

# END-USER LICENCE AGREEMENT (EULA)

PLEASE READ THESE LICENCE TERMS CAREFULLY

BY YOU OR ANY USER ACCESSING THE ENVIRONMENT, YOU AGREE TO THESE TERMS AND REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO ENTER INTO THE SAME.

In these terms:

- **'you'** means the Account Holder (as defined below) acting on behalf of itself and all of its Users (as defined below) and, where the context of this licence provides, your Primary Users (as defined below) (and references to **'your'** shall be construed accordingly);
- **'we'** or **'our'** or **'us'** refers to Egton Medical Information Systems Limited (T/A EMIS) registered in England and Wales (registered number 02117205) whose registered office is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA; and
- **"party"** refers to any one of you or us and **"parties"** shall mean each of you and us.

## 1. Definitions

**"Account Holder"** means the person (in the case of a sole trader) or entity that owns and/or operates Sites.

**"Account Holder Commissioned Service"** means any project or service commissioned in relation to the provision of clinical services, to be facilitated through the System, where the Account Holder is a Commissioner in accordance with a separate contract between us and the Account Holder.

**"Affinity Group"** means an organisation that manages payments in respect of CPCS Claims for its community pharmacy members, through PharmOutcomes Direct.

**"agreement"** means the agreement in effect between you and us under the provisions set out in these terms (which include any annexes attached hereto) governing access to and use of the System and associated services.

**“Anonymised Data”** means anonymised data created by us from your Information, including in respect of NHS England, anonymised data described in the following link: <https://www.england.nhs.uk/wp-content/uploads/2019/10/CPCS-Advanced-Service-Specification.pdf> (as may be updated by NHS England from time to time).

**“Anonymised Data Purpose”** means sharing the Anonymised Data with the PSNC, NHS England and/or relevant Affinity Groups for the following purposes:

(a) In the case of the PSNC:

(i) using the Anonymised Data for such commercial or non-commercial purposes as the PSNC determine would be for the benefit of the pharmacy industry as a whole; and/or

(ii) using the Anonymised Data as PSNC may require to fulfil any legal and/or regulatory obligations; and/or

(b) In the case of an Affinity Group - using the Anonymised Data as the Affinity Group may require to perform its obligations and/or exercise its rights, including under the AG Customer Agreement (as defined under Annex 2); and

(c) In the case of NHS England, sharing Anonymised Data for reporting purposes.

**“Applicable Law”** means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of the parties’ respective obligations under the agreement.

**“CPCS Claim”** means a claim made by us on your behalf through PharmOutcomes, to the NHS Business Services Authority, for you to be reimbursed for the cost of providing a Completed Follow Up.

**“CPCS Service(s)”** means the ability to receive and record clinical services referred to you by a GP or NHS111 in the relevant Solution(s)/Environment, using the ‘provider pays’ model, including inputting a Completed Follow Up and CPCS Claims being made on your behalf.

**“Commissioner”** means a third party who has commissioned a project or service in relation to the provision of clinical services by clinical service providers (such as pharmacists, general practitioners and opticians) and contracted with us to facilitate the sharing of relevant information

(including Patient Data) between you and the Commissioner via the System in connection with this service.

**“Completed Follow Up”** means the service performed by you to a patient who attends your Site for an appointment, following a referral from a GP or NHS111 and when the pharmacy service follow up stage has been saved successfully into PharmOutcomes.

**“Confidential Information”** means information (in any format) that falls within any of the following categories:

(a) it is Your Information;

(b) the System;

(c) it is marked as “confidential” (or similar);

(d) Patient Data; and/or

(e) it is of a nature that a reasonable person would (in all the circumstances) consider confidential, including:

(i) information concerning a party’s business operations or affairs, including research and development efforts, inventions, drawings, models, trade secrets, know-how, products, processes, techniques, equipment, marketing, market opportunities, plans, intentions, relationships with suppliers and customers, finances, personnel, computer software, and algorithms; and

(ii) similar information of third parties that a party maintains in confidence; or

(e) any combination of the foregoing.

**“Data Controller”** has the meaning as defined under the Data Protection Legislation.

**“Data Processor”** has the meaning as defined under the Data Protection Legislation.

**“Data Protection Legislation”** means all applicable data protection and privacy laws in force from time to time in the UK, including the Data Protection Act 2018 (DPA) and UK GDPR (having the meaning given to it in the DPA) (**GDPR**) (in each case as may be amended or superseded from time to time)

**“Data Subject”** has the meaning as defined under the Data Protection Legislation.

**“Environment”** means our primary operating system which is a web-based clinical and service management data collection and communications platform (known variously as Outcomes4Health, OcularOutcomes and/or PharmOutcomes) allowing us to provide services to Commissioners and Solutions to you.

**“Intellectual Property Rights”** means all patents, rights to inventions, copyright and related rights, trade marks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Log-in Details”** means the relevant Primary Log-in Details and Secondary Log-in Details.

**“Patient Data”** means any patient data you or any of your Users enter into the System, as required by the Solutions relevant to you, in delivering services on behalf of the relevant Commissioner(s) (including details of any consultations completed for the patient, prescriptions and courses of treatment).

