NHS
Shared Business Services

Service Level Agreement (Order Form)

Framework details

Title: Medicines Management Prescribing Decision Support Systems 2
Reference: SBS/19/AB/WAS/9389
Contract Duration: 1st October 2019 to 30th September 2021 with the option to extend it for
Max End Date: 30th September 2023
NHS SBS Contacts: Amanda Bailey 0161 212 2420 amanda.bailey12@nhs.net

Oder Form details

This Order Form is between the following parties and in accordance with the Terms and Conditions of the Framework Agreement.

Period of the Agreement	Effective Date	1 March 2023	Expiry Date	31 March 2026

Date of order	[ ]	**Order Number**	[ ] To be quoted on all correspondence relating to this Order

FROM

Customer	Coventry and Warwickshire Integrated Care Board
Customer's Address	Westgate House, Market Street, Warwick, Cv34 4de, United Kingdom
Invoice Address	Westgate House, Market Street, Warwick, Cv34 4de, United Kingdom
Contact Ref:	Name: [redacted] Address: Westgate House, Market Street, Warwick, CV34 4DE, United Kingdom Phone: [redacted] e-mail: [redacted] Name: [redacted] Address: Westgate House, Market Street, Warwick, CV34 4DE Phone: [redacted] e mail: [redacted]

TO

Supplier	"First Databank UK Ltd "Supplier"
Supplier's Address	Swallowtail House, Grenadier Road, Exeter, EX1 3LH
Account Manager	Name: Helen Orton Address: Swallowtail House, Grenadier Rd, Exeter EX1 3LH Phone: [redacted] e-mail: [redacted]

GUARANTEE

Guarantee to be provided	**No**

Where a guarantee is to be provided then this Contract is conditional upon the provision of a Guarantee to the Customer from the Guarantor in respect of the Supplier. Details of the Guarantor (if any) are set out below:

[Parent Company	**[ ]** **"Guarantor"**
Parent Company address	**[ ]**
Account Manager	**Name:** **Address:** **Phone:** **e-mail:** **Fax:**

1. TERM
(1.1) Commencement Date 1 March 2023
(1.2) Expiry Date The Contract shall expire on the date which is 37 Months after the Commencement Date with the option to extend for a further 12-month period.

2. GOODS AND SERVICES REQUIREMENTS
(2.1) Goods and/or Services **Goods** - [ ] [***Guidance: Insert details of the Goods which are the subject of the Contract***] The Customer agrees to purchase all of its requirements for the Goods or equivalent goods from the Supplier. **Service Profile** - OptimiseRx **[*Guidance: Insert details of the service profile agreed*]** **Minimum Order Value** **£ 307,423.20** **Optional Services** **Collection and recycling** ☐ **Paper catalogue** ☐ **Secure Collection** ☐

[***Guidance: Include a description of the core Services which are applicable to the Customer together with any specific Service requirements.***]

(2.2) Premises

Supplier shall provide the Services to the Customer, and in particular to the End Users identified in Schedule 7A(iii).

[***Guidance: Insert details of any Premises where the Goods and/or Services are to be provided. It is not mandatory to include details. If none then insert "n/a".]***

(2.3) Lease/ Licenses

Licence terms are contained within the Call Off Terms and Conditions.

(2.4) Standards

Supplier's solutions are based on a commitment to international quality accreditation methodologies, proven content consistency and reliability, rigorous quality control and continuous process improvement. FDB operates a comprehensive Quality Management System ("QMS") accredited to ISO 9001:2015, a widely recognised and globally defined standard, which is audited independently on a regular basis. Adherence to Supplier's QMS ensures the necessary policies and procedures are in place to enable the company to deliver clinical decision support products of a consistently high quality.

Supplier retains a commitment to Six Sigma methodologies and continuous process improvement that lock in content consistency and reliability. Six Sigma uses data and customer input to assist in designing solutions and delivery mechanisms that are more likely to be problem-free.

Without prejudice to the generality of the provisions of the Terms and Conditions, Licensee acknowledges that the Licensed Solutions are compiled by FDB based upon information provided by third party sources and FDB does not conduct independent verification of such source material as a matter of course, FDB gives no warranty as to the accuracy or completeness of the data. Accordingly, FDB shall not be responsible for any use made by Licensee, Customers or End Users of the Licensed Solutions. End Users who are registered medical practitioners, or others legally authorised to prescribe or dispense drugs or other pharmaceutical products shall be fully responsible and liable for any use which they make of the Licensed Solutions as incorporated in the System in prescribing or dispensing substances to be taken by patients or otherwise used as part of their therapeutic treatment and care.

Supplier has achieved the following:
ISO 13485:2016

NICE has accredited the process used by FDB to develop content used in Multilex drug knowledge. More information on accreditation can be found at www.nice.org.uk/accreditation. For full details on our accreditation visit: https://www.nice.org.uk/about/what-we-do/accreditation/casestudies/fdb

Cyber Essentials

Data Security and Protection Toolkit – 100% standards met. Organisation code: 8HV90

Information Commissioners Office (ICO) certified. Certificate number: ZA274627

(2.5) Security Requirements

Security Policy

[ ]

Additional Security Requirements

[ ]

[***Guidance: Include any information regarding Security Requirements that are appropriate to the Customer or the location where the Services are being provided. Consider if there are any other specific security requirements relating to the Customer and include details.***]

Processing personal data under or in connection with this contract

YES

(2.6) Exit Plan (where required)

[YES] OR [NO]

[***Guidance: Customer to consider whether an Exit Plan is required for the Services.***]

(2.7) Environmental Plan

[YES] OR [NO]

[***Guidance: If required by the Customer, the Supplier shall create an environmental plan appropriate to this Contract.***]

3. SUPPLIER SOLUTION

(3.1) Supplier Solution

OptimiseRx

[Guidance: If there are particular aspects of the Goods and/or Services that have been offered by the Supplier that you wish to record in the contract then these should be set out here.]

(3.2) Account structure including Key Personnel

[redacted]

(3.3) Sub-contractors to be involved in the provision of the Services and/or Goods

NOT APPLICABLE

(3.4) Outline Security Management Plan

As set out below:

[ ]

[***Guidance: As part of the ordering process, Customers should require the Supplier to provide an outline plan and policy and include this in the Order Form in this paragraph 3.4.***]

(3.5) Relevant Convictions

A Relevant Conviction is a Conviction that is relevant to the nature of the Services to be provided [***Guidance: You may wish to specify a particular conviction(s) e.g. involving dishonesty, violence, sexual offence***]

(3.6) Implementation Plan

As agreed between the parties as part of the Call off Terms and Conditions (if any).

4. PERFORMANCE QUALITY

(4.1) Key Performance Indicators

[ ]

[Guidance: Insert details of any specific KPI's applicable to the Supplier here.]

(4.2) Service Levels and Service Credits

When providing the Goods and/or Services, the Supplier shall as a minimum ensure that it achieves the following service levels:

Priority	Response time	Resolution time	Examples
1	1 hour	As agreed	Unavailability of the system, or a major function of the system, causing significant business impact; correction of clinically important errors in the switch suggestion/message profile (e.g. by switching off the suggestion/message in question)
2	2 hours	As agreed	Unavailability of the system, or a major function of the system, causing limited business impact
3	4 hours	As agreed	Problems causing inconvenience, minor disruption or restricting performance
4	8 hours	As agreed	Requests to add a new switch suggestion or new message to the Contracting Authority's profile
5	8 hours	As agreed	Non-urgent problems causing slight irritation where work-rounds are available; general enquiries for information

If the level of performance of the Supplier during the Contract Period:

(i) fails to achieve a Service Level in respect of each element of the Service, then the Customer shall be entitled to deduct the Service Credits from the Contract Price; and/or

(ii) constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract.

5. PRICE AND PAYMENT

(5.1) Contract Price payable by the Customer in accordance with the commercial schedule set out in the framework agreement (including applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS))

[redacted]

[*Guidance: Insert details of any specific price arrangements.*]

(5.2) Invoicing and Payment

The Supplier shall issue invoices annually in advance. The Customer shall pay the Supplier within [thirty (30) days] of receipt of a Valid Invoice, submitted in accordance with this paragraph 5.2, the payment profile set out in paragraph 5.1 above and the provisions of the Contract.

[*Guidance: Also include any specific arrangements relating to method of payment.*]

6. SUPPLEMENTAL AND/OR ADDITIONAL CLAUSES

(6.1) Supplemental requirements

[ ]

[***Guidance: Include any additional requirements required by the Customer above. Examples could include:***

- Any reference to the Participating Authority's requirements set out in any documents relating to a mini-competition and the Supplier's proposal

- Whether the time for delivery of the Goods should be of the essence

- Further provisions relating to financial distress of a supplier such as enhanced reporting / meetings, payment of charges into escrow to ensure payments are made to sub contractors and creation of a financial distress plan

- Details of any particular obligations that the Customer has agreed to and provisions dealing with the control the consequences of any failure to meet such obligations such as, for example, payment deductions for failure to meet an agreed service level

- Provisions relating to TUPE. The application of TUPE should be considered in every case and, if circumstances indicate that a TUPE transfer would be triggered, appropriate wording should be inserted.]

