, neither Party shall in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

14.3 Subject to clause 14.1 and clause 14.4:

- (a) the Supplier's total aggregate liability in contract, tort (including without limitation breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to £150,000 (one hundred and fifty thousand Sterling); and
- (b) the Authority's total aggregate liability (other than its liability to pay any sums properly due and payable under this Agreement and for which the Authority shall remain fully liable) in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to £60,000 (sixty thousand Sterling).

14.4 The limitations or exclusions of liability in this clause 14 shall not apply:

- (a) in the case of liability of the Authority, to its payment obligations; and
- (b) in the case of liability of the Supplier, to:

- (i) any breach of any regulatory requirement by the Supplier which directly or indirectly results in the imposition of any fine or sanction on the Authority or the Authority otherwise incurring any liability;
- (ii) any breach by the Supplier of clause 8 (Intellectual Property Rights Ownership), clause 9 (Confidentiality), clause 10 (Data Protection), clause 11 (Anti-bribery) or clause 13 (Warranties and Compliance); or
- (iii) any physical damage to tangible property or in respect of the loss or corruption of data.

15. INSURANCE

15.1 The Supplier shall, during the term of this agreement and for seven years thereafter and at its own cost:

- (a) effect and maintain in force with reputable insurers the following insurance policies in accordance with Good Industry Practice:
 - (i) public liability insurance policy;
 - (ii) professional indemnity insurance;
 - (iii) property damage; and
 - (iv) business interruption insurance;
- (b) provide evidence of such insurance to the Authority on request;
- (c) administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the Authority set out in this Agreement;
- (d) do nothing to invalidate any such insurance policy or to prejudice the entitlement of the Authority under this agreement; and
- (e) procure that the terms of such policy shall not be altered in such a way as to diminish the benefit to the Authority of the policies as provided at the date of this agreement.

16. ASSIGNMENT

16.1 This Agreement is personal to the Supplier and the Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

16.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

17. DURATION

17.1 This Agreement shall commence on the date on which it becomes effective, being the date when it has been signed by all the Parties and shall continue, unless terminated earlier in accordance with this Agreement, until the later of:

- (a) 12 months from the Acceptance Date; or
- (b) the date of termination of the CPCF, including any period extending the term of the CPCF.

18. TERMINATION

18.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other Party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 18.1(a);
- (c) the other Party suspends or ceases, or threatens to suspend or cease, carrying on business; or
- (d) there is a change of control of the other Party within the meaning of section 1124 of the Corporation Tax Act 2010).

18.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement on giving not less than one months' written notice to the other Party.

18.3 On termination of this Agreement for any reason, each Party shall as soon as reasonably practicable:

- (a) return, destroy or permanently delete (as directed in writing by the other Party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other Party containing, reflecting, incorporating or based on Confidential Information belonging to the other Party. If required by the other Party, it shall provide written evidence (in the form of a letter signed by its Product & Technology Director no later than 30 days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 9);
- (b) permanently delete any proprietary software belonging to the other Party and not the subject of a current licence granted by the other Party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other Party. Each Party shall provide written confirmation (in the form of a letter signed by its Product and Technology Director no later than 30 days after termination of this Agreement that this software has been deleted;
- (c) return all of the other Party's equipment and materials, failing which, the other Party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the Party in possession shall be solely responsible for their safe-keeping,

and any data shall be considered deleted, for the purposes of this clause 18.3 where it has been put beyond use by the deleting Party.

- 18.4 The Authority shall not in any circumstances be liable to the Supplier for redundancy payments and staff termination costs arising from termination or expiry of this Agreement.

19. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

20. REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. ENTIRE AGREEMENT

- 21.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

23. SEVERANCE

- 23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 23 shall not affect the validity and enforceability of the rest of this Agreement.
- 23.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

25. THIRD-PARTY RIGHTS

- 25.1 No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 25.2 Except as expressly provided elsewhere in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third Party which exists, or is available, apart from that Act.
- 25.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

26. NO PARTNERSHIP OR AGENCY

- 26.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party, except as expressly authorised by the Authority or the Supplier (as the case may be).
- 26.2 The Supplier shall, subject to any express restrictions imposed under this Agreement, have complete control of the Services and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are carrying out the Services.

