

# MASTER TERMS AND CONDITIONS

## 1. INTERPRETATION

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

**Acceptable Use Policy:** means EHCP's acceptable use policy (as may be made available to the Customer (and updated) from time to time).

**Additional Terms:** means the additional terms and conditions (if any) set out in the relevant Order Form in respect of the relevant Solution(s), Service(s) and/or Goods detailed therein.

**Agreement:** means this master services agreement, consisting of these Master Terms, the schedules (including, any and all Order Forms as may be entered into by the parties from time to time) and any attachments.

**Authorised Users:** means those users (being employees of the Customer) that the Customer permits from time to time to access and use the relevant Solution(s) and/or Service(s) in accordance with the terms of the Agreement.

**Business Day:** means any day between Monday and Friday (other than any public holiday in England and Wales).

**Charge(s):** means the fees and charges identified or referred to as such in the relevant Order Form(s) in respect of the relevant Solution(s), Goods and/or Service(s).

**Commencement Date:** means (without prejudice to clause 8.14) the Effective Date of the first Order Form entered into as between the parties (which references these Master Terms).

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

- (a) it relates to, includes or comprises the existence or terms and conditions (or both) of the Agreement;
- (b) it is Customer Data or EHCP Data;
- (c) it forms part of the EHCP Materials;
- (d) it is marked as "confidential" (or similar);
- (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
- (f) any combination of the foregoing.

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

**Customer:** means the party referred to as such in the relevant Order Form.

**Customer Data:** means:

- (a) any personal data in respect of which the Customer is a Data Controller; and
- (b) any data controlled by, provided by or in the possession of the Customer.

**Data Controller:** has the meaning as defined under the Data Protection Law.

**Data Processor:** has the meaning as defined under the Data Protection Law.

**Data Protection Law:** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)].

**Data Subject:** means an identified or identifiable individual. An "identifiable" individual is one who can be identified, directly or indirectly, including by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

**Database:** means the proprietary drugs and pharmacy knowledge database (as updated from time to time) which consists of one master drug database and several additional sub databases and associated tables that, together, provide clinical and commercial information for use within the Solution and which is made available to the Customer.

**Documents:** means any documentation in whatever format, including, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Effective Date:** means the date identified as such in the relevant Order Form entered into between the parties.

**EHCP:** means Egton Medical Information Systems Limited (t/a EMIS).

**EHCP Data:** means any data controlled by, provided by or in the possession of EHCP, including (where the context admits) the relevant Solution(s).

**EHCP Materials:** means any and all Documents, information and materials provided by EHCP in relation to the Solution(s), Goods and/or the Service(s) (including, any data, reports and specifications (as the same may be updated from time to time)).

**EMIS:** means Egton Medical Information Systems Limited.

**Existing Contracts:** has the meaning set out in clause 2.5.

**Goods:** means the goods (or any part of them) set out in the Order Form. For the avoidance of doubt, the term 'Goods' does not include any Solution(s).

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and EHCP.

**Hardware Refresh:** means the purchase of Goods comprising information technology hardware products under the Agreement

on which one or more of the Solution(s) will be run. The relevant Order Form will typically refer to such an order as being a 'hardware refresh' or a 'hardware renewal' or similar.

**In-put Material:** means any and all Documents, information and any other materials provided by the Customer relating to the relevant Solution(s), Goods and/or Service(s).

**Intellectual Property Rights:** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Licence Restrictions:** means the restrictions (if any) on the licence to access and use the relevant Solution(s) specified as such in the relevant Order Form (in accordance with clause 3.1.1, as amended from time to time under clause 3.6).

**Master Terms:** means these terms and conditions.

**Minimum Specification:** means the minimum IT environment requirements (if any) referred to in the relevant Order Form in respect of the relevant Solution(s) (as may be updated from time to time).

**NHS BSA:** means the NHS Business Service Authority.

**Operational Hours:** means Monday to Friday, 9:00am to 5:00pm, but excluding any public holidays.

**Order Form:** means an order form (including any online order form) in such format as may be provided by EHCP from time to time (incorporated into and forming part of the Agreement as a schedule hereto) which describes the relevant Service(s), Goods and/or Solution(s), including, details of the deliverables (if any), applicable service levels, Charges and/or any other applicable additional terms and conditions not detailed in these Master Terms.

**Personal Data:** has the meaning as defined under the Data Protection Law.

**Prohibited Act:** means

- (a) to directly or indirectly offer, promise or give any person working for or engaged by a party a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement;
- (c) an offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud a party; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**ProScript Connect:** means EHCP's core pharmacy management Solution (as may be updated from time to time), sold under the

mark 'ProScript Connect' (and which comprises the relevant software and the Database).

**RTEC System:** means the Real Time Exemption Checking service provided by NHS BSA that allows the real time checking of patient entitlement to exemption from prescription charges.