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Goods and/or Services. The Parties hereby acknowledge and agree that they have read the NHS Conditions of Contract for purchase of goods and/or Services and by signing below agree to be bound by the terms of this Contract.

For and on behalf of the Supplier:

[redacted]

Schedule 1

Information Governance Provisions

[redacted]

Schedule 2

Ordering Procedure, Award Criteria and Order Form

Contracts are formed between participating authorities and each supplier under the Framework Agreement by the placing of an Order. Once an Order is issued to a supplier there is a legally binding contract. This contract is referred to in the guidance below as 'call-off contract'.

The call-off contract is made up of the following components:

(a) the call-off terms and conditions set out at Appendix A of this Framework Agreement;
(b) a completed Order Form as per the embedded document below.
(c) a completed Call Off Notice Relating to the Provision of Medicines Management Prescribing Decision Support Systems, set out at Appendix to Schedule 7 [7a].
(d) the applicable parts of the Specification and Tender Response Document set out at Schedule 5 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Order Form;
(e) the applicable parts of the Commercial Schedule set out at Schedule 6 of this Framework Agreement, as may be supplemented by information set out and/or referred to in the Order Form; and
(f) any relevant provisions applicable to the call-off contract as set out in the Framework Agreement.

Participating Authorities have the ability to call off: Where the terms laid down in the framework agreement are precise enough and complete for the particular call-off product and/or service provision.

Capability Assessment: Participating Authorities may complete a Capability Assessment per lot to allow providers a discretionary opt-out.

At Mini-competition stage

Where the terms laid down in the framework agreements are not precise enough or
Complete for the particular call-off, a further or mini competition will be held with all those suppliers within the frameworks capable of meeting the particular need.

Each contracting authority and/or consortia may supplement or refine the basic terms to reflect particular circumstances for the individual call-off. Specific details will be provided for each mini-competition.

Examples of such terms are:

- particular delivery timescales;
- particular invoicing arrangements and payment profiles;
- additional security needs;
- incidental charges;
- particular associated services, e.g. training;
- particular mixes of quality systems and rates;
- particular mixes of rates and quality;
- where the terms include a price mechanism;
- Individual special terms – e.g. requirements specific to the particular product, service or solution that is needed and/or provided to meet particular requirements.
- For example in assessing Price authorities will request multiple scenarios against the contracting authorities requirements.

- For example authorities may request to create/structure site visits broadly based on requirements and include this within the criteria for evaluation to allow for tailored individual special terms.

All Framework requirement criteria and sub-criteria will be followed and weightings will always total 100%.

SCHEDULE 7A (i)
TERMS SCHEDULE

1. THE AUTHORITY

Coventry and Warwickshire Integrated Care Board

2. LICENSED SOLUTIONS

2.1. The Authority is permitted to use the Licensed Solution as outlined below:

OptimiseRx

3. TERRITORY

3.1. The Authority acknowledges that it is satisfied that it is appropriate to use the Licensed Solutions in the Territory:

Great Britain

4. COMMENCEMENT DATE

4.1. The Commencement Date shall be 1 March 2023

Year 1 Period 1	1 March 2023 – 31 March 2023
Year 1 Period 2	1 April 2023 – 31 March 2024
Year 2	1 April 2024 – 31 March 2025
Year 3	1 April 2025 – 31 March 2026

5. TERM

5.1. This Agreement shall commence on the Commencement Date for a period of 37 months with the option to extend for a further 12 months:

Year 1 Period 1	1 March 2023 – 31 March 2023
Year 1 Period 2	1 April 2023 – 31 March 2024
Year 2	1 April 2024 – 31 March 2025
Year 3	1 April 2025 – 31 March 2026

6. DECLARATION OF USE

6.1. Usage by the Authority is restricted to the Authority's System described as follows:

The Authority shall use the Licensed Solutions as a source of drug product information to optimise prescribing decisions by allowing End Users to consider and select or reject options presented by the Licensed Solutions that exclusively support the operation of the Authority's system, which is outlined below:

EMIS

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7. PATIENT FEES

7.1. Patient Fees

Patient Fees will be inclusive of:
i) All functionality associated with Licensed Solution known as OptimiseRx; together with updates provided on a fortnightly basis (update schedule correct at the Commencement Date, but Licensee reserves the right to alter this Schedule).
ii) Implementation: providing access through login and password to enable the use of the system
iii) Training: this means providing sufficient guidance and training (including materials).

7.2. Patient Fees shall be payable in accordance with the following formulae:

[redacted]

7.3. All Fees are exclusive of VAT which shall be payable in addition against the Supplier's VAT invoice.

8. TRAINING

8.1. The Supplier will provide training to the Authority's medicines management teams in the use of the available functionality in Medicines Optimisation. Training may be provided by telephone conference or video conference.

8.2. The training provided by Supplier shall be limited to a total of one day (8 hours)

9. PATIENT DECLARATIONS

9.1. Upon commencement of this Agreement and on each anniversary date thereafter, the Authority shall notify the Supplier in writing of the total number of Patients registered at the Authority's practices, giving the following detailed information:

- Practice Name
- Partnership name (if any)
- Branch sites (if any)
- Address of each End User Site

- Number of registered Patients at each End User Site
- The NHS Practice Code of the End User Site
- GP Practice clinical System
- Practice Manager name, email address and direct line

Failure to provide the Patient Declarations by the due date will be regarded as a material breach of the obligations of the Authority under this Agreement.

Authority warrants that the Patient Declarations made in accordance with this paragraph will be compiled and submitted to FDB using all appropriate skill and care to ensure that such Declarations are accurate.

No less than sixty days prior to the anniversary of the contractual Year, Supplier shall identify the current patient population using "Patients Registered at a GP Practice" data published by NHS Digital (or any other data feed which supersedes it) and will provide a summary in writing for Authority to confirm it remains accurate and correct. Should any changes be made to the content during the Term Authority should provide written notice within 14 days of any change taking place.

If Authority fails to declare usage by a practice or any changes and Supplier subsequently becomes aware of an increase in patient population, Authority will remit to Supplier an amount equal to the difference between the Patient Fee paid the prior year and the amount owed on the basis of the increase in the number of Patients in the intervening year.

10. AUDIT

10.1. For as long as this Agreement is in effect and for a one (1) year period thereafter (a) the Authority shall maintain complete records with respect to the use of the Licensed Solutions, and (b) during normal business hours, at reasonable intervals but not more often than quarterly, and upon advance written notice of no less than five (5) Business Days, the Supplier may audit and review those records as necessary to confirm that the fee paid to the Supplier is correct and that the Authority has complied with all the terms of this Agreement.

In the event of the procedures identifying registered patients not previously reported to the Supplier or accurately reported, the Authority will be liable to pay all and any fees that would have been payable but for such omissions or inaccuracies.

SCHEDULE 7A (ii)
SERVICE LEVEL AGREEMENT

1. GENERAL SUPPORT INFORMATION

1.1. First-line Support for the Authority's System will continue to be provided in accordance with the Authority's service levels with its Vendor System provider.

1.2. Support required to be provided to the Authority, shall be provided during Contracted Support Hours, which are defined as Monday to Friday, 9am - 5:30pm excluding public holidays in England. Support shall not be provided outside of these times.

1.3. The Supplier shall provide an email address for support queries, together with access to a web based query form.

1.4. The Supplier shall provide a quarterly report of all support requests logged, if requested by the Authority.

1.5. The Supplier will use all reasonable endeavours to ensure that all valid support queries logged with the successful bidder regarding the Licensed Solution are addressed within the timescales as follows:

Priority	Response time	Resolution time	Examples
1	1 hour	As agreed	Unavailability of the system, or a major function of the system, causing significant business impact; correction of clinically important errors in the switch suggestion/message profile (e.g. by switching off the suggestion/message in question)
2	2 hours	As agreed	Unavailability of the system, or a major function of the system, causing limited business impact
3	4 hours	As agreed	Problems causing inconvenience, minor disruption or restricting performance
4	8 hours	As agreed	Requests to add a new switch suggestion or new message to the Contracting Authority's profile
5	8 hours	As agreed	Non-urgent problems causing slight irritation where work-rounds are available; general enquiries for information

1.6. All queries received by the Supplier's customer service department will be logged and assigned with a unique reference number.

1.7. The Supplier shall ensure that a log is maintained in respect to each query raised by the Authority.

1.8. Whenever so requested by the Authority, acting reasonably at all times, and during Monday to Friday, 9am to 5:30pm, the Supplier shall provide an update report from the log with respect to any the Authority related queries.

2. TELEPHONE SUPPORT

2.1. The Supplier will request written confirmation of the following details of the call:

- Name of the Authority's contact.
- Telephone number of the Authority's contact.

- e-mail address of the Authority's contact.
- GP Clinical system and version number.
- Date and time call was originally raised.
- System name and version number.
- Identifiers.
- Problem details (e.g. actual results, expected results, problem description).
- Any unique Authority reference number.

2.2. Any calls placed by the Authority outside of Monday to Friday, 9am to 5:30pm shall be actioned from the start of the next Contracted Support Hours.