27. NOTICES

- 27.1 Any notice or other communication given to a Party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by 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); or
 - (b) sent by email to [REDACTED] for the Authority; and
 - (c) sent by email to [REDACTED] for the Supplier.
- 27.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if sent by email, at the time of transmission.
- 27.3 This clause 27 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 27, writing shall include email.

28. GOVERNING LAW

- 28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 28.2 The agreement has been entered into on the date stated at the beginning of it.

29. JURISDICTION

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

SCHEDULE 1 SERVICES AND KEY MILESTONES

The Supplier shall provide the following services in respect of each of the Advanced Services under the terms and conditions set out in this Agreement (the **Services**):

1. develop the Software in accordance with the requirements set out in this Agreement and the Bespoke Software in accordance with the Services Specification, and both in accordance with the key milestones set out in paragraph 4 of this Schedule 1 below (where applicable);
2. ensure that the Software performs in accordance with the requirements set out in this Agreement and the Bespoke Software performs in accordance with the Services Specification, including providing support and maintenance in relation to both, for the duration of this Agreement;
3. incorporate Updates in the Bespoke Software for the duration of this Agreement; and
4. provide the services described in paragraphs 1 to 3 (inclusive) and the following services set out below in respect of each of the Advanced Services by the key milestone dates set out below:

KEY MILESTONES	MILESTONE DATES		
	BLOOD PRESSURE CHECKING SERVICE	NEW MEDICINES SERVICE	SMOKING CESSATION SERVICE
Develop the Software to incorporate all relevant fields and capture all data required by the Authority in the Services Specification, and that are necessary to enable the Pharmacy Contractor to provide the Advanced Service to citizens. Present the Software (the user interface) to the Authority in confirmation that it has incorporated all fields and captured all data required by the Authority in the Services Specification, and that are necessary to enable the Pharmacy Contractor to provide the Advanced Service to citizens.	20 July 2023	22 September 2023	8 January 2024
Carry out and complete, in conjunction with the Authority, the Acceptance Tests.	4 August 2023	20 October 2023	19 January 2024

Successfully transmit a live service message from the Software to the MYS System via the API using the Bespoke Software.	7 August 2023	26 October 2023	26 January 2024
Ensure that the Bespoke Software is Ready for Service.	10 August 2023 or the Ready for Service Date	1 November 2023 or the Ready for Service Date	1 February 2024 or the Ready for Service Date

SCHEDULE 2 FUNDING AND PAYMENT

1. The Funding for the Services comprises three equal fixed fee instalments of £20,000 exclusive of VAT.
2. Each Funding instalment relating to each Advanced Service shall be payable by the Authority only if the Supplier has:
 - a. provided the Services that are required under the terms of this Agreement before the Ready for Service Date relevant to that Advanced Service, including but not limited to:
 - i. presented the Software to the Authority in confirmation that it has incorporated all fields and captured all data required by the Authority in the Services Specification in relation to that Advanced Service, and that are necessary to enable the Pharmacy Contractor to provide that Advanced Service to citizens; and
 - ii. provided the Bespoke Software Ready for Service by the Ready for Service Date relevant to that Advanced Service; and
 - b. received an Acceptance Certificate from the Authority for the Services relating to that Advanced Service; and
 - c. submitted a valid invoice to [REDACTED] for the Services provided by the Supplier relating to that Advanced Service.

This Agreement has been signed by the Parties below:

Signed for and on behalf of **NHS BUSINESS SERVICES AUTHORITY** by:

Signed for and on behalf of **POSITIVE SOLUTIONS LIMITED** by:

ANNEX A SERVICES SPECIFICATION



NHS-BSA-CVD-API-Client-Specification-v2.3.



NHS-BSA-NMS-API-Client-Specification-v1.3



NHS-BSA-SCS-API-Client-Specification_v2.2.

ANNEX B ACCEPTANCE TESTS SPECIFICATION



CVD - API Testing
Guide v0.4.docx



NMS - API Testing
Guide v0.3.docx



SCS - API Testing
Guide v0.3.docx