**“Personal Data”** has the meaning as defined under the Data Protection Legislation.

**“PharmOutcomes Direct”** means our management solution used to manage CPCS Services.

**“Primary Log-in Details”** means the user ID, password, security code and, where relevant, hard key rescue card allocated by us to a Primary User to access the System in accordance with the agreement.

**“Primary User”** means the person or persons at each Site provided with Primary Log-in Details by us.

**“PSNC”** means the Pharmaceutical Services Negotiating Committee of 14 Hosier Lane, London, EC1A 9LQ.

**“Purpose”** means to allow you (and your Users) to participate in, and share information via, the Solutions relevant to you / each of your Sites.

**“Secondary User”** means your officers, employees or locums (or such other persons as we may approve to the Primary User in writing, acting in our absolute discretion) granted access to the Environment by a Primary User.

**“Secondary Log-in Details”** means a user ID and password provided by a Primary User to a Secondary User to access the System in accordance with the agreement.

**“Site”** means a site from which the Account Holder provides clinical services (such a pharmacy, general practitioners or optician) that needs to use the System in order to provide services on behalf of Commissioner(s).

**“Solutions”** means the relevant templates, including PharmOutcomes Direct, made available to you and your Users from time to time within the Environment in order to allow for the sharing of relevant information (including Patient Data) between you and a Commissioner. Such Solutions may be different at your different Sites depending upon what services a Commissioner has commissioned in the location of each Site.

**“System”** means, together, the Environment and the Solutions.

**“Term”** means the period between your acceptance of these terms and termination of your use of the System in accordance with the agreement.

**“User”** means either a Primary User and/or Secondary User and **“Users”** shall be interpreted accordingly.

**“Your Information”** means any information you or your Users enter into the System including pharmacist details (including Site details), prescriber details and Patient Data.

## **2. Interpretation**

2.1. Clause and annex headings shall not affect the interpretation of the agreement.

2.2. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignees.

2.3. A reference to: (i) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (ii) words in the singular shall include the plural and vice versa; (iii) one gender shall include a reference to the other genders; (iv) a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (v) writing or written includes e-mail, but not faxes; and (vi) clauses are to the clauses of the agreement.

2.4. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### **3. Licence**

3.1. In consideration of your acceptance of, and on-going compliance with, the agreement, we hereby grant you (at each of your Sites), during the Term, a revocable, personal, non-transferable, non-exclusive licence for you and your Users to access and use the System strictly for the Purpose and subject to the terms of the agreement.

3.2. We will only make Solutions available to you, your Sites and your Users as instructed by relevant Commissioners and reserve the right to withdraw access to a particular Solution at any time without notice and without any liability to you.

3.3. Log in details to the Environment may be provided to you or your Primary Users by us or, where you are a Secondary User, by a Primary User. You shall be responsible for ensuring that Primary Users are appropriately authorised by you and we shall have no responsibility to verify the identity of Primary Users or any liability to you in this respect.

3.4. You agree to provide, and procure that your Users provide, us or our employees, agents or sub-contractors with: (i) up to date contact details for the Primary Users; and (ii) such reasonable assistance as we may require from time to time in connection with the provision of the System to you and your Users.

## **4. Warranty**

4.1. We warrant that we have the power and authority to enter into the agreement in our own right and grant the rights and licenses that we grant or purport to grant to you pursuant to the agreement.

4.2. We do not guarantee that the System will always be available or that its use will be uninterrupted. The System is provided by us on an 'as is' and 'as available' basis, with any and all faults as may be present. To the extent permitted by law any and all implied or statutory statement, representation, condition, warranty or other term as to the quality, merchantability, suitability or fitness for any particular purpose of the System (and any related services) is hereby excluded.

## **5. Account Security**

5.1. You shall:

5.1.1. maintain the confidentiality of passwords and the Log-in Details associated with your account;

5.1.2. take all necessary steps to ensure that Log-in Details are kept confidential, secure, used properly and not disclosed to unauthorised people; and

5.1.3. notify us immediately if any Primary User ceases to be employed by, or provide services for, you at any Site.

5.2. Accordingly, notwithstanding any obligations on Users contained within the agreement, you are responsible, and liable to us, for all your Users' use of the System and all activities that occur under your account. In this respect, you shall ensure:

5.2.1. that the terms of the agreement are brought to the attention of, and agreed by, each of your Users; and

5.2.2. that your Primary Users are aware of and comply with their obligations under clause 6 below (whose actions you shall ultimately remain liable to us for).

5.3. If you or your Users lose, forget or wish to change your Log-in Details then Primary Users should contact us and Secondary Users should contact their Primary User.

5.4. You shall notify us immediately if you become aware of any unauthorised use of your account, if suspect someone else may know any of your Users' Log-in Details and/or believe that any Log-in Details associated with your account and/or any of your Sites are, or may be being used, in an unauthorised way.

5.5. We reserve the right to:

5.5.1. suspend your account or the System without notice in the event that we believe that there is, or is likely to be, a breach of security (including in relation to loss of Log-in Details) or misuse of the System by you or any of your Users. Where possible, we will use reasonable endeavours to give you prior notice of any such proposed suspension; and/or

5.5.2. require you to change any or all of the relevant Log-in Details where we believe it is reasonably necessary to do so in order to preserve the security of the System.