2.3. the Supplier may be contacted via the following contact points:

[redacted]

3. ESCALATION PATH

3.1. THE AUTHORITY TO THE SUPPLIER

3.1.1. The Authority shall be entitled to escalate issues to members of the Supplier's senior management. Contact details are provided in the following table:

[redacted]

3.1.2. The Authority will escalate to members of the Supplier's senior management in the order shown above until such time as the Authority, acting reasonably, deems it necessary to escalate to the next level.

3.2. THE SUPPLIER TO THE AUTHORITY

3.2.1. The Supplier shall be entitled to escalate issues to members of the Authority's senior management. Contact details are provided in the following table:

[redacted]

3.2.2. The Supplier will escalate to members of the Authority's senior management in the order shown above until such time as the Supplier, acting reasonably, deems it necessary to escalate to the next level.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

SCHEDULE 7A (iv)
END USER LICENSE TERMS

The following terms apply to use of the API that is included within the licence grant. In the event of any conflict between the body of the Agreement and this Schedule Four, the terms of this Schedule 7A (iv) shall apply.

LICENSEE OBLIGATIONS

1.1 The Authority acknowledges that the API includes third party software ("EMIS Health software") which is the intellectual property of Egton Medical Information Systems Limited ("EMIS Health").

1.2 The EMIS Health software is NOT free or shareware. The customer's right to use the EMIS Health software in conjunction with the Company's solution is granted on a non-exclusive, personal and non-transferable basis and shall immediately cease upon the earlier of: (i) the termination or expiry of its agreement with the Company; or (ii) the termination of the agreement in effect between EMIS Health and the Company in respect of the EMIS Health software.

1.3 The customer shall:

a. not copy the EMIS Health software (other than for normal operation) nor (subject to such limited rights as cannot be excluded by applicable law) to disassemble, decompile or reverse engineer the EMIS Health software;

b. not translate, modify, lease, rent, loan, redistribute, sub-lease, sub-license or create derivative works from the EMIS Health software;

c. maintain accurate and up-to-date records of the number and location of all copies of the EMIS Health software;

d. supervise and control use of the EMIS Health software in accordance with the terms of its agreement with the Company;

e. reproduce and include any proprietary notices which appears in, or on, the EMIS Health software on all copies; and

f. not use the EMIS Health software for any immoral, illegal or for any other purpose which may be determined threatening, abusive or harmful.

1.4 The EMIS Health software is provided on an "*as is*" basis without any warranty of any kind either express or implied including but not limited to the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement except to the extent that by statute liability may not lawfully be excluded in an agreement of this nature.

1.5 All copyright, trade marks and other intellectual property rights subsisting in or used in connection with the EMIS Health software (including but not limited to all images, animations, audio and other identifiable material relating to the software) are and remain the sole property of EMIS Health (or its third party licensors as appropriate).

1.6 The parties agree that the API is Confidential Information;

1.7 EMIS Health and Supplier do not make any representations in respect of the API other than those expressly provided for in this Agreement;

1.8 End Users shall bring any claims they might have in relation to their use of the Licensed Solutions (which definition should include reference to the API) directly against the Supplier and not its third party licensor(s) (including, EMIS Health).

1.9 Authority acknowledges that the software is intended to aid and supplement, not substitute for, the expertise and judgment of physicians, pharmacists or other healthcare professionals. All information is provided on the basis that the healthcare practitioners responsible for patient care will retain full and sole responsibility for deciding any treatment to prescribe or dispense for all patients and, in particular whether the use of information provided by the relevant system is safe, appropriate, or effective for any particular patient or in any particular circumstances.

DATED

(1) FIRST DATABANK UK LTD

- and –

(2) COVENTRY AND WARWICKSHIRE SUB ICB LOCATION

CALL OFF CONTRACT
relating to the provision of Medicines
Management Prescribing Decision Support
Systems

Where an Order Form is issued by the Authority that refers to the Framework Agreement, the Contract is made between the Authority and the Supplier on the date of that Order Form. The Contract is subject to the terms set out in the schedules of these Call-off Terms and Conditions listed below ("**Schedules**").

The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of the Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of the Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Order Form.

The Definitions in Schedule 4 of these Call-off Terms and Conditions apply to the use of all capitalised terms in the Contract.

Schedules

Schedule 1 of these Call-off Terms and Conditions	Key Provisions of these Call-off Terms and Conditions
Schedule 2 of these Call-off Terms and Conditions	General Terms and Conditions of these Call-off Terms and Conditions
Schedule 3 of these Call-off Terms and Conditions	Information Governance Provisions of these Call-off Terms and Conditions
Schedule 4 of these Call-off Terms and Conditions	Definitions and Interpretations of these Call-off Terms and Conditions

Schedule 1 of these Call-off terms and Conditions

Key Provisions

5 Application of the Key Provisions

5.1 The standard Key Provisions at Clauses 5 to 7 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.

5.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

6 Term

6.1 This Contract commences on the Commencement Date.

6.2 The Term of this Contract shall be as set out in the Order Form.

6.3 The Term may be extended in accordance with Clause 19.1 of Schedule 2 of these Call-off Terms and Conditions provided that the duration of this Contract shall be no longer than any maximum duration applicable to the Contract if such maximum duration is set out in the Framework Agreement (including any options to extend).

7 Contract Managers

7.1 The Contract Managers at the commencement of this Contract shall be as set out in the Order Form or as otherwise agreed between the Parties in writing.

8 Names and addresses for notices

8.1 Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to such persons at such addresses as referred to in the Order Form.

9 Management levels for dispute resolution

9.1 Unless otherwise agreed by the Parties in writing, the management levels at which a dispute will be dealt with are as follows:

Level	Authority representative	Supplier representative
1	Contract Manager	Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

10 Order of precedence

10.1 Subject always to Clause 1.10 of Schedule 4 of these Call-off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

10.1.1 the Order Form

10.1.2 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;

10.1.3 the provisions on the front page of these Call-off Terms and Conditions for the Provision of Services;

10.1.4 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;

10.1.5 the Specification and Tender Response Document (but only in respect of the requirements);

10.1.6 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;

10.1.7 Schedule 3 of these Call-off Terms and Conditions: Information Governance Provisions; and

10.1.8 Schedule 4 of these Call-off Terms and Conditions: Definitions and Interpretations.

Schedule 2 of these Call-off Terms and Conditions

General Terms and Conditions

Contents

WHEREAS:

1. The Supplier owns or is a licensee, and licenses or sub-licenses various copyrighted databases ("**Databases**") of medical, pharmaceutical, and commercial information, and periodic updates thereto, accessible via web-based hosting services ("**Hosting Services**") provided by the Supplier or its third party vendors (the Databases together with the Hosting Service are collectively referred to as "**Licensed Solutions**" and are enumerated at Schedule 7a hereto).

2. The Authority desires to obtain, for itself and for use by its End Users, the use of parts or all of one or more Licensed Solutions within the Authority's own electronic information system or other computer system, including a Vendor System as defined below (collectively the "**System**") as described in Schedule 7a hereof.

3. Subject to the terms and conditions of this Agreement, the Supplier is willing to grant to the Authority a non-exclusive license to use the Licensed Solutions described in Schedule 7a hereof.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following terms shall have the meanings as set out in of these Call-off Terms and Conditions.

1.2. Any reference to a Clause or Schedule is to the relevant Clause or Schedule of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.

1.3. The index and clause headings are included for convenience only and shall not affect the interpretation of this Agreement.

1.4. Use of the singular includes the plural and vice versa.

1.5. Use of any gender includes the other gender.

1.6. Any reference to “persons” includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

1.7. Any reference to a statute, statutory provision or subordinate legislation (“**Legislation**”) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which reenacts or consolidates (with or without modification) any such legislation.

1.8. Any reference to a document being “in the agreed form” means a document in a form agreed by the parties and initialed by, or on behalf of, each of them for the purpose of identification as such.

1.9. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term.

1.10. Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.11. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.

2. ORDER OF PRECEDENCE

2.1. Outlined in Schedule 1 Key Provisions, Clause 6.1

3. GRANT

3.1. The Supplier HEREBY GRANTS to the Authority and the Authority hereby accepts a non-exclusive royalty free license to use the Licensed Solutions in the Territory and during the Term of this Agreement solely for the purpose of exercising its rights and performing its obligations under this Agreement, in accordance with the Declaration of Use. All rights not expressly granted hereunder are reserved to the Supplier. The Authority shall allow End Users to use the Licensed Solutions, subject to the terms and conditions of this Agreement and only in accordance with the Declaration of Use; provided, that the Authority shall be: (i) responsible for ensuring that End Users are informed of, and abide by, the terms and conditions applicable to the Authority pursuant to this Agreement; and (ii) liable to Supplier for any breach of this Agreement by any End User.

3.2. For those Licensed Solutions that are web-based, the license herein granted includes the right to access, and allow End Users to access, the Licensed Solutions via the Hosting Service and Vendor's System and to:

3.2.1. view the Content on screen; and

3.2.2. subject to the confidentiality requirements of Section 11, download, reproduce and store selected parts of the Content for use by End Users provided that any storage of Content by an End User must be on one computer used by such End User.

3.3. Except as permitted by this Clause 3 the Authority and its End Users may not copy, download, distribute, store, adapt, publish, transmit, transfer or sub-license or otherwise use any of the Content.

3.4. Any change in the legal status of an Authority and/or an Authority Service Recipient shall not affect the validity of any license granted under clause 3.1.