**RTEC Exchange:** means the software / technology provided by EHCP to Customers, in accordance with the terms of the Agreement that allows Customers to access the RTEC System via ProScript Connect.

**Service(s):** means the service(s) to be performed by EHCP pursuant to the Agreement (including, those detailed at clause 5.7 and more fully specified in the applicable Order Form(s)).

**Sites:** means the Customer's business premises located within the Territory and as identified in the relevant Order Form. For the avoidance of doubt, where the Customer operates from more than one branch then this term shall refer to the relevant branch site, or all of the branch sites, as appropriate.

**Solution:** means the systems, applications and software, details of which are set out in the applicable Order Form(s), together with any associated EHCP Materials provided by EHCP to the Customer.

**Term:** means the term of the Agreement, as determined in accordance with clause 2.1.

**Territory:** means the United Kingdom (and such other territories or countries as may be agreed in writing from time to time).

**Threshold Number of Prints:** means:

- (a) 300,000 prints where the relevant laser printer is a Basic Brother Laser Printer; or
- (b) 600,000 prints where the relevant laser printer is a Benchmark Brother laser printer.

**Transaction Data:** means data in respect of transactions inputted into the Solution.

**Transaction Data Credit:** means a credit against the Customer's account to be applied in accordance with clause 8.20, the rate being as notified by EHCP from time to time.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**VAT:** means applicable value added tax chargeable under English law for the time being (and any similar additional or replacement tax).

1.2 Clause, attachment, schedule and paragraph headings shall not affect the interpretation of the Agreement.

1.3 A reference to: (i) 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; (ii) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (iii) words in the singular shall include the plural and vice versa; (iv) one gender shall include a reference to the other genders; and (v) 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.

1.4 References to clauses and schedules are to the clauses of, and schedules to, the Agreement; references to paragraphs are to paragraphs of the relevant schedule.

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

1.6 Where the terms of any Order Form conflict with the terms set out in the main body of the Agreement, the terms of the Order Form shall prevail. For the avoidance of doubt, Goods, Services and/or Solutions referred to as defined terms in these Master Terms will be as defined or described in the relevant Order Form (or as otherwise notified by EHCP in writing).

1.7 All of these Master Terms shall apply to the supply of Goods, Solutions and Services except where application to one is specified.

## 2. COMMENCEMENT AND DURATION

2.1 Subject to the remaining terms of this clause 2 and clause 8.14, the Agreement shall be made effective as of the Commencement Date and shall (subject to any alternative initial term specified in the relevant Order Form or any earlier termination pursuant to clause 15) continue for an initial term of 48 months from the date on which the first Solution to be provided under the Agreement goes live (or, where there is no Solution, EHCP starts to deliver the relevant Service) and shall then continue on an annual rolling basis unless or until it (or the relevant Order Form(s)) is terminated by either party giving not less than three (3) months’ notice in writing to expire at the end of the relevant initial term or on any subsequent anniversary of the Commencement Date.

2.2 EHCP shall (subject to any earlier termination in accordance with the Agreement) provide to the Customer and the Customer shall pay for the relevant Service(s) and/or Solution(s) from the Effective Date and during the Term (subject to any alternative term set out in the applicable Order Form(s)).

2.3 If EHCP agrees to provide any additional Solution(s) or Service(s) under any Order Form(s) agreed after the Commencement Date then the initial term during which EHCP shall provide such Solution(s) and/or Service(s) will (save as may be expressly agreed otherwise in writing) align with the Term so that the period during which any and all Solution(s) and Service(s) are to be provided under the Agreement shall be the same.

By way of example only, if a Customer ordered ProScript Connect and that Solution went live on 1 June 2018 then the initial term of the Agreement would end on 1 June 2022. If the same Customer then ordered an additional Solution, My Local Pharmacy, on 1 December 2020 then the initial term in respect of that Solution would also end on 1 June 2022 and both ProScript Connect and My Local Pharmacy would be provided on an annual rolling basis with effect from 1 June 2022.

2.4 For the avoidance of doubt, subject to clause 15.4, the termination of a single Order Form shall not (in itself) result in the termination of the Agreement, or any other Order Form (or the provision of the relevant Service(s), Goods and/or Solution(s) provided thereunder).

2.5 Subject to clause 2.6 (or as expressly provided for in the Additional Terms), the parties agree to align the provision of any existing solutions, goods and services being provided (prior to the Commencement Date) by EHCP under separate contracts (the “**Existing Contracts**”) with the provision of the relevant Solution(s), Goods, and/or Services to be delivered under the Agreement, so that with effect from the Commencement Date the term of the relevant Existing Contracts shall (where necessary) be extended so as to run concurrently with the Term. The charges due under the Existing Contracts may be varied by EHCP in

accordance with clause 10.4 following what would have been the expiry of the original term of the relevant Existing Contract.