## **6. Primary User Obligations**

6.1. The terms of this clause 6 apply in respect of all Primary Users.

6.2. You shall ensure that each Primary User is:

6.2.1. entitled, subject to the terms of the agreement, to provide Secondary Log-in Details to your Secondary Users; and

6.2.2. responsible for:

6.2.2.1. managing Secondary Log-in Details;

6.2.2.2. replacing Secondary Log-in Details where a Secondary User loses, forgets or wishes to change their Secondary Log-in Details;

6.2.2.3. changing Secondary Log-in Details on a regular basis;

6.2.2.4. deleting/withdrawing any Secondary Log-in Details if the Secondary User ceases to be employed or work for the Account Holder;

6.2.2.5. taking all necessary steps to ensure that their Primary Log-in Details and all Secondary Log-in Details granted by the Primary User are kept confidential and secure and are not disclosed to any unauthorised persons; and

6.2.2.6. raising any queries, service or technical queries or issues to us.



## 7. Licence Restrictions

7.1. Except as expressly set out in these terms or as permitted by any applicable law which cannot be excluded, you shall not, and you shall not permit any of your Users or any third party to:

7.1.1. use the System for anything other than the Purpose;

7.1.2. copy the System);

7.1.3. take any action or make any omissions that imposes an unreasonable or disproportionately large load or burden on the System (as determined by us);

7.1.4. rent, lease, sub-license, assign, sell, transfer, loan, charge or otherwise deal in or encumber any element of the System or use the System or access the System on behalf of any third party or make available the same to any third party;

7.1.5. translate, merge, adapt or otherwise make alterations to, or modifications of, the whole or any part of the System, nor permit the System or any part of them to be combined with, or become incorporated in, any other programs;

7.1.6. use or attempt to use any other party's Log-in Details to access the System;

7.1.7. use any robot, spider, scraper or other automated means to access the System without our prior written consent;

7.1.8. disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the System nor attempt to do any such things;

7.1.9. provide, or otherwise make available, the System in any form, in whole or in part (including, program listings, object and source program listings, object code and source code) to any unauthorised person; and/or

7.1.10. use the System in relation to any immoral, fraudulent or illegal purpose or for any other purpose which may reasonably be determined threatening, abusive or harmful or damaging to our reputation.

7.2. We do not guarantee that access to and/or use of the Solutions and/or the Environment, will always be available or be uninterrupted. We will not

be liable to you or any of your Users if for any reason the Solutions and/or the Environment are unavailable at any time or for any period.

7.3. You must comply with any acceptable use policies that we may provide to you from time to time in relation to the use of the System.

7.4. You do not have the right to link to any of our websites without our prior express written permission.

7.5. You are responsible for making all arrangements necessary for you and your Users to access the System (including, having access to an internet connection and an appropriate browser).

7.6. We will use our reasonable endeavours to ensure that the System is free from bugs and/or viruses. However, without prejudice to clause 12.6.2, we do not guarantee that the System will be secure or that it will be free from bugs or viruses. You accept that you are responsible for ensuring that you have in place, on any device used to access the System adequate and appropriate protections against any computer software that contains any "time-bombs", "worms", "viruses", "Trojan horses", "protect codes", "data destruct keys" or other programming devices that might, or might be used to, improperly access, modify, delete, damage, deactivate or disable any third party's computer software, hardware or data.

7.7. You and your Users must not:

7.7.1. misuse the System by knowingly introducing viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful;

7.7.2. attempt to gain unauthorised access to the System or, the server(s) on which the System is hosted or any server, computer or database connected to the System; or

7.7.3. attack the System via a denial-of-service attack or a distributed denial-of service attack.

By breaching this provision, you and/or your Users may be committing a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your and any relevant Users identity to them. In the event of such a breach, your and your Users' right to use the System will cease immediately.

## **8. Our Obligations**

8.1. We shall use reasonable endeavours to:

8.1.1. provide the System and any other services under the agreement with reasonable care and skill;

8.1.2. ensure that the System is available to you and your Users between the hours of 8am and 11pm Monday to Saturday (excluding any public holidays). Any access outside of these hours may be interrupted / unavailable. In the event that any Solution (or the Environment) is unavailable, you and your Users are advised to securely keep alternative records of Your Information such that it can be inputted once the relevant Solution / Environment is available to you and your Users; and

8.1.3. store Your Information within the System (using, where relevant, third party hosting services) to the extent necessary to deliver the relevant services to the Commissioners and fulfil any legal or regulatory obligations we may have.

8.2. The System may from time to time, be unavailable due to planned maintenance activities. We shall, where practicable communicate in advance the details of any planned maintenance of the System to you however, in cases of emergency; this may not always be possible. We may restrict or suspend your access to, or use of, the System for these purposes (or if we identify any security or operational concerns or issues).

## **9. Intellectual property rights**

9.1. You acknowledge that any and all Intellectual Property Rights subsisting in the System, including all configurations and enhancements thereof created by (or on behalf of) us, all documentation and manuals relating thereto, are and shall remain our property (and/or our third party licensor(s) as appropriate).

9.2. Except as expressly stated herein, these terms do not grant you any rights to, or in, any Intellectual Property Rights subsisting in the System.

9.3. In the event a claim, relating to the infringement of any third party rights, is made, or in our reasonable opinion is likely to be made, against you in relation to the System, we may, at our sole option and as your sole remedy:

9.3.1. procure for you the right to continue to use the relevant part of the System in accordance with the terms of the agreement;

9.3.2. modify the relevant part of the System so that it ceases to be infringing;

9.3.3. replace the relevant part of the System with non-infringing materials; and/or

9.3.4. terminate the agreement immediately by notice in writing to you.