4. TERM

This Agreement shall commence upon the Commencement Date and shall subject as hereinafter provided continue for the period set out in Schedule 7a to this Agreement.

5. FEES AND CHARGES

5.1. In consideration of the grant of the license as described in Clause 3.1 the Authority shall pay all Fees and other charges to the Supplier in accordance with the provisions and arrangements described in this Clause 5 and Schedule 7a to this Agreement.

5.2. The Authority shall pay each undisputed invoice received in accordance with Clause 5.1 of this Agreement within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets:

5.2.1. Any disputes for undisputed sums shall go to the Dispute Resolution Procedure in accordance with Clause 28 of this Agreement.

5.3. If the Authority (acting in good faith) disputes all or any part of the Fees and other charges invoiced by the Supplier or any other amount that the Supplier claims is payable to it:

5.3.1. the undisputed amount of the Fees and other charges invoiced or any other amount shall be paid by the Authority in the normal manner;

5.3.2. the Authority shall be entitled to retain the disputed amount of the invoiced Fees and other charges or other amount, as the case may be;

5.3.3. the parties shall use all reasonable endeavours to resolve the dispute in question within ten (10) days of the dispute arising, and if they fail to resolve it, either party may refer the matter to the Dispute Resolution Procedure; and

5.3.4. following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith.

5.4. The Agreement Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT

invoices shall show the VAT calculations as a separate line item.

6. OBLIGATIONS OF LICENSEE

6.1. The Authority shall:

6.1.1. comply with all legal requirements from time to time in force relating to the licensing of the Licensed Solutions, including the provisions of any Vendor relating to the API, and not engage in any business practice which is illegal under the laws of the Territory;

6.1.2. immediately bring to the attention of the Supplier any improper or wrongful use of the trademarks of the Supplier trade names or other Intellectual Property Rights, which come to the notice of the Authority;

6.1.3. promptly submit Patient Declarations to the Supplier in accordance with Schedule 7a hereof;

6.1.4. ensure that all Licensed Solutions supplied to End Users are in compliance with all reasonable specifications and other reasonable instructions given by the Supplier from time to time and notified to the Authority in writing and are otherwise in accordance with the provisions of this Agreement;

6.1.5. upon advance written notice of no less than five (5) Business Days from the Supplier give the Supplier or its authorised representative free access during normal business hours to the premises of the Authority for the purpose of ensuring the Authority is observing these obligations;

6.1.6. accept responsibility, for the Administration of the Licensed Solutions. The Authority shall indemnify the Supplier in accordance with Clause 15 in respect of the Administration of the Licensed Solutions within the Vendor System; and

6.2. the Authority shall not, and shall ensure that End User shall not, save where permitted by this Agreement:

6.2.1. sub-license the Licensed Solutions or allow the Licensed Solutions to be used by anyone except as set out in this Agreement;

6.2.2. extract or re-utilise the contents of the Licensed Solutions (or any part thereof) for any commercial purpose including but not limited to trading, building commercial databases, reselling or redistributing data from the Licensed Solutions;

6.2.3. copy, download, distribute, store, adapt, publish, transmit, transfer, reverse engineer, sub-license, de-compile, disassemble or otherwise use the Licensed Solutions, except to the extent that the Supplier cannot prohibit such acts by law, and shall use all reasonable endeavours to ensure that there is no unauthorised copying, reverse engineering or decompiling (save to the extent permitted under applicable law) or amendment of the Licensed Solutions by itself or its End-Users;

6.2.4. incur any liability on behalf of the Supplier or in any way pledge or purport to pledge the credit of the Supplier or purport to make any Agreement binding upon the Supplier; and

6.2.5. download the data from the Licensed Solutions for manipulation or storage or reformat, make any additions or modifications, adjustments or alterations to such data.

6.3. the Authority shall notify the Supplier in writing within five (5) days of its becoming aware of any

breach by an End User.

6.4. In the event of a breach of any obligations contained in this Agreement by the Authority or by an End User, the Authority shall be liable to the Supplier and shall forthwith suspend access to the Licensed Solutions as incorporated into the System to the person or persons responsible until such breach has been remedied.

6.5. The following short-form disclaimer will be shown to End Users when a message is returned via the Vendor System:
"The Medicines Optimisation module is intended for the use of healthcare professionals and is provided on the basis that the healthcare professionals will retain FULL and SOLE responsibility for deciding what treatment to prescribe or dispense for any particular patient or circumstance."

6.6. The Authority agrees to communicate the following full disclaimer to the Medicines Management Team during Administration. The Medicines Management Team must "click to accept".

6.7. The above short-form disclaimer will link to the following full disclaimer:
"Disclaimer:
IMPORTANT NOTICE:
First Databank Europe Limited (Supplier) is proud of the extensive editorial and quality control procedures which it has developed over many years. However, since every patient's history is different, and even the most exhaustive sources of information cannot cover every possible eventuality, you should be aware that all information is provided from the Supplier Solutions on the basis that the healthcare professionals responsible for patient care will retain FULL and SOLE responsibility for deciding what treatment to prescribe or dispense for all patients and, in particular whether the use of any drug or other products is safe, appropriate or effective for any particular patient or in any particular circumstances. This is because (and all healthcare professionals should bear in mind):
1. The Supplier Solutions are intended to supplement, not substitute for, the expertise and judgment of physicians, pharmacists or other healthcare professionals and should not be taken as an indication of suitability of a particular treatment for a particular individual.
2. The Supplier Solutions and those who are responsible for their construction, operation and maintenance do not know the particular circumstances, condition or medical history of particular patients or groups of patients and so cannot advise as to particular cases.
3. While the Supplier Solutions use reputable sources of information, such as published data of pharmaceutical manufacturers, it does not validate or verify the information received from third parties.
4. The information stored on the Supplier Solutions is not exhaustive. It therefore cannot be relied upon as complete.
5. Although the information stored on the Supplier Solutions is updated on a regular basis, healthcare professionals should ensure that they are satisfied that the information they have is current."

6.8. The foregoing disclaimer may be updated by the Supplier during the Term of this Agreement, subject to the Authority's agreement.

6.9. Subject to the Authority's agreement, the Authority agrees at all times to display such additional disclaimers as may be provided by Vendor in connection with Vendor's System, and not to alter, delete or restrict access thereto. The Authority acknowledges and agrees that the Supplier is an intended third-party beneficiary of such Vendor disclaimers.

7. THE AUTHORITY'S SYSTEM

7.1. During the Term of this Agreement, the Authority will not incorporate any content into its System which would have the same functionality to the Content in the Licensed Solutions.

7.2. The Authority shall ensure that sources of data are clearly acknowledged as specified below:

7.2.1. The Authority shall make reference to the Licensed Solutions within its documentation, brochures and promotional material and wherever appropriate, such logos as the Supplier may supply must be used. A copy of the approved logos will be supplied to the Authority upon receipt of the signed Agreement; and

7.2.2. The Authority agrees at all times to display those proprietary notices in respect of the Supplier's Intellectual Property Rights provided by the Vendor in connection with Vendor's System, and not to alter, delete or restrict access thereto. The Authority acknowledges and agrees that the Supplier is an intended third-party beneficiary of such Vendor notices.

7.2.3. The Supplier has the right, but not the obligation, to monitor use of the Authority's system by the Authority and End Users in order to verify compliance with this Agreement and/or to satisfy any law, regulation or authorised government request.

7.3. The Supplier undertakes to notify the Authority of any Excluded Material which may be added to the Licensed Solution from time to time during the Term of this Agreement. The Authority hereby undertakes to procure and maintain a legally binding license for all Excluded Material from the relevant copyright owners and further undertakes not to use or sub-license the Licensed Solution unless and until authorised to do so by such copyright owners. The Authority shall indemnify the Supplier in accordance with Clause 15 in respect of any unauthorised use of Excluded Material.

8. OBLIGATIONS OF THE SUPPLIER

8.1. The Supplier shall:

8.1.1. provide the Licensed Solutions as provided for in this Agreement and allow the Authority to use the same subject to the provisions hereof;

8.1.2. provide support services in accordance with the details set out in Schedule 7a to this Agreement; and

8.1.3. use its reasonable endeavours (subject to the limitations on its liabilities as provided hereinafter) to assist the Authority to resolve difficulties experienced in the use of the Licensed Solutions provided such difficulties do not arise directly as a result of software developed by the Authority for the incorporation of the Licensed Solutions into the Authority's System provided that the Authority shall disclose to the Supplier all details concerning such difficulties which the Supplier requests.

8.2. For the avoidance of doubt, the Supplier shall not be responsible for the Authority's:

8.2.1. hardware, operating systems, backups or system administration;

8.2.2. integration support or maintenance of operating systems, third party software or data-feeds; or

8.2.3. access to the internet for purpose of connecting to the Hosting Service.

8.3. If an Excusing Cause causes a material adverse interference with, or causes a material failure of, the performance of the Services and provided that the Excusing Cause and the likely effects of it are notified to the Authority by the Supplier in writing within seven (7) days of the date on which the Supplier became aware of the occurrence of the Excusing Cause, then to the extent such failure or interference arises as a result of such Excusing Cause, such failure by the Supplier to perform, and

any poor performance of any affected Service shall not constitute a breach of the provisions of this Agreement by the Supplier so that the Supplier shall be entitled to payment under this Agreement as if the Excusing Cause had not occurred and to payment of any unavoidable additional direct costs and expenses to the extent not recovered from the Fees.