2.6 For the avoidance of doubt, if an Order Form includes any Solution(s), Goods, and/or Services which are the same as or which are intended to replace (for example, the replacement of ProScript with ProScript Connect) any solutions, goods or services which are provided under any Existing Contract(s) then it is agreed that with effect from the relevant Effective Date, the Existing Contract(s) shall (in respect of the relevant solution(s), goods, and/or services or, if there are no remaining solution(s), goods, and/or services to be delivered under the relevant Existing Contract(s), in its entirety) be deemed to have been terminated by mutual consent (and without any liability on the part of either party) and the relevant Solution(s), Goods and/or Service(s) shall be provided under the Agreement.

2.7 Notwithstanding clause 2.1, if EHCP has appointed an authorised reseller and the Customer is party to a separate agreement with the reseller in respect of products or services supplied by the reseller (the “**Reseller Agreement**”) and as at the Commencement Date the remaining term of the Reseller Agreement is less than 48 months then (save as the parties may expressly agree otherwise) the initial term of the Agreement shall align with the remaining term of the Reseller Agreement (following which the Agreement shall continue on a rolling basis as detailed in clause 2.1).

## 3. PURCHASING PROCEDURE

3.1 The Customer may: (i) purchase a licence to access and use a particular Solution; or (ii) to receive the relevant Goods and/or Service(s) (or any combination thereof) by entering into an Order Form (which is then incorporated into and forms part of the Agreement) with EHCP which shall specify the relevant:

3.1.1 Solution(s) which are to be licensed to the Customer and the type and extent of any Licence Restrictions which apply (for example, number of concurrent Authorised Users; number of locations; named Authorised Users etc.);

3.1.2 Service(s) which EHCP is to deliver (which may include, support services, hosting services, consulting services (such as training, consultancy, project management, design or development services) as appropriate);

3.1.3 Goods which EHCP is to deliver;

3.1.4 Charges payable in respect of the Solution(s), Goods and/or Service(s) to be provided; and

3.1.5 the period during which) EHCP will give access to the relevant Solution(s) and/or deliver the relevant Service(s) and/or Goods.

3.2 In respect of any Order Forms which are to be:

3.2.1 signed by the Customer; or

3.2.2 made available electronically and completed by the Customer (for example, by clicking a button marked ‘Accept’ or ticking the appropriate boxes),

then in each case this will constitute an offer by the Customer to purchase the relevant Solution(s), Goods or Service(s) as specified in the Order Form under these Master Terms and any or all of: (i) the execution and return of a signed copy of the Order Form by EHCP; (ii) an acknowledgement of the Order Form (including, one sent by email); (iii) the issuing of an invoice; or (iv) EHCP’s commencement of work pursuant to the Order Form, will mean that the Order Form is deemed to have been entered into so as to form part of the Agreement.

3.3 Without prejudice to the other terms of this clause 3, EHCP may appoint one or more authorised resellers in respect of

the relevant Solution(s), Goods and/or Service(s). If the Customer seeks to place an order with an authorised reseller then this shall be deemed an offer from the Customer and the terms of clause 3.2 shall apply regarding the acceptance of any such offer by EHCP (and for the avoidance of doubt, any provision by EHCP of any Solution(s), Goods or Service(s) will be subject to these Master Terms and the Agreement will be formed as between EHCP and the Customer).

3.4 For the avoidance of doubt, any standard terms and conditions of the Customer attached to, enclosed with, or referred to in any Order Form or otherwise shall not form part of the Agreement or otherwise govern the delivery of any Solution(s), Goods or Service(s).

3.5 Without prejudice to clause 3.4, if the Order Form contains any Additional Terms provided by EHCP then such terms shall be deemed incorporated into the Agreement (in respect of the Solution(s), Service(s) or Goods to which they relate) and to the extent that there is any conflict between the Additional Terms and these Master Terms, the Additional Terms shall prevail.

3.6 If the Customer wishes to reduce the scope of any Licence Restrictions (for example, by increasing the maximum number of concurrent Authorised Users) then it will notify EHCP identifying the relevant Solution(s) and the changes required and EHCP will inform the Customer as to any consequential changes to the Charges and if the Customer agrees to such changes then EHCP will reduce the Licence Restrictions and issue a revised invoice to the Customer accordingly.

3.7 For the avoidance of doubt, any quotation given by EHCP shall not constitute an offer, and is only valid for a period of twenty (20) Business Days from its date of issue.

#### **4. EHCP'S OBLIGATIONS**

4.1 EHCP shall use its reasonable endeavours to:

4.1.1 deliver the Service(s) and/or Goods and provide the Solution(s) in accordance (in all material respects) with the terms of the Agreement;

4.1.2 provide any Service(s) with reasonable care and skill;

4.1.3 meet any performance dates specified in the Agreement but any such dates shall be estimates only and shall not be of the essence in relation to the delivery of any Goods and/or Service(s) and/or provision of any Solution(s); and

4.1.4 observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Sites and that have been reasonably communicated to it, provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under the Agreement (including, any applicable Order Form(s)).