## **10. Limitation on Liability**

10.1. To the extent not prohibited by law, we shall under no circumstances whatever be liable to the you, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

10.1.1. loss (whether direct or indirect) of revenue or profits;

10.1.2. loss (whether direct or indirect) of business opportunity;

10.1.3. loss (whether direct or indirect) of goodwill;

10.1.4. loss (whether direct or indirect) of anticipated savings;

10.1.5. loss (whether direct or indirect) of, or corruption to, any data; or

10.1.6. indirect, consequential or special loss or damage,

arising out of or related to your (or your Users) use of, or inability to use, the Solutions or access the Environment, however caused, regardless of the theory of liability (contract, tort, or otherwise) and even if you have been advised of the possibility of such damages.

10.2. Save as set out in Annex 2, in no event shall our total liability to you for all damages (other than as may be required by applicable law) exceed the amount of one thousand pounds (£1,000.00).

## **11. Your Information**

11.1. By entering into the agreement you agree that we (and any appointed sub-contractors) shall be entitled to use Your Information for the purposes of delivering the Solutions and Environment and as otherwise set out in the agreement. Any such use of Your Information shall not therefore, be deemed to be in breach of our confidentiality obligations under the agreement. Any of Your Information that is determined to be Personal Data shall also be subject to the provisions of clause 12 (Data Protection).

11.2. You agree that we shall be entitled to create the Anonymised Data and you hereby grant us the right provide the Anonymised Data to PSNC and Affinity Groups for their respective use of the Anonymised Data for their respective Anonymised Data Purpose.

11.3. You are responsible for ensuring the accuracy of Your Information and shall make sure that Your Information:

11.3.1. is not fraudulent, false, inaccurate or misleading;

11.3.2. does not infringe any third party's Intellectual Property Rights; and

11.3.3. does not breach any laws, rules or regulations.

## **12. Data Protection**

12.1. Information and data (including any Personal Data) collected by us about your business (including any Users' details) will be treated in accordance with the our Privacy Policy referred to in the 'Legal' section of the EMIS website located at <https://www.emishealth.com/legal/> (as may be updated from time to time).

12.2. All parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Account Holder is a Data Controller and we are a Data Processor.

12.4. Annex 1 sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of Personal Data and categories of Data.

12.5. Without prejudice to the generality of clause 12.2, you will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to us for the duration and purposes of the agreement

12.6. We shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under the agreement:

12.6.1. process that Personal Data on the written instructions of the Account Holder (unless otherwise required by law, under which

circumstances we will notify you before processing such data, where the law permits such notice) and immediately notify the Account Holder if, in our opinion, such instruction(s) infringes Data Protection Legislation. In this respect, the Account Holder authorises each of its Primary Users to provide us with instructions in respect of the relevant Site to which they are associated;

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

12.6.3. ensure the reliability and integrity of personnel who have access to and/or process Personal Data;

12.6.4. not transfer any Personal Data outside of the UK without the prior written consent of the Account Holder and the following conditions are fulfilled:

(a) you or we have provided appropriate safeguards in relation to the transfer;

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

(c) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) we comply with reasonable instructions notified to us in advance by the Account Holder with respect to the processing of the Personal Data;

12.6.5. assist the Account Holder, at the Account Holder's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. In compliance with this obligation, we will notify you as soon as reasonably practicable in relation to any

requests or complaints from Data Subjects, relevant to you, exercising their rights under the Data Protection Legislation;

12.6.6. notify the Account Holder without undue delay on becoming aware of a Personal Data Breach (as defined in the Data Protection Legislation) and, where feasible, not later than 48 hours after becoming aware of it;

12.6.7. at the written direction of the Account Holder, delete or return Personal Data and copies thereof to the Account Holder on termination of the agreement unless required by law to store the Personal Data; and

12.6.8. allow for audits by the Account Holder or the Account Holder's designated auditor in respect of our data processing activities under the agreement.

12.7. A list of our material sub-processors is set out here: <https://www.emishealth.com/legal/> ("**Sub-Processors**"). You hereby expressly authorise us to (i) appoint the Sub-Processors; and (ii) appoint any other replacement or additional third party Sub-Processors from time to time in relation to performing its obligations under the agreement (provided that we give you reasonable prior written notice of its intention to do so, including updating the Sub-Processors on the webpage set out above). If you object to the change, you are entitled to terminate your use of the System in accordance with clause 15.3. We shall remain responsible for ensuring that we impose on any such sub-processor obligations equivalent to the agreement and we will remain liable for any acts or omissions of any such sub-processor.

12.8. The Account Holder shall ensure that, throughout the term of the agreement, it has all necessary rights, consents and permissions (including from any Data Subjects) such that our processing of any Patient Data or Personal Data contained within Your Information in accordance with the terms of the agreement will not breach any third party rights or relevant law.

12.9. In the event of any loss of, or damage to, any Patient Data or Your Information (to the extent it contains Personal Data), we shall use our reasonable endeavours to restore the lost or damaged data from the latest backup version of the data available to us. If the loss or damage was caused by us then we shall undertake such restoration at our own cost and expense and in any other circumstances we shall be entitled to charge the Account Holder in respect of any time spent at our then standard rates.