8.4. the Supplier reserves the right:

8.4.1. to vary the technical specification of the Licensed Solutions;

8.4.2. temporarily suspend access to the Licensed Solutions for the purposes of maintenance or upgrade (but the Supplier will use its reasonable endeavours to minimise the period of suspension consistent with the provisions of Schedule 7a hereunder).

9. NON-SOLICITATION OF EMPLOYEES

9.1. Each party covenants that it will not for the duration of the Agreement on behalf of itself or any other person, directly or indirectly, entice or solicit away or endeavour to entice or solicit away any employee of the other party without the other's prior written consent. This Clause shall not apply to responses from any employee to any general employment advertisement.

9.2. If either party commits any breach of Clause 9.1 resulting in an employee leaving the employment of the other party, the infringing party shall on demand pay to the other party, by way of liquidated damages, a sum equal to one year of the basic salary which the employee had been earning at the employer he/she has left (such sum to be calculated as at the date the employee left the employment).

10. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

10.1. With the exception of Excluded Material, the Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Licensed Solutions and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.

10.2. The Authority acknowledges that the Intellectual Property Rights in the Licensed Solutions are and shall continue to be the property of Supplier or its licensors and the Authority shall not, except as provided in this Agreement, be entitled to pass on any title, right or interest in the same to any third party.

10.3. The Authority shall take all reasonable steps to assist the Supplier in protecting the Intellectual Property Rights in the Licensed Solutions. The Authority shall as soon as it becomes aware of it, give to the Supplier in writing full particulars of any unauthorised use or infringement by any person, firm or company of the Intellectual Property Rights in the Licensed Solutions.

10.4. The Authority shall not remove from the Licensed Solutions when incorporated into the Authority's System any trademark, trade name, copyright notice or other notice.

10.5. The Authority shall not during or after the expiry or termination of this Agreement without the prior written consent of the Supplier use or adopt any name, trade name, trading style or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trademark, trade name, trading style or commercial designation used by the Supplier.

10.6. As between the parties to this Agreement, the Supplier may take whatever legal action it deems advisable to prevent any infringement of the Intellectual Property Rights in the Licensed

Solutions. If the Supplier decides to commence proceedings in respect of infringement or alleged infringement of the Intellectual Property Rights in the Licensed Solutions, the Authority shall at the request and cost of the Supplier give full co-operation to the Supplier in any such proceedings. The Supplier shall bear the cost of any such proceedings and shall be entitled to retain all damages received.

11. CONFIDENTIALITY

11.1. Each party undertakes at all times to hold in confidence, to use only for the purposes hereof and not otherwise copy, print, publicise or otherwise disclose to any third party, Confidential Information of the other party. Confidential Information shall not include any document, material, idea, data or other information which:

11.1.1. is known to the receiving party, under no obligation of confidence, at the time of disclosure by the disclosing party; or

11.1.2. is or becomes publicly known through no wrongful act of the receiving party; or

11.1.3. is lawfully obtained by the receiving party from a third party who in making such disclosures breaches no obligation of confidence to the other party; or

11.1.4. is independently developed by the receiving party without reference to the other party's Confidential Information.

11.2. Each party shall ensure that its employees, sub-contractors and agents shall be given access to any Confidential Information received from the other party only on a "need to know" basis for the purposes of this Agreement and shall have been made aware of the requirements of confidentiality for Confidential Information.

11.3. In the event of disclosure of Confidential Information to a third party the receiving party shall use all reasonable efforts to assist the disclosing party in recovering and preventing such a third party from using, disseminating, selling or otherwise disposing of such Confidential Information.

12. DATA PROTECTION

12.1. The Authority and the Supplier shall comply with all requirements of the Data Protection Act 2018 and any other legislation, regulations, or codes of practice relevant to the use of Personal Data.

13. LICENSING AND SUPPLY OF CODES

13.1. The Supplier is authorised to include certain codes as more particularly set out in Schedule 7a ("**Excluded Material**") in the Database but is not authorised by the relevant copyright owners to sub-license such codes to its customers.

13.2. From time to time, the Supplier may add further elements to the Database which shall be deemed Excluded Material. The Supplier undertakes to notify the Authority of any additional Excluded Material which may be added to the Database from time to time during the Term of this Agreement.

14. WARRANTIES

14.1. The Supplier warrants and undertakes that:

14.1.1. it shall comply with this Agreement;

14.1.2. it has, and shall ensure its Staff shall have, and shall maintain throughout the Term all appropriate licenses and registrations with the relevant bodies to fulfil its obligations under this Agreement;

14.1.3. it has all rights, consents, authorisations, licenses and accreditations required to provide the Services and shall maintain such consents, authorisations, licenses and accreditations throughout the Term;

14.1.4. it has and shall maintain a properly documented system of internal quality processes;

14.1.5. it shall not make any significant changes to its system of data delivery processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);

14.1.6. where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law, the Supplier shall comply fully with such notification and/or approval requirements;

14.1.7. it will comply with all Law in so far as it is relevant to the provision of the Services;

14.1.8. that the Licensed Solutions have been and will be compiled, developed, maintained and updated using all reasonable skill and care;

14.1.9. unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;

14.1.10. it will promptly respond to all requests for information regarding the Agreement and the provision of the Services at the frequency and in the format that the Authority may reasonably require;

14.1.11. all information included within the Supplier's responses in the Specification and Tender Response Document and all accompanying materials is materially accurate;

14.1.12. it has the right and authority to enter into this Agreement and that it has the capability and capacity to fulfil its obligations under this Agreement;

14.1.13. it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement and the documents referred to in this Agreement;

14.1.14. all necessary actions to authorise the execution of and performance of its obligations under this Agreement have been taken before such execution;

14.1.15. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;

14.1.16. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Agreement;

14.1.17. it has and will continue to have the capacity, funding and cash flow to meet all its

obligations under this Agreement; and

14.1.18. it has satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and has gathered all information necessary to perform its obligations under the Agreement and all other obligations assumed by it.

14.2. The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.

14.3. The Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.

14.4. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 14 of this Agreement have been breached or there is a risk that any warranties may be breached.

14.5. Any warranties provided under this Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

14.6. The warranties outlined in 14.1 to 14.4. are the Supplier's only warranties and no other warranty or condition, express or implied, will apply. To the fullest extent possible pursuant to applicable law, the Supplier disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of satisfactory quality, fitness for a particular purpose, and non-infringement. Without limiting the foregoing, the Supplier does not represent or warrant that the Licensed Solutions will meet the Authority's or it's End User's requirements or that the operation of the Licensed Solutions will be uninterrupted or error free. The Supplier does not represent or warrant that the licensed solutions are free of viruses, worms or other code that may manifest contaminating or destructive properties. The Supplier does not warrant or make any representations regarding the use, validity, accuracy, currency or reliability of, or the results from the use of, or otherwise respecting the licensed solutions.

14.6.1. Without prejudice to the generality of the Clause 14.1, the Authority acknowledges that the Licensed Solutions are compiled by the Supplier based upon information provided by third party sources and the Supplier does not conduct independent verification of such source material as a matter of course, the Supplier gives no warranty as to the accuracy or completeness of the data. Accordingly, the Supplier shall not be responsible for any use made by the Authority or its End Users of the Licensed Solutions. End Users who are registered medical practitioners, or others legally authorised to prescribe or dispense drugs or other pharmaceutical products shall be fully responsible and liable for any use which they make of the Licensed Solutions as incorporated in the System in prescribing or dispensing substances to be taken by patients or otherwise used as part of their therapeutic treatment and care.

14.6.2. The Authority is responsible for ensuring that its System meets all relevant technical specifications necessary to use the Licensed Solutions. The Authority also acknowledges that although the Supplier tries to guard against viruses, the Supplier cannot and does not guarantee or warrant that the Licensed Solutions will be free from infections, viruses and/or other code that has contaminating or destructive properties. The Authority agrees that it is solely responsible for implementing sufficient procedures and virus checks (including anti-virus and other security

checks) to satisfy the Authority's particular requirements for the accuracy of data input and output.

14.6.3. With respect to web-based Licensed Solutions, the Supplier will endeavor to ensure that access is uninterrupted and that transmissions will be error-free. The Supplier cannot guarantee that access will not be suspended from time to time including to allow for repairs, maintenance or the introduction of new content or facilities. Authority acknowledges that both scheduled and unscheduled downtime will occur from time to time during the term of this Agreement and that neither shall constitute a breach of the Agreement. The Authority further acknowledges that the Supplier makes no representation or warranty with respect to the availability or operability of the internet.

15. INDEMNITY

15.1. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

15.1.1. any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of Agreement in connection with the performance of this Agreement including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

15.2. Liability under Clauses 15.1.1 and 15.4 of this Agreement and Clause 2.6 of Schedule 3 of this Agreement shall be unlimited.