4.2 EHCP does not warrant that the use of any Goods, Service(s) and/or Solution(s) will be uninterrupted or error-free.

#### **5. SOLUTION(S) AND SERVICE(S)**

5.1 EHCP hereby grants the Customer a non-exclusive, non-transferable, limited, personal and revocable right during the term of the relevant Order Form(s) to access and use the relevant Solution(s) (and related EHCP Materials) detailed therein (in object code form only) from the Sites and in the manner contemplated in the Agreement.

5.2 The Solution(s) licensed to the Customer under the Agreement may include the provision of one or more Service(s) as detailed in the relevant Order Form(s).

5.3 The Customer may exercise the rights granted to it by virtue of clause 5.1:

5.3.1 through the Authorised Users;

5.3.2 only for the internal business purposes of the Customer; and

5.3.3 subject to any Licence Restrictions specified in the relevant Order Form.

5.4 In respect of any Solution(s) which is hosted by (or on behalf of) EHCP, it shall, subject to any planned down time, use its reasonable endeavours to make the relevant Solution(s) available for use by the Customer during Operational Hours. Should the relevant Solution(s) not be available during Operational Hours then the Customer may contact EHCP for support Service(s) as detailed in clause 9.

5.5 EHCP may apply (remotely or in person) any updates, upgrades or patches in respect of any Solution(s) from time to time. If any such application is scheduled to take place during Operational Hours and is likely to cause any disruption to the Customer's use of the same then EHCP shall endeavour to provide reasonable advance notice (but the Customer acknowledges this may not always be possible in cases of emergency).

5.6 EHCP may restrict or suspend access to or use of any Service(s) or Solution(s) if it needs to undertake any planned maintenance or if it (acting reasonably) feels this is necessary for security or clinical safety purposes.

5.7 In respect of the Service(s) to be provided by EHCP under the Agreement, the relevant Order Form shall set out:

5.7.1 the scope of the Service(s) to be provided;

5.7.2 any agreed timescales for the delivery of the Service(s) (and any agreed deliverables); and

5.7.3 the applicable Charges (including, whether the Service(s) are to be provided on a fixed price or a time and materials basis).

5.8 EHCP reserves the right to change (from time to time) any Service or Solution or Goods provided under the Agreement at any time provided that the performance of the relevant Service or Solution or efficacy of the relevant Goods is not materially adversely affected. Such changes may include:

5.8.1 introducing or removing features of a Service or Solution; or

5.8.2 replacing the relevant Service, Solution or Goods with an equivalent Service, Solution or Goods.

#### **6. SALES OF GOODS**

6.1 The Goods may be described in the relevant Goods Specification.

6.2 EHCP reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

6.3 EHCP shall ensure that each delivery of the Goods is accompanied by a delivery note which shows any relevant EHCP reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

6.4 EHCP shall deliver the Goods to the location set out in the Order Form or such other location as the parties may agree

(the “**Delivery Location**”) at any time after EHCP notifies the Customer that the Goods are ready.

6.5 Delivery of the Goods shall be completed on the Goods’ arrival at the Delivery Location.

6.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. EHCP shall not be liable for any delay (or failure) in delivery of the Goods that is caused by the Customer’s failure to provide EHCP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.7 If the Customer fails to accept or take delivery of the Goods, then except where such failure or delay is caused by EHCP’s failure to comply with its obligations under the Agreement in respect of the Goods:

6.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day following the day on which EHCP notified the Customer that the Goods were ready; and

6.7.2 EHCP shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6.8 If ten (10) Business Days after EHCP notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, EHCP may resell or otherwise dispose of part or all of the Goods.

6.9 The Customer shall not be entitled to reject the Goods if EHCP delivers up to and including five (5) per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

6.10 EHCP may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.11 EHCP shall use its reasonable endeavours to pass on to the Customer the benefit of any manufacturer’s warranty regarding the relevant Goods.

6.12 EHCP warrants that on delivery, the Goods shall:

6.12.1 conform in all material respects with the Goods Specification; and

6.12.2 be free from material defects in design, material and workmanship.

6.13 Subject to clause 6.14, if:

6.13.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.12;

6.13.2 EHCP is given a reasonable opportunity of examining such Goods; and

6.13.3 the Customer (if asked to do so by EHCP) returns such Goods to EHCP’s place of business at the Customer’s cost,

EHCP shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.14 EHCP shall not be liable for the Goods’ failure to comply with the warranty in clause 6.12 if:

6.14.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.13;

6.14.2 the defect arises because the Customer failed to follow EHCP’s instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

6.14.3 the defect arises as a result of EHCP following any drawing, design or Goods Specification supplied by the Customer;

6.14.4 the Customer alters or repairs such Goods without the written consent of EHCP;

6.14.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or

6.14.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.15 Except as provided in this clause 6, EHCP shall have no liability to the Customer in respect of the Goods’ failure to comply with the warranty set out in clause 6.12.