12.10. You acknowledge that once Your Information has been submitted into the System:

12.10.1. Your Information will be accessible in the System to the relevant Commissioner of the clinical service you are delivering (at your relevant Sites and by your relevant Users); and

12.10.2. Where appropriate Patient Data may be sent to the relevant individual's healthcare provider to allow the clinical service, delivered by you to the individual, to be filed to the patient's medical record and/or to ensure the continuation of the individual's health care.

12.11. As such, you agree and acknowledge that:

12.11.1. the Commissioner and/or the relevant healthcare provider may (subject to the relevant arrangements in place) become a Controller in respect of the relevant Personal Data you or your Users submit into the System (which may include downloading this information out of the System); and

12.11.2. we, as a Data Processor may receive conflicting instructions from you and the relevant Commissioner, both of whom are a Data Controller of Personal Data held in the System (in circumstances where we are processing on behalf of both parties in our capacity as a Data Processor).

12.12. In the event that you and any Commissioner provide conflicting instructions in relation to any Personal Data entered into the System by you or your Users, we will, where possible, seek to comply with your instructions in priority to the Commissioner's instructions (and we will inform the Commissioners accordingly). However, you agree and acknowledge that this may have implications with regard to your relationship (contractual or otherwise) with the Commissioner and we shall have no liability to you in this respect.

### **13. PHARMOUTCOMES DIRECT, CPCS SERVICES AND AFFINITY GROUPS**

13.1. Where we provide PharmOutcomes Direct and CPCS Services to you Annex 2 shall apply.

13.2 Where you do not select an Affinity Group to manage payments in respect of your CPCS Services, the terms set out in Part A of Annex 2 shall apply.



13.3 Where you select an Affinity Group to manage payments in respect of your CPCS Services, the terms set out in Parts A and B of Annex 2 shall apply.

## **14. CONFIDENTIALITY**

14.1. Each party may be given access to Confidential Information belonging to the other party in connection with the agreement. A party's Confidential Information shall not be deemed to include information that:

14.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

14.1.2. was in the receiving party's lawful possession before the relevant disclosure;

14.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

14.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

14.2. Save as expressly provided for under the agreement, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation and performance of the agreement.

14.3. Each party may disclose the other party's Confidential Information (for the purposes set out in clause 14.2):

14.3.1. to its employees, officers, affiliates, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the agreement. Each party shall ensure that its employees, officers, affiliates, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 14;

14.3.3. in respect of Patient Data, as may be required to comply with its obligations under the agreement; and

14.3.3. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.4. Each party shall take reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the agreement.

14.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (save where that third party is an affiliate, representative, subcontractor or adviser of the relevant party).

## **15. TERMINATION AND SUSPENSION**

15.1. Without prejudice to any other rights and remedies set out in the agreement, we may suspend your access to the System at any time in the event that:

15.1.1. you materially breach the terms of the agreement;

15.1.2. we reasonably believe that your (or your Users') actions or omissions may cause us financial loss or legal liability or may give rise to a breach of the Data Protection Legislation, the confidentiality obligations set out in the agreement or may infringe our, or a third party's, Intellectual Property Rights; and/or

15.1.3. for clinical safety purposes.

15.2. We may terminate the agreement (and so your and your Users' right to use System) at any time acting in our absolute discretion.

15.3. You may terminate the agreement immediately at any time by giving us notice in writing.

15.4. On termination:

15.4.1. all licences granted under these terms shall immediately terminate; and

15.4.2. you and your Users shall immediately cease to access and use the System.

15.5. Termination of the agreement for any reason will:

15.5.1. be without prejudice to any obligation or right of either party which has accrued prior to such termination (or will thereafter accrue in respect of the period before such termination); and

15.5.2. not affect any provision of these terms which is expressly or by implication intended to come into effect on, or to continue in effect after, such termination.

## **16. Variation**

16.1. We may, from time to time and without notice, make changes to the System (and any elements thereof).

16.2. We may, from time to time, amend these terms, including any annexes, by giving you notice in writing either by email to you (if we have a valid email address) or by posting the amended terms to one or more of our websites. If you continue to use the System following notification of any such variation or update then you will be deemed to have accepted the same (and the agreement is varied accordingly).

## **17. Force Majeure**

We shall have no liability to you under the agreement if we are prevented from, or delayed in performing, our obligations under the agreement or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, pandemic, epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm.

## **18. Waiver**

18.1. A waiver of any right under these terms is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay us in exercising any right or remedy under these terms or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

18.2. Unless specifically provided otherwise, rights arising under these terms are cumulative and do not exclude rights provided by law

## **19. Severance**

19.1. If any provision of these terms (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal

or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these terms, and the validity and enforceability of the other provisions of these terms shall not be affected.

19.2. If a provision of these terms (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **20. Notices**

20.1. Any notice required to be given under the agreement to us must be in writing and shall be delivered by hand or sent by pre- paid first-class post or recorded delivery post to us to Egton Medical Information Systems limited at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA or by email to [contracts@emisgroupplc.com](mailto:contracts@emisgroupplc.com) and marked for the attention of Legal Counsel.