15.3. In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

15.3.1. relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

15.3.2. relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

15.4. The Authority shall on demand indemnify and keep indemnified Supplier and Vendor at all times from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) sustained by Supplier; (i) as a result of any claim or action brought against Supplier and/or Vendor by any third party arising out of or in connection with the use of the Licensed Solutions and/or System by Authority or its End Users, including without limitation, claims of patient harm; (ii) arising out of or in connection with the Authority's failure to procure a Licence for its use of the Excluded Material; (iii) arising from any claim that patient confidentiality has been infringed, including any claim alleging a violation of the Data Protection Act; (iv) arising from any breach by Authority of the terms of this Agreement by using the Licensed Solutions in a manner

which is in breach of the Agreement; (v) as a result of any act or omission arising from the Administration of the Licensed Solutions within the Vendor System by Authority's Medicines Management Team and (vi) any breach by Authority of Suppliers IPR in the Licensed Solutions (each of (i)-(vi) a "Claim").

16. IPR INDEMNITY

16.1. The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each Authority Service Recipient and keep the Authority and each Authority Service Recipient indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority and/or a Authority Service Recipient arising from an IPR Claim.

16.2. The Authority agrees that:

16.2.1. it will notify the Supplier in writing of any IPR Claim; and

16.2.2. it will not, without first agreeing with the Supplier in writing, settle the IPR Claim or make an admission of infringement relating to the IPR Claim.

16.3. The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority or any Authority Service Recipient into disrepute and the Supplier shall keep the Authority fully informed and consult with the Authority with respect to any such IPR Claim.

16.4. The Authority shall at the request of the Supplier provide reasonable assistance to the Supplier in the management of any IPR Claim. In such circumstances, the Supplier shall reimburse the Authority for any direct and reasonable costs and expenses incurred in providing such assistance.

16.5. The Supplier shall not settle or compromise any IPR Claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

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

16.6.1. procure for the Authority and each Authority Service Recipient the right to continue to receive the Services and to use the relevant item which is subject to the IPR Claim; or

16.6.2. replace or modify the Services and/or the relevant item with non-infringing substitutes provided that:

16.6.2.1. there is no adverse effect on the performance and functionality of the Services or any Related Service or the receipt or use of any IPR to be provided by the Supplier under this Agreement;

16.6.2.2. there is no additional cost to the Authority; and

16.6.2.3. the terms of the Agreement shall apply to the replaced or modified Services.

16.7. If the Supplier elects to modify or replace an item pursuant to clause 16.6.2 or to procure a license in accordance with clause 16.6.1, but this has not avoided or resolved the IPR Claim, then the Authority may terminate this Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 16.1, the Supplier shall be liable for all reasonable and

unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

16.8. The provisions of clauses 16.1 to 16.7 (inclusive) shall not apply in respect of any IPR Claim caused by:

16.8.1. any use by the Authority of any Licensed Solution supplied by the Supplier in combination with any item not supplied or approved by the Supplier (or otherwise provided for or anticipated by this Agreement); or

16.8.2. any modification carried out by the Authority to any Licensed Solution supplied by the Supplier under this Agreement where such modification is not authorised by the Supplier; or

16.8.3. the use by the Authority of the Licensed Solution in a manner not reasonably to be inferred from the Services Description or the provisions of this Agreement; or

16.8.4. Use by the Supplier in fulfilling its obligations under this Agreement of any of the Authority Materials provided to the Supplier by the Authority.

16.9. The Authority shall not provide and the Supplier shall not accept personal data as defined in the Data Protection Act 2018. Without limiting the foregoing, the Authority acknowledges that the Vendor System enables access to certain patient information that is protected by the Data Protection Act, and it will make its End Users aware of their duty to protect patient confidentiality thereunder. In the event that in the course of its provision of the Services under this Agreement, the Supplier becomes aware of, is made privy to (whether intentionally or otherwise) or gains access to (whether intentionally or otherwise), any Personal Data, the Supplier shall immediately inform the Authority's representative that such data (or knowledge of or access to such data) has come into its possession and require the Authority to block access to such data, or at the Authority's request, return or destroy such data.

17. LIMITATION OF LIABILITY

17.1. Nothing in this Agreement shall exclude or restrict the liability of either Party:

17.1.1. for death or personal injury;

17.1.2. for fraud or fraudulent misrepresentation; or

17.1.3. in any other circumstances where liability may not be limited or excluded under any applicable law.

17.2. Subject to Clauses 15.2, 17.1 and 17.3 of this Agreement, the total liability of each Party to the other under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Agreement Price paid or payable by the Authority to the Supplier for the Services.

17.3. Subject to Indemnity provided by the Authority in Clause 15.4, There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Agreement whether arising in Agreement (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Agreement the following costs, expenses

and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

17.3.1. extra costs incurred purchasing replacement or alternative services;

17.3.2. costs associated with advising, screening, testing, treating, retreating or otherwise providing healthcare to patients;

17.3.3. the costs of extra management time; and/or

17.3.4. loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

17.4. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one Party is entitled to bring a claim against the other pursuant to this Agreement.

17.5. If the total Agreement Price paid or payable by the Authority to the Supplier over the Term:

17.5.1. is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 17.2 of this Agreement shall be replaced with one million pounds (£1,000,000);

17.5.2. is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 17.2 of this Agreement shall be replaced with three million pounds (£3,000,000);

17.5.3. is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 17.2 of this Agreement shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 17.2 of this Agreement shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and

17.5.4. is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 17.2 of this Agreement shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 17.2 of this Agreement shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

17.6. Clauses 17.2, 17.3 and 17.5 shall exclude any breach of the Suppliers IPR by the Authority or its End Users.

17.7. Clause 17 of this Agreement shall survive the expiry of or earlier termination of this Agreement for any reason.

18. INSURANCE

18.1. Subject to Clause 18.3 of this Agreement and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity with the minimum cover per claim of the greater of five million pounds (£5,000,000) unless otherwise agreed with the Authority in writing.

18.2. The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.

18.3. The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

18.4. The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 18 of this Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

19. TERMINATION

19.1. The Authority:

19.1.1. shall be entitled to extend the Term in accordance with Schedule 7a of this Agreement.

19.2. In the case of a breach of any of the terms of this Agreement by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Agreement), the non-breaching Party shall, without prejudice to its other rights and remedies under this Agreement, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("Remedial Proposal") before exercising any right to terminate this Agreement in accordance with Clause 19.4.1.2. of this Agreement. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

19.2.1. put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

19.2.2. comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

19.2.3. remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation, shall be deemed, for the purposes of Clause 19.3.1.2 of this Agreement, a material breach of this Agreement by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

19.3. Either Party may terminate this Agreement forthwith by notice in writing to the other Party if such other Party:

19.3.1. commits a material breach of any of the terms of this Agreement which is:

19.3.1.1. not capable of remedy; or

19.3.1.2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or

19.3.2. has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

19.4. The Authority may terminate this Agreement forthwith by notice in writing to the Supplier if:

19.4.1. the Supplier does not commence delivery of the Services by any Long Stop Date;

19.4.2. the Supplier, or any third party guaranteeing the obligations of the Supplier under this Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

19.4.3. the Supplier purports to assign, sub-contract, novate, create a trust in or otherwise transfer or dispose of this Agreement in breach of Clause 21.1 of this Agreement; or

19.4.4. pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 19.5, 23.7, 25.2; 25.4 and 29.2 of this Agreement.

19.5. If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Agreement and/or any material of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Agreement to the Supplier or the entering into a by the Supplier, the following process shall apply:

19.5.1. the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Agreement on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;

19.5.2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 19.5 of this Agreement in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and

19.5.3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 28.1 of this Agreement) shall entitle, but shall not compel, the Authority to terminate this Agreement in accordance with Clause 19.3.1.1 of this Agreement.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 19.5 of this Agreement, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier upon request.

19.6. If the Authority novates this Agreement to anybody that is not a Authority, from the effective date of such novation, the rights of the Authority to terminate this Agreement in accordance with Clause 19.5.2 to Clause 19.5.3 of this Agreement shall be deemed mutual termination rights and the Supplier may terminate this Agreement forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.

19.7. The Supplier shall be entitled forthwith to terminate this Agreement by written notice to the Authority in the event that there is a breach or threatened breach of the Supplier's intellectual property rights in the Licensed Solutions.

19.8. Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Agreement. The Supplier shall provide the Authority with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Agreement.

20. CONSEQUENCES OF EXPIRY OR EARLIER TERMINATION OF THIS AGREEMENT

20.1. Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.

20.2. Immediately following expiry or earlier termination of this Contract and subject to Clause 20.3:

20.2.1. the Supplier and the Authority shall comply with its obligations under any agreed exit plan; and

20.2.2. all data, including without limitation documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that (a) the content does not relate solely to the Services; (b) the Supplier is required by Law to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date.

20.3. The Supplier shall not be required to provide records containing reference to the Licensed Solution, including but not limited to source code or any identifiers contained therein.

20.4. The Authority shall be required to delete all copies of the Licensed Solution and any Content contained therein and confirm in writing within 14 days of the date of termination that such deletion has taken place.

20.5. The Supplier shall retain records relating to the Licensed Solutions in accordance with Clause 24.1 of this Agreement.