6.16 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by EHCP under clause 6.13.

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

6.18 Title to the Goods shall not pass to the Customer until EHCP receives payment in full (in cash or cleared funds) for the Goods and any other goods that EHCP has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.19 Until title to the Goods has passed to the Customer, the Customer shall:

6.19.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as EHCP’s property;

6.19.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.19.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on EHCP’s behalf from the date of delivery;

6.19.4 notify EHCP immediately if it becomes subject to any of the events listed in clause 15.6.3; and

6.19.5 give EHCP such information relating to the Goods as EHCP may require from time to time.

6.20 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.6.3, then, without limiting any other right or remedy EHCP may have:

6.20.1 the Customer’s right to use them in the ordinary course of its business ceases immediately; and

6.20.2 EHCP may at any time: (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any Sites or the premises of any third party where the Goods are stored in order to recover them.

## **7. CUSTOMER OBLIGATIONS**

7.1 The Customer shall:

7.1.1 not copy any Solution or merge or incorporate any Solution (or any part thereof) with or into any other software nor (subject to any rights under any applicable law that cannot be

excluded) attempt to disassemble, decompile, modify, adapt or reverse engineer any Solution;

7.1.2 not translate, modify, lease, rent, assign, transfer, disclose, loan, redistribute, sub-lease, sub-license or create derivative works from any Solution;

7.1.3 not use any Solution or any portion thereof as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution;

7.1.4 not use the Database outside of the relevant Solution;

7.1.5 maintain accurate and up-to-date records of the number and location of all copies of each relevant Solution;

7.1.6 complete in a timely and accurate manner any pre-installation checklists as may be provided by EHCP from time to time;

7.1.7 supervise and control use of the Solution(s) in accordance with the terms of the limited rights granted under the Agreement;

7.1.8 use the relevant Solution(s) and Service(s) in accordance with any user documentation, guides or training (and any other reasonable instructions received from time to time) provided by EHCP from time to time;

7.1.9 comply with any relevant Licence Restrictions, and the Customer shall not permit such Licence Restrictions to be exceeded at any time. For example, should the Licence Restrictions indicate a maximum number of concurrent users then the Customer shall not permit more Authorised Users to exercise, at any one time, the rights granted to it by virtue of clause 5 than the specified maximum number of concurrent users;

7.1.10 not allow any Solution(s) to become the subject of any charge, lien or encumbrance;

7.1.11 ensure that its employees, agents and other parties who are permitted to use the Solution(s) are notified of the relevant terms of the Agreement prior to such employee, agent or party using the Solution(s);

7.1.12 not sub-license, assign, novate, transfer, sell, lease, rent, charge or otherwise deal in or encumber any Solution(s) (in whole or in part);

7.1.13 not provide or otherwise make available the Solution(s) to any person other than its employees or as specified herein without EHCP's prior written consent;

7.1.14 not use any Solution(s) or Service(s) in order to provide a bureau service (or any similar service) on behalf of any third party;

7.1.15 not display the Solution(s) (or any EHCP Materials) on a public bulletin board, ftp site, worldwide web site, chat room or by any other unauthorised means;

7.1.16 not use the Solution(s), Goods or any Service(s) for any immoral or illegal purpose or for any other purpose which may be determined by EHCP (acting reasonably) to be threatening, abusive or harmful; and/or

7.1.17 immediately upon the date of termination or discontinuance of its right to use the same, for whatever reason, destroy all copies of the Solution within its possession or control.

7.2 The Customer shall:

7.2.1 co-operate with EHCP in all matters relating to the provision of any Service(s) and its use of the relevant Goods and/or Solution(s) (including, providing such assistance (and access, including, remote access, to the relevant Sites, records

and/or systems) as EHCP may reasonably require in connection with its delivery of any Solution(s), Goods or Service(s));

7.2.2 complete any preparation activities that EHCP may require promptly and in accordance with any reasonable timescales so as to enable EHCP to deliver, and the Customer to receive, any Solution(s) and/or Service(s);

7.2.3 provide to EHCP, in a timely manner, such In-put Material and other information as EHCP may require (and ensure that the same is accurate in all material respects);

7.2.4 not cancel any direct debit (or amend its bank details) in relation to any payments due under the Agreement without giving reasonable advance notice to EHCP (and if the Customer fails to comply with this obligation then it shall (without prejudice to its other rights and remedies) pay EHCP a £100 administration charge);

7.2.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to its receipt of any Service(s), its use of the relevant Goods and/or Solution(s), the use by EHCP of any In-put Material and the use by EHCP of any of the Customer's equipment, in all cases before the relevant start date;

7.2.6 promptly contact EHCP's support desk to register any faults with regard to any Service(s), Goods or Solution(s);

7.2.7 accept and install all maintenance releases, patches and updates as required by EHCP from time to time in respect of the relevant Solution(s);