20.2. A notice delivered by hand or by email shall be deemed to have been received when delivered (or if delivery is not during our normal working hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## **21. Entire Agreement**

21.1. Subject to clause 21.2, the agreement constitutes the whole agreement between the parties in relation to use of the System and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter.

21.2. In the event that the Account Holder is also a Commissioner, then:

21.2.1. the agreement shall apply in relation to any access to, or use of, the System:

21.2.1.1. by the Account Holder's Users in relation to any Account Holder Commissioned Service; and/or

21.2.1.2. by the Account Holder or its Users in relation to any other Commissioner's commissioned services that uses the System; and

21.2.2. the contract with the Account Holder (in its capacity as a Commissioner) shall apply to any access or use of the System in relation to the service we are providing under that contract.

## **22. Assignment**

22.1. We may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the agreement and may subcontract or delegate in any manner any or all of your obligations under the agreement to any third party or agent.

22.2. You shall not, without our prior written consent, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the agreement.

## **23. Third party rights**

The agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the agreement.

## **24. No Partnership**

Nothing in the agreement is intended to, or shall operate to, create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **25. Governing Law, Compliance and Jurisdiction**

25.1. All parties shall, in performing their respective obligations under the agreement, comply with Applicable Law.

25.2. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of England and Wales.

25.3. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Annex 1**

**Purpose of Processing:** for the purposes of delivering the services and meeting other obligations specified in the agreement.

**Duration of the Processing:** for the term of the agreement (together with the delivery of any post-termination obligations including any back-up copies of data created through the delivery of the relevant services and fulfilment of our legal and regulatory obligations).

**Nature:** such processing as is necessary to enable us to provide the services and solutions provided for under the agreement (which may include, from time to time: collecting, recording, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data).

**Types of Personal Data:** data which may be processed under the agreement includes: names, addresses, dates of birth, NHS numbers, telephone numbers, email addresses and other contact details. In particular it will include special category personal data relating to health (including, medical records, images and biometric data as required by the relevant Solution).

**Categories of Data Subject:** data subjects may include: Users, patients and members of the public with whom you and your Users are interacting.

## Annex 2

### PharmOutcomes Direct and Affinity Groups

PharmOutcomes Direct is a management tool through which you can manage the delivery of CPCS Services. You must comply with all relevant terms in the agreement including this Annex 2 to be able to use the CPCS Services.

Where we provide PharmOutcomes Direct to you under the agreement (but with no Affinity Group involved), the terms set out in paragraphs 1-4 and Part A of this Annex 2 shall apply (unless expressly stated otherwise).

Furthermore, where you select an Affinity Group to manage payments in respect of CPCS Claims made using PharmOutcomes Direct, paragraphs 1-4 and the following terms set out in this Annex 2 will apply:

- Part A; and
- Part B.

#### **1. Definitions**

In this Annex 2, the following definitions shall apply (capitalised terms which are not defined in this Annex 2 shall have the meaning given to them in the agreement):

**AG Customer Agreement:** means an agreement between you and an Affinity Group, pursuant to which the Affinity Group will provide payment and invoicing related services and benefits to you in respect of CPCS Claims.

**Charges:** means any charges paid or payable to us under the agreement, in return for your use of PharmOutcomes Direct and the CPCS Services.

#### **2. Application of this Annex 2**

The terms of this Annex 2 shall apply from the date upon which you first use PharmOutcomes Direct and, unless agreed otherwise in writing between the parties, shall thereafter continue for the duration of the agreement.

#### **3. Initial Selection and Initial Request**

3.1 Upon accepting these terms, and in any event as soon as reasonably possible prior to the end of the relevant month, you must indicate within the System whether you intend to use an Affinity Group or not.

3.2 Where you intend to pay us directly for receiving CPCS Services, you shall promptly set up a direct debit mandate in accordance with paragraph 5.3 below. You acknowledge that you will not be able to go live with CPCS Services until this direct debit has been set up.

3.3 Where you wish to use an Affinity Group, you must request this within the System ("**Initial Request**") and we (and the Affinity Group) will review any Initial Request, and subject to our (and the Affinity Group's) acceptance of an Initial Request (which will be entirely within our and the Affinity Group's discretion) your AG Customer Agreement with that Affinity Group will commence immediately. You acknowledge that you will not be able to use the CPCS Services unless and until such Initial Request has been accepted in accordance with this paragraph.

3.4 Where we and/or the Affinity Group rejects an Initial Request, you may either:

3.4.1 sign a direct debit mandate and pay us directly to receive CPCS Services in accordance with Part A; or

3.4.2 submit an Initial Request to an alternative Affinity Group, who would also review such Initial Request in accordance with paragraph 3.3.

## 4. Summary

4.1 The CPCS Service model can be summarised as follows:

4.1.1 you should log each Completed Follow-Up in PharmOutcomes;

4.1.2 as soon as reasonably practicable after each Completed Follow-Up is logged in PharmOutcomes, we shall, on your behalf, use reasonable endeavours to submit a CPCS Claim to the NHS BSA, details of which will be available from the PharmOutcomes Direct portal in respect of that Completed Follow-Up;

4.1.3 a record of each Completed Follow-Up, each associated CPCS Claim, and the relevant Affinity Group (where applicable), is stored in PharmOutcomes Direct; and

4.1.4 NHS BSA should, irrespective of whether or not you have appointed an Affinity Group, reimburse you (although we offer no guarantee that they will do so, nor do we accept any liability for their failure to do so), in arrears, in respect of all successful CPCS Claims made within a relevant month (or other relevant period).