20.6. The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Agreement. This cooperation shall extend to providing access to information relevant to the operation of this Agreement, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements, to meet requirements set out in any exit plan agreed between the Authority and the Supplier. For the avoidance of doubt, Supplier shall not be required to provide copies of or access to the Licensed Solutions or any Content contained therein, nor shall Authority be entitled to share its access or grant access to a replacement supplier.

20.7. Immediately upon expiry or earlier termination of this Contract any license or lease entered into in accordance with any Order Form shall automatically terminate
.

20.8. The expiry or earlier termination of this Agreement for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.

20.9. The expiry or earlier termination of this Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

21. ASSIGNMENT

21.1. Save as provided in Clause 21.2, a party may not assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, nor purport to do any of the same, nor sub-Agreement any or all of its obligations under this Agreement without having obtained the prior written consent of the other party
.

21.2. If the Supplier sub-contracts any of its obligations under this Agreement, every act or omission of the sub-contractor shall for the purposes of this Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.

21.3. The Authority shall upon written request have the right to review any sub-contract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any sub-contract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of sub-contracts.

21.4. Where the Authority transfers, assigns, novates, sub-contracts or otherwise disposes of its rights and obligations under this Agreement or any part of this Agreement, the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Agreement to anybody that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier. If Authority novates this Agreement to a party who is not a Contracting Authority, and who in Suppliers reasonable opinion is a competitor of Supplier, Supplier shall be relieved of its obligations in accordance with this Clause and shall be entitles to terminate forthwith.

21.5. The Supplier can novate to an Affiliate Company. “Affiliate Company” shall be defined as any company owned by The Hearst Corporation as a subsidiary, and known as First Databank Asia/Pacific, Inc., First Databank Inc, Zynx Health Incorporated and MCG Health LLC.

22. BUSINESS CONTINUITY

22.1. Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

22.1.1. the criticality of this Agreement to the Authority; and

22.1.2. the size and scope of the Supplier's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event. For the avoidance of any doubt, Authority shall provide notice in writing of 22.1.1.

22.2. The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Agreement to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 22.2 of this Agreement and reasonable and proportionate information regarding the outcome of such tests.

22.3. Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular updates to the Authority on such implementation.

22.4. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Agreement.

23. FORCE MAJEURE

23.1. In this Agreement, "Force Majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

23.2. If either party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that party shall use reasonable endeavours without hereby being obliged to incur any expenditure to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event.

23.3. Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Agreement the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.

23.4. If either Party is prevented or delayed in the performance of its obligations under this Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.

23.5. Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.

23.6. The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.

23.7. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more terminate this Agreement on service of written notice on the Supplier.

23.8. Following such termination in accordance with Clause 23.7 of this Agreement and subject to Clause 23.9 of this Agreement, neither Party shall have any liability to the other.

23.9. Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 23.7 of this Agreement shall continue in full force and effect unless otherwise specified in this Agreement.

24. RECORDS RETENTION AND RIGHT OF AUDIT

24.1. Subject to any statutory requirement and Clause 24.2 of this Agreement, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of the Licensed Solutions.

24.2. The Authority shall have the right to audit the Supplier's compliance with this Agreement. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Agreement.

24.3. Should the Supplier sub Agreement any of its obligations under this Agreement, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any books and records used in the performance of the Supplier's obligations under this Agreement that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.

24.4. The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Agreement for the purposes of:

24.4.1. the examination and certification of the Authority's accounts; or

24.4.2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.

24.5. The Controller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 23 of this Agreement does not constitute a requirement or agreement for the examination, certification or

inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.

24.6. The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Agreement.

24.7. The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Agreement.

25. CONFLICTS OF INTEREST AND THE PREVENTION OF FRAUD

25.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

25.2. The Authority reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The actions of the Authority pursuant to this Clause 25.2 of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.

25.3. The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

25.4. If the Supplier or its Staff commits Fraud the Authority may terminate this Agreement and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.

26. THIRD PARTY RIGHTS

Unless otherwise specifically stated herein this Agreement does not create any rights under the Agreement (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to it and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

27. AGENCY AND PARTNERSHIP

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as an agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. DISPUTE RESOLUTION

28.1. In the event that a dispute arises under this Agreement, the parties agree to escalate the issue as follows:

28.1.1. in the first instance to the individuals in each organisation who have day-to-day operational responsibility for this Agreement;

28.1.2. if these individuals are not able to resolve any issue within five (5) working days, the issue will be escalated to a director of each organisation; and

28.1.3. if these individuals are not able to resolve the dispute within five (5) working days, the issue will be escalated to the chairman, managing director or CEO of each organisation for resolution.

28.2. If any dispute is not resolved in accordance with the escalation procedure set out in Clause 28.1, the dispute may be referred by either party for mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure.

28.3. To initiate mediation:

28.3.1. either party shall give a written notice ("**Mediation Notice**") to the other party requesting a mediation of the dispute and shall send a copy of the Mediation Notice to CEDR to nominate a mediator in the event the parties are unable to agree such appointment by negotiation; and

28.3.2. the mediation shall commence within twenty eight (28) days of the Mediation Notice being served.

28.4. If the parties accept the mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be in writing and, once it is signed by their duly authorised representatives, will be final and binding on the parties.

28.5. Failing agreement, any of the parties may invite the mediator to provide a non-binding opinion in writing as to the merits of the dispute and the rights and obligations of the parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the parties and may not be used in evidence in any proceedings commenced pursuant to the terms of the Agreement without the prior written consent of all the parties.

28.6. If the parties fail to reach agreement in the structured negotiations within thirty (30) days of the mediator being appointed, such a failure will be without prejudice to the right of any party thereafter to pursue any of their rights at law in relation to the dispute.

28.7. Nothing in this Agreement shall prevent:

28.7.1. the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or

28.7.2. either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.

28.7.3. Nothing in this Clause 28 shall restrict either party's freedom to commence legal proceedings at any time to preserve any legal right or remedy or to prevent the misuse of any of its Confidential Information or the infringement of its Intellectual Property Rights.

28.8. During any dispute, including a dispute as to the validity of this Agreement, it is agreed that the Supplier shall continue its performance of the provisions of the Agreement (unless the Authority requests in writing that the Supplier does not do so), with the exception of where there has been a breach of the Supplier's IPR by the Authority or it's End Users.

28.9. Clause 28 of this Agreement shall survive the expiry of or earlier termination of this Agreement for any reason.

29. PROHIBITED ACTS

29.1. The Supplier warrants and represents that:

29.1.1. it has not committed any offence under the Bribery Act 2010 or done any of the following ("Prohibited Acts"):
(i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
(ii) in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2. If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1. the Authority shall be entitled:
(i) to terminate this Agreement and recover from the Supplier the amount of any loss resulting from the termination;
(ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
(iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2. any termination under Clause 29.2.1 of this Agreement shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3. notwithstanding Clause 28 of this Agreement, any dispute relating to:
(i) the interpretation of Clause 29 of this Agreement; or
(ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

30. GENERAL

30.1. Failure or neglect by the parties to this Agreement to enforce any of the provisions hereof shall not be deemed to be a waiver of the rights of either party hereunder nor shall in any way affect the validity of the whole or any part of this Agreement.

30.2. Any notice hereunder may be given by sending the same through the post by prepaid registered or recorded delivery mail addressed to the party concerned at its address mentioned above (or at such other address as may be notified by one party to the other as the address for service of notice pursuant to this Clause) or if applicable at the Registered Office for the time being and any notice so given shall be deemed to have been served on the second day after the date on

which it was posted.

30.3. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any statement or representation that is not expressly incorporated into this Agreement. No subsequent statements or representations made by either party after the date hereof shall be construed so as to waive the effect of this Clause unless the same are expressly incorporated into this Agreement in writing and signed by both parties.

30.4. Any variation of this Agreement shall be in writing and signed for and on behalf of each of the parties hereto.

30.5. No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any right or of any later breach.

30.6. If any provision of this Agreement is judged to be illegal or unenforceable the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

30.7. This Agreement shall be governed in all respects by and in accordance with the laws of England and the parties hereto hereby agree to submit to the exclusive jurisdiction of the English Courts over any claim or matter arising under or in connection with this Agreement.

30.8. If there is any conflict or inconsistency between the main body of this Agreement and the Schedules, the terms of the main body of this Agreement shall prevail.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed by their respective duly authorised officers.

[redacted]

Schedule 3 of these Call-off Terms and Conditions

Information Governance Provisions

1. CONFIDENTIALITY

1.1. In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of Schedule 7 of this Agreement, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

1.1.1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;

1.1.2. the provisions of Clause 1 of Schedule 3 of this Agreement shall not apply to any Confidential Information:

(i) which is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;

(ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(iii) which is authorised for disclosure by the prior written consent of the Discloser;

(iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser;

(v) which the Recipient can demonstrate was independently developed;

(vi) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange; or

1.2. is independently developed by the receiving party without reference to the other party's Confidential Information. Nothing in this Schedule 3 of this Agreement shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").

1.3. Provided the Authority makes clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3 of this Agreement, the Authority may disclose the Supplier's Confidential Information to the following third parties:

1.3.1. any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the (i) information is confidential;(ii) is not to be disclosed to a third party which is not part of any Contracting Authority and (iii) such receiving party is bound by the terms of this Schedule 3 and Clause 16 and Clause 15 of the Agreement);

1.3.2. to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority otherwise than for the purposes of performing the Authority's obligations in this Agreement.