7.2.8 promptly notify EHCP as soon as it becomes aware of: (i) any unauthorised use of any Solution(s) or Service(s); or (ii) any errors in respect of any Solution(s) (including, the Database) or Service(s);

7.2.9 comply with all applicable laws (and the Acceptable Use Policy) in relation to its receipt or use of any Service(s), Goods and/or Solution(s), including, any professional licences and permissions (and shall ensure that its users do the same);

7.2.10 ensure that it has all necessary rights, licences and permissions (including, a licence from UBM (UK) Limited) to use any PIP code data (and any other proprietary data related to pharmaceutical products) in connection with its use of any relevant Solution(s);

7.2.11 comply with such generally applicable security policies as EHCP may introduce from time to time;

7.2.12 ensure that it has in place at all times, on any device used to access any Service(s) or Solution(s) 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;

7.2.13 ensure that it implements and enforces reasonable security measures so as to minimise the risk of any unauthorised access to any Service(s), Goods and/or Solution(s) (including enforcing appropriate password and other login security measures);

7.2.14 have in place and operate data backup and archiving procedures in accordance with good industry practice; and/or

7.2.15 have data backups and archives of the Customer Data available to it at all times in other locations in accordance with such data backup procedures.

7.3 The Customer shall (and shall ensure that in respect of each of the Sites it shall):

7.3.1 have in place an IT environment that meets any relevant Minimum Specification identified for it to properly receive and use the relevant Solution(s) and Service(s); and

7.3.2 maintain all necessary network connections and environments for it to: (i) properly receive and use the relevant Solution(s), Goods and/or Service(s); (ii) access and use the full functionality of the relevant Solution(s) (including, in relation to the receipt of electronic prescriptions), and (iii) allow remote access to the relevant Solution(s), Goods and/or Service(s) as required to enable to provision of any support and maintenance (and any other diagnostic) services.

7.4 The Customer shall be responsible for the security of any and all data it stores, enters or processes using any Service(s), Goods and/or Solution(s) and for taking appropriate backup copies of its data (save to the extent that such backup services are being expressly provided by EHCP as detailed in the relevant Order Form).

7.5 The Customer:

7.5.1 accepts responsibility for the selection of the Solution(s), Goods and/or Service(s) to achieve its intended results and acknowledges that none of the Solution(s), Goods and/or Service(s) have been developed to meet the individual requirements of the Customer; and

7.5.2 agrees that the Solution(s), Goods, Service(s) and/or any related EHCP Materials are intended to support, not substitute for, the expertise and professional judgement of pharmacists or other healthcare professionals and that any data is provided on the basis that the pharmacist will retain responsibility for deciding whether to (and what to) dispense.

7.6 If EHCP's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (its agents, subcontractors, consultants or employees), EHCP shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay (and any timescales agreed between the parties will be revised accordingly).

## 8. SERVICE SPECIFIC TERMS

8.1 The appropriate terms set out in this clause 8 shall apply in the event that EHCP is providing one or more of the Solution(s) or Service(s) detailed below under the Agreement. In order to use some or all of the Services, Goods or Solutions detailed in this clause 8, the Customer may be required to maintain a licence with EHCP for ProScript Connect. Where this is the case and the Customer fails to maintain such a licence (for whatever reason, including termination by EHCP in accordance with the Agreement), the Customer's rights to use the relevant additional Services, Goods or Solutions shall immediately cease without liability to EHCP. No refund shall be due to the Customer for any Charges already paid for the Services, Goods or Solutions.

### 8.2 Pharmacy Access:

8.2.1 The Customer shall not access or use the Pharmacy Access Solution for the purposes of operating a distance selling chemist operation, being a pharmacy business which provides pharmaceutical services from distance selling premises (as defined in the NHS (Pharmaceutical Services) Regulations 2012).

8.2.2 The Customer shall ensure that only persons with defined roles (including, the pharmacist(s)) are permitted to access the Pharmacy Access Solution.

8.2.3 The Customer shall notify EHCP as to the identity of any "**Participating Practices**" (being a GP practice using a

compatible clinical system which has consented to participate in the delivery of the Pharmacy Access services) so that EHCP may endeavour to arrange for the relevant clinical system to be configured so as to enable the Pharmacy Access Solution.

8.2.4 The Customer acknowledges that EHCP shall not be responsible for:

8.2.4.1 securing the consent of any GP practice to enable the Pharmacy Access Solution;

8.2.4.2 the accuracy, completeness or suitability of data submitted by a Participating Practice to the Customer; or

8.2.4.3 supervising the adequacy of data submitted to the Participating Practices by the Customer and any impact this may have on their ability to request repeat prescriptions.

8.2.5 The Customer shall ensure that at all times throughout the Term it remains compliant with the NHS Information Governance Toolkit in order to use the GP Record Viewer capability within the Pharmacy Access Solution.