## Part A – PharmOutcomes Direct

### 5. Charges (no Affinity Group involved)

- 5.1 Subject to paragraph 7.2 below, you shall pay us our Charges in accordance with this paragraph 5.
- 5.2 In consideration of the provision of CPCS Services to you, you shall pay us the Charges, details of which will be provided to you in the PharmOutcomes Direct portal.
- 5.3 In order to receive the CPCS Services under this paragraph, you must set up (by no later than the end of the first month) and maintain at all times whenever this Part A applies, a direct debit mandate to pay us (via our group company Egton Medical Information Systems Limited who we have appointed to collect Charges on our behalf, or any other such third party as we notify to you from time to time) the Charges. The set-up of your direct debit will be facilitated by our nominated third party payment services provider, details of whom will be notified to you in writing from time to time. If you cancel your direct debit, or if for any other reason we do not receive payment of our Charges via direct debit due to your act or omission, you accept and acknowledge that, without prejudice to our other rights and remedies under this Annex 2:
- 5.3.1 we may immediately suspend your access to the CPCS Services for such period that the direct debit arrangements are cancelled / payments remain outstanding; and
- 5.3.2 you shall immediately pay our Charges via BACS or other similar direct payment method stipulated by us.
- 5.4 We will generally only raise an invoice at the end of a month, where there have been a minimum of 10 Completed Follow Ups performed in that month, or otherwise during the period since our last invoice (and you acknowledge that we may carry over Completed Follow Ups into a subsequent month where this minimum amount has not been achieved in a given month(s)). For example, if in April there are 5 Completed Follow Ups and 3 in May, then 12 in June, then we will invoice for 20 Completed Follow Ups at the end of June. Otherwise, all Charges are payable monthly in arrears, following receipt of our invoice. However, notwithstanding the aforementioned terms of this paragraph 5.4, we reserve the right to invoice you for any and all outstanding Completed Follow Ups at the end of any month (in our absolute discretion). Such an invoice is likely to be raised if you start using an Affinity Group pursuant to Part B of this Annex 2 or if more than 6 months have elapsed since our last invoice or if the agreement is terminated or expires, in whole or in part.
- 5.5 You shall pay each invoice in full and in cleared funds, within thirty (30) days of the date

of such invoice, in accordance with the direct debit arrangements described in paragraph 5.3.

5.6 We may adjust the Charges on an annual basis during the Term. We will notify you in writing (which shall include, for the avoidance of doubt, updating the charges within the PharmOutcomes Direct portal) of any change in the Charges. Your continued use of the CPCS Services shall be deemed as acceptance of any updated Charges.

5.7 For the avoidance of doubt all Charges are exclusive of VAT, which we will add to our invoices at the appropriate rate.

5.8 Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date, this shall constitute a material breach and we may:

5.8.1 suspend your access to the CPCS Services until such payment is received in full; and/or

5.8.2 charge interest on such sum from the due date for payment at the annual rate of four percent (4%) above the base lending rate from time to time of Clydesdale Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and you shall pay the interest immediately on demand (or, we may in the alternative and at our option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998).

5.9 Notwithstanding any provision in the agreement to the contrary, all sums payable to us under this Annex 2 shall become due immediately on termination of this Annex 2 or the agreement. This paragraph 5.9 is without prejudice to any right to claim for interest under the law, or any such right under the agreement.

5.10 We may, without prejudice to any other rights we may have, set off any liability of yours to us against any liability of us to you.

## Part B – Affinity Groups

### 6. Your relationship with Affinity Groups

6.1 Where you are paying us directly for CPCS Services pursuant to Part A, but subsequently wish to appoint an Affinity Group, you must request this within the System (“**AG Request**”) and we (and the relevant Affinity Group) will review any AG Request, and subject to our (and the Affinity Group’s) acceptance of an AG Request (which will be entirely in our and the Affinity Group’s discretion):

6.1.1 your AG Customer Agreement with that Affinity Group will commence on the 1st

day of the following month; or

6.1.2 if you fail to submit an AG Request sufficiently in advance of the end of the relevant calendar month, we (and the Affinity Group) reserve the right to allow the AG Customer Agreement to only commence on the 1st day of the second calendar month following our receipt of such AG Request, and you acknowledge that your receipt of the CPCS Services will remain subject to Part A unless and until such AG Request has been accepted in accordance with this paragraph 6.1.

6.2 Where you make an AG Request pursuant to paragraph 6.1 and this is accepted, your direct debit arrangement will be cancelled once any outstanding payments owed to us pursuant to Part A have been made in full, and you acknowledge that you will continue to be liable to us for any outstanding payments due under Part A notwithstanding the commencement of your AG Customer Agreement. Where you make an AG Request and this is refused, then you may make an alternative AG Request in respect of another Affinity Group or continue to pay to receive CPCS Services from us pursuant to Part A.

6.3 The minimum term of an AG Customer Agreement is 1 whole calendar month (so if you entered into an AG Customer Agreement part-way through a calendar month, the minimum term would be the remainder of that month, plus the whole of the following calendar month).