1.3.3. to any relevant party for the purpose of the examination and certification of the Authority's accounts; or

1.3.4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

1.3.5. The third parties set out in 1.3.1. to 1.3.4 shall exclude disclosure of the Supplier's Confidential Information to any competitor of the Supplier.

1.4. The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to the provision of the Services, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Agreement. The Supplier shall ensure that such Staff are aware of and shall comply with the obligations in Clause 1 of Schedule 3 of this Agreement as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Agreement.

1.5. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3 of this Agreement, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Agreement and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Agreement, unless and until this information is made public by the Authority.

1.6. Clause 1 of Schedule 3 of this Agreement shall remain in force:

1.6.1. without limit in time in respect of Confidential Information which relates to national security; and

1.6.2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Agreement.

2. DATA PROTECTION

2.1. The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.

3. FREEDOM OF INFORMATION AND TRANSPARENCY

3.1. The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

3.2. The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

3.2.1. that this Agreement and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Agreement are subject to the obligations and commitments of the

Authority under the FOIA, Codes of Practice and Environmental Regulations;

3.2.2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;

3.2.3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;

3.2.4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

3.2.5. that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

3.2.6. to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.

3.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Agreement is not Confidential Information.

3.4. Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.

3.5. In preparing a copy of this Agreement for publication under Clause 3.4 of Schedule 3 of this Agreement, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.

3.6. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

3.7. Where any information is held by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Schedule 3 of this Agreement, as if such subcontractor were the Supplier.

4. INFORMATION SECURITY

4.1. Without limitation to any other information governance requirements set out in this Schedule 3 of this Agreement, the Supplier shall:

4.1.1. notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and

4.1.2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.

4.2. Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant quality standards as may be set out in the Agreement.

Schedule 4 of these Call-off Terms and Conditions

Definitions and Interpretations

1 Definitions

1.1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

“Administration”	shall mean the selection of options to be provided by the Licensed Solutions which will be displayed to End Users via the Vendor System
"Agreement" or “Contract”	the terms and conditions in this agreement, the relevant provisions of the Catalogue and schedules in this agreement together with any documents attached to this agreement;
“Agreement Price”	shall mean the Patient Fees as set out in Schedule 1
“API”	shall mean the proprietary application programming interface for third party integration with healthcare IT systems provided by Vendor, including any enhancements, new versions or releases of such software;
“Authority”	means the authority named on the form of Agreement on the first page;
“Authority Service Recipient(s)”	means any entity which is authorised by the Authority to receive the benefit or use of the Services;
“Business Continuity Event”	means any event or issue that could impact on the operations of the Supplier and its ability to fulfil its obligations under this Contract including an influenza pandemic and any Force Majeure Event;
“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
“Commencement Date”	shall mean the date set out in Schedule 1;

“Confidential Information”	shall mean: (a) information - technical, commercial, financial or otherwise (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, finances, programmes, materials, records, business plans, consumer research, analysis or experience) of a confidential nature and whether disclosed directly or indirectly, orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or other means including without limitation on electromagnetic or CD media or via telephone lines or radio or microwave and whether stored electronically or otherwise which relates to a party’s business, product offerings, planned offerings, developments, services, trade secrets, know how, personnel, supplies, customers or patients already disclosed by or on behalf of a party to this Agreement to the other party (whether or not designated as confidential); (b) notes, reports, analysis and reviews of and any other information derived from information referred to in paragraph (a) above; and (c) information designated as confidential, commercially sensitive or politically sensitive or which ought reasonably to be considered as such, including, without limitation, the terms of this Agreement. For the avoidance of any doubt, the Licensed Solutions and any Content contained therein are deemed Confidential Information;
“Content”	shall mean all data, Databases, data compilations, information, material, text, photos and graphics contained in the Licensed Solutions;
“Declaration of Use”	shall mean those business purposes set out in Schedule 1;
“Dispute Resolution Procedure”	shall mean the procedures laid down in Clause 28 for the resolution of disputes;
“End User”	shall mean any employee, consultant or agent of the Authority using the System at an End User Site;
“End User Site”	shall mean any single geographical location, site or premises at which End Users have access to the System incorporating the Licensed Solutions;
“**Excluded Material”**	Shall mean any codes which the Supplier is authorised to include in the Licensed Solution, but not authorised by the relevant copyright owner to sub-license such codes to the Authority and/or End Users
“**Excusing Cause**”	shall mean any act or omission of the Authority, including without limitation any breach of any of the Authority’s express obligations under this Agreement, and / or any Authority party, which affects the Supplier’s performance of the Services (unless, and to the extent, caused or contributed to by the Supplier or any subcontractor of the Supplier);
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Agreement, including in accordance with any codes of practice published by relevant trade associations;

"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency the European Commission, the Care Quality Commission and/or any other regulator or competent body;
"Intellectual Property Rights" or "IPR"	shall mean rights, title and interest in: (i) patents; (ii) inventions (whether patentable or not); (iii) trademarks, and trade and business names (including service marks); (iv) design rights; (v) utility models; (vi) copyright (including copyright in programs); (vii) database rights; (viii) know-how (including trade secrets and confidential business information which has been recorded on any media); and in each case whether registered or unregistered, and including (i) any pending applications or rights to apply for registrations of any of these rights, and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England and Wales or of any other jurisdiction;
"Licensed Solution"	shall mean the Licensed Solution as set out in Schedule 1
"Long Stop Date"	means the date, if any, specified in Schedule 1;
"Medicines Management Team"	shall mean the team of clinicians responsible for the clinical and cost effective use of medicines within the Authority's Territory.
"Party"	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
"Patient"	shall mean any person who has registered to receive care by any of the Authority's End Users;
"Patient Fee"	shall mean the per patient fees payable by the Authority as described in Schedule 1;
"Patient Declaration"	shall have the meaning set out in Schedule 1;
"Personal Data"	shall have the meaning given in the Data Protection Act 2018;
"Pilot"	shall mean the test trial of the Licensed Solutions by the Authority in a live clinical setting;
"Policies"	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
"Services"	shall mean the support services and such other professional services as may be provided by the Supplier to the Authority under this Agreement, as set out in Schedule Two to this Agreement;
"Supplier"	means the Supplier named on the form of Agreement on the first page;
"System"	shall have the meaning given in Schedule 1;
"Term"	shall have the meaning given in Schedule 1;
"Territory"	shall mean the territory set out in Schedule 1;
"Vendor"	shall mean any third party system vendor that the Supplier has authorised to allow access to the Licensed Solutions via the vendor's system, and with whom the Authority has contracted to obtain access to the Supplier's Licensed Solutions;

"Vendor System"	shall mean the medical information system that a Vendor has authorised the Authority to utilise. The Authority's System includes any Vendor System.

1.2 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.

1.3 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.

1.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of, this Contract.

1.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.

1.6 Unless set out in the Contract as a chargeable item, the Supplier shall bear the cost of complying with its obligations under this Contract.

1.7 The headings are for convenience only and shall not affect the interpretation of this Contract.

1.8 Words denoting the singular shall include the plural and vice versa.

1.9 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.10 Where there is a conflict between the Supplier's responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.

1.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

Data Protection Agreement between:

(1) Coventry and Warwickshire Integrated Care Board**("Customer"); and**
(2) First Databank UK Limited ("Contractor")

Definitions

Agreement: this contract;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer** take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation *(Regulation (EU) 2016/679)*

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

LED: Law Enforcement Directive *(Directive (EU) 2016/680)*

Party: a Party to this Agreement

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 2 (Security).

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

UK GDPR: The GDPR is retained in domestic law as the 'UK GDPR' which sits alongside an amended version of the DPA 2018.

Vendor: FDB's vendor partners responsible for the clinical systems, namely TPP, EMIS, InPractice and Microtest and such other vendors as may be deployed by FDB's customers in use by a Customer.

1. DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 1. The only processing that the Processor is authorised to do is listed in Schedule 1 by the Controller and may not be determined by the Processor.

1.2 Controller warrants that it has taken all necessary steps to achieve compliance with Data Protection Legislation.

1.3 Without prejudice to the generality of paragraph 1.2, Controller warrants that where Controller supplies Personal Data to Processor, Controller has provided any requisite notice and has a valid legal basis to collect, obtain and share the Personal Data with Processor and to allow Processor to process the Personal Data in accordance with Schedule 1.

1.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

1.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 1, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that:

(i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

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

(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

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

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.7 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

1.8 The Processor’s obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.

1.9 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

1.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

(a) the Controller determines that the processing is not occasional;

(b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.12 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

1.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and

(d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

1.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

1.15 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

1.17 IN NO EVENT WILL CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS DATA PROTECTION AGREEMENT ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED £500,000. IN NO EVENT WILL CONTRACTOR BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, HOWEVER ARISING, WHETHER IN CONTRACT, TORT, OR OTHERWISE, REGARDING THESE DATA PROTECTION TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Schedule 1
Schedule of Processing, Personal Data and Data Subjects

Processing, Personal Data and Data Subjects

The contact details of the Controller's Data Protection Officer shall be provided to the Processor upon execution of the Data Sharing Agreement.

[redacted]

[redacted]