8.2.6 The Customer acknowledges that in relation to the Medicines Manager and GP Record Viewer elements of the Pharmacy Access Solution that the relevant Participating Practices would be Data Controllers and that EHCP where acting as a Data Processor on their behalf would be required to comply with the lawful instructions of the relevant Participating Practice. Therefore, EHCP is entitled to immediately restrict the Customer's access to any Personal Data if instructed to do so by the relevant Participating Practice. The Customer acknowledges that EHCP is not responsible for, and cannot, maintain the consent of the Participating Practices to allow the relevant Services to be provided to the Customer, and as a result EHCP shall in no way be liable in the event that a Participating Practice withdraws such consent.

8.2.7 The Customer shall ensure that it has appropriate consent from each patient before viewing such person's medical record(s), and should the Customer fail to obtain such consent then they shall not access such person's medical record.

### 8.3 My Local Pharmacy

8.3.1 The Customer shall:

8.3.1.1 promptly respond to any "**Request**" (being a request for a repeat prescription sent by a patient using the My Local Pharmacy mobile application) and in accordance with any documentation supplied by EHCP (from time to time); and

8.3.1.2 undertake all relevant checks and procedures (whether enforced by law, regulation or industry practice) prior to the provision of any medicine to a patient following a Request.

8.3.2 In the event that the Customer sends a patient (or group of patients) a notice or a message via the My Local Pharmacy mobile application, it shall ensure that message and/ or notice shall: (i) not be blasphemous, defamatory or indecent; (ii) comply with all relevant laws, regulations and codes of practice; (iii) not infringe (or be likely to infringe) any third party Intellectual Property Rights; and (iv) comply with EHCP's reasonable instructions, including, those set out in any documentation supplied by EHCP.

### 8.4 Asset Management Tool

8.4.1 The Customer acknowledges that EHCP may (from time to time) remotely access the relevant assets where necessary for diagnostic purposes.

## 8.5 Hardware Maintenance

8.5.1 Subject to clause 8.5.4, EHCP shall use its reasonable endeavours to provide maintenance services in respect of the hardware specified in the relevant Order Form (the “**Equipment**”), during Operational Hours.

8.5.2 EHCP does not warrant that all Equipment will be capable of being repaired should a fault arise and if it is unable to rectify the issue then it will notify the Customer and it may offer to replace the relevant piece of Equipment (at the Customer’s expense (save where the relevant piece of Equipment is covered by a manufacturer’s warranty and EHCP is able to cover such costs under the same)).

8.5.3 The Service is provided on the basis that the Equipment is free of any faults and in good working order as at the date of the relevant Order Form, if this is not the case then any Services provided by EHCP in order to rectify the same shall be undertaken at an additional cost on a time and materials basis.

8.5.4 If the Equipment the Customer has ordered from EHCP includes a laser printer then EHCP shall only provide maintenance services pursuant to this clause 8.5 in respect of the same during the Term and until the earlier of: (i) the Threshold Number of Prints being printed; or (ii) 4 years from date of delivery of the printer. Following either event, EHCP may offer to replace the relevant piece of Equipment (at the Customer’s expense) thereby starting a new maintenance period. If no such replacement is offered (and accepted) then all maintenance services in respect of the relevant printer shall immediately cease.

## 8.6 Third party solutions and services

8.6.1 In the event that EHCP is providing a third party solution or data to the Customer (including, anti-virus, remote backup and/or asset management software), then the Customer acknowledges that such use may be subject to the relevant third party’s terms which must be accepted before the third party solution or data may be accessed or used by the Customer (such additional terms will be made available to the Customer via the relevant Order Form).

## 8.7 Constant Connect Service

8.7.1 For the purposes of the Constant Connect Service:

- 8.7.1.1 **3G:** means the third generation of mobile telecommunications technology used to transfer data;
- 8.7.1.2 **4G:** means the fourth generation of mobile telecommunications technology used to transfer data;
- 8.7.1.3 **Aerial:** means an external, outdoor, device capable of receiving a 3G signal;
- 8.7.1.4 **Line:** means the digital subscriber line (which may be an ADSL or a VDSL line as appropriate), being the type of data communications technology used for connecting to the internet;
- 8.7.1.5 **N3:** means the national broadband network for the English National Health Service which securely links acute hospitals and GP surgeries in England and Scotland;
- 8.7.1.6 **Router:** means the router supplied by EHCP in order to perform the Services which is capable of providing both a 3G and 4G connection; and
- 8.7.1.7 **Service Commencement Date:** means the date the Router is installed at the relevant Site(s).

8.7.2 EHCP shall use its reasonable endeavours to provide the Customer with a service designed to enable the Customer to continue to access certain services (as detailed below at clause 8.7.3) in the event of a failure in connectivity to N3 over the Customer’s Line connection. EHCP shall supply, install and maintain, as part of this Service, a Router which it will connect to the Customer’s current N3 router. In the event of failure of the Line the Router is designed to take over and provide limited connectivity. Once the Line functionality is restored the system automatically reverts to use of the Line and the Router connection will drop.