6.4 You shall pay to the relevant Affinity Group its fees, in accordance with the terms of the AG Customer Agreement.

6.5 Once signed up to an AG Customer Agreement with an Affinity Group you may at any time either:

6.5.1 select a new Affinity Group; or

6.5.2 select to terminate the AG Customer Agreement with your current Affinity Group.

6.6 Where you wish to make a change pursuant to paragraph 6.5, you must, as soon as reasonably possible prior to the end of the relevant month, via settings in PharmOutcomes Direct:

6.6.1 request that your existing AG Customer Agreement is terminated ("**AG Termination Request**"); or

6.6.2 request to enter into a new AG Customer Agreement with a different Affinity Group ("**Switch Request**").

6.7 In the event that you make an AG Termination Request:

6.7.1 your AG Customer Agreement shall be terminated and such termination shall take effect either:

6.7.1.1 from the 1<sup>st</sup> day of the following month; or

6.7.1.2 if you fail to submit an AG Termination Request sufficiently in advance of the end of the relevant calendar month, we (and where relevant the Affinity Group) reserve the right to effect such change from the 1st day of the second calendar month following our receipt of such AG Termination Request;

6.7.2 upon termination of the relevant AG Customer Agreement, you will revert to paying us directly, in accordance with Part A above and you must set up a new direct debit, in accordance with paragraph 5.3; and

6.7.3 for the avoidance of doubt, until termination of your AG Customer Agreement has taken place, you shall continue to be liable to pay the relevant Affinity Group its fees in accordance with the relevant AG Customer Agreement and you acknowledge that you will continue to be liable to the Affinity Group for any outstanding payments due to it under the AG Customer Agreement, notwithstanding the termination of the AG Customer Agreement.

6.8 In the event that you make a Switch Request:

6.8.1 we (and where applicable the new Affinity Group) will review any Switch Request, and subject to our (and where applicable the new Affinity Group's) acceptance of a Switch Request (which will be entirely in our and where applicable, the new Affinity Group's discretion), such change will take effect either:

6.8.1.1 from the 1st day of the following month; or

6.8.1.2 if you fail to submit a Switch Request sufficiently in advance of the end of the relevant calendar month, we (and where relevant the new Affinity Group) reserve the right to effect such change from the 1st day of the second calendar month following our receipt of such Switch Request;

6.8.2 upon acceptance of your Switch Request, and therefore commencement of your new AG Customer Agreement, your existing AG Customer Agreement will automatically terminate; and

6.8.3 for the avoidance of doubt, until your Switch Request and therefore termination

of your previous AG Customer Agreement has taken place, you shall continue to be liable to pay the 'old' Affinity Group its fees in accordance with your AG Customer Agreement with that Affinity Group and you acknowledge that you will continue to be liable to the old Affinity Group for any outstanding payments due to it under the old AG Customer Agreement, notwithstanding the termination of the old AG Customer Agreement and/or commencement of the new AG Customer Agreement.

- 6.9 You may switch Affinity Groups as frequently as you wish but you may only receive services from 1 Affinity Group at any one time. Accordingly, upon commencement of a new AG Customer Agreement, your existing AG Customer Agreement will automatically terminate (save for any provisions which expressly or by implication are intended to survive, including in respect of any outstanding payment obligations).
- 6.10 If we are notified by a relevant Affinity Group that your AG Customer Agreement with them is due to terminate or expire, you agree and acknowledge that we are entitled to remove you from that Affinity Group at the end of the relevant Month or, in the case of immediate termination, immediately. Where possible, we will use reasonable endeavours to give you notice within the System of when your AG Customer Agreement is due to expire / terminate. Should you dispute such termination or expiry, you must contact the relevant Affinity Group. We shall have no liability to you whatsoever in the event that we remove you from an Affinity Group on the instruction of that Affinity Group.

## **7. Charges (Affinity Group involved)**

- 7.1 Where you have appointed an Affinity Group in respect of your CPCS Services, then the parties acknowledge that, subject to paragraph 7.2:
- 7.1.1 any charges due to us in respect of our provision of CPCS Services shall be payable to us by the relevant Affinity Group, pursuant to separate terms between us and the relevant Affinity Group; and
- 7.1.2 paragraph 5 of Part A above shall not apply.
- 7.2 You acknowledge that the default direct charging arrangement under paragraph 5 of Part A shall apply if:
- 7.2.1 the Agreement between us and your Affinity Group expires or terminates for any reason whatsoever;
- 7.2.2 an AG Customer Agreement terminates or expires, and you do not subsequently enter into another AG Customer Agreement immediately thereafter (including

where we or the new Affinity Group do not accept a Switch Request) – in which case paragraph 5 of Part A shall apply automatically and you will be required to set up a new direct debit arrangement in accordance with paragraph 5.3; or

7.2.3 the relevant Affinity Group does not pay us by the relevant due date, in which case we may, in our discretion, apply paragraph 5 of Part A on demand, and you will be required to set up a new direct debit arrangement in accordance with paragraph 5.3.

## **8. Liability**

Notwithstanding clause 10.1, the annual liability of us to you arising out of, or in connection with, the provisions of the CPCS Services (only), whether arising from contract, tort, negligence or otherwise shall be limited to the greater of a) £1,000 or b) 100% of the charges paid or payable by you to us, pursuant to paragraph 5 of this Annex 2, during the previous 12 month period.