8.7.3 The Services are designed to allow the Customer in the event of a Line failure to:

- 8.7.3.1 access limited functionality over the N3;
- 8.7.3.2 download EPS Release 2 prescriptions and upload dispense notifications and financial claims;
- 8.7.3.3 transmit product orders through a broadband ordering route to supported suppliers;
- 8.7.3.4 access other support services provided by EHCP including remote access and diagnostics services; and
- 8.7.3.5 automatically have their connection switched back from the Router to the Line once Line functionality is restored.

8.7.4 The Router shall provide a 3G connection but it may also be capable of providing a 4G connection. EHCP may, at its discretion, offer a 4G connection as part of the Services, though it shall be under no obligation to do so.

8.7.5 EHCP shall use its reasonable endeavours to:

- 8.7.5.1 liaise with the Customer to schedule the installation of the Services at the relevant Site(s); and
- 8.7.5.2 preconfigure, deliver and install the Router and a SIM card (and, where relevant, an Aerial) at the relevant Site(s).

8.7.6 For the avoidance of doubt, any Router(s) provided by EHCP in connection with this Service shall at all times remain the property of EHCP (with risk in the same passing to the Customer upon delivery). Upon termination of the relevant Service, EHCP shall arrange for a secure courier to collect the Router(s) from the Site(s) and the Customer shall promptly deliver up the same. Risk in any Aerial(s) installed in connection with this Service shall pass to the Customer on installation and title shall pass on payment of the relevant charges.

8.7.7 The Customer acknowledges and agrees that:

- 8.7.7.1 the Constant Connect Service is not intended to provide a service equivalent to that available via a Line connection and that the Customer’s access to N3 may be subject to disruption and limitations; and
- 8.7.7.2 EHCP has no control over mobile network coverage, availability or bandwidth and can offer no performance assurances in respect of this Service.

8.7.8 The Customer shall:

- 8.7.8.1 only use the Router to access the limited services detailed in clause 8.7.3. If the Customer uses the Router for any other purpose then EHCP reserves the right to charge the Customer for any additional data charges incurred. For the avoidance of doubt breach of this clause shall be deemed a material



breach incapable of remedy which gives EHCP the right to terminate the relevant Order Form and/or the Agreement;

- 8.7.8.2 not give or lend the Router to any third party or otherwise deal with the Router as if it was the Customer's own property except for using it in accordance with the terms of the Agreement;
- 8.7.8.3 ensure that it has obtained (and maintains at all times) appropriate authorisation from any relevant authority to access the N3 (or any equivalent) network and that it at all times acts in accordance with any terms of use governing access to or use of the same (as may be updated from time to time); and
- 8.7.8.4 ensure that the relevant Site(s) can access a guaranteed 3G signal of the required strength. For the avoidance of doubt it is the Customer's responsibility to ensure the relevant Site(s) have such access, which could involve the Customer arranging for an Aerial to be installed at the Sites. EHCP shall not be held responsible if the Customer cannot access the Services due to a failure to meet its obligations in this clause 8.7.8.4.

## 8.8 Pharmacy Broadband

8.8.1 EHCP will use its reasonable endeavours to provide the Customer with an internet access service over a compatible access line (the nature of that line depending on the geographical area where the Service is to be provided).

8.8.2 EHCP will provide the Pharmacy Broadband Service in partnership with a third party telecoms services provider (including, BT) and the Customer's receipt and use of the relevant Services shall (in addition to the terms of the Agreement) be subject to such terms of use as may be notified to it from time to time by EHCP (or the relevant third party direct).

8.8.3 The Customer may use the Pharmacy Broadband Service subject to such usage allowance as may be detailed in the relevant Order Form.

8.8.4 Upon receipt of an Order from the Customer for the Pharmacy Broadband Service, EHCP may (either directly or via the relevant third party service provider) undertake such preliminary checks as it feels are reasonably required in order to determine the suitability of the relevant Site(s) to receive the Service. If any Site visit or other preparatory works should identify an issue with regard to the delivery of the Pharmacy Broadband Service then EHCP may (at its discretion) terminate the delivery of the Service to the relevant Site(s) without liability to either party.

8.8.5 If, for whatever reason, the Customer should cease to have an appropriate access line available at a Site then EHCP may suspend or terminate the delivery of the Pharmacy Broadband Service in respect of the relevant Site(s).

8.8.6 For the avoidance of doubt, EHCP shall not be liable for any problems with the Pharmacy Broadband Service attributable to issues with any access line or any other IT infrastructure provided by any third party.

8.8.7 The Customer acknowledges that:

- 8.8.7.1 any use made of the internet via the Pharmacy Broadband Service is entirely at its own risk; and
- 8.8.7.2 the Pharmacy Broadband Service cannot be used to call the emergency services (by dialling 999 or 112) and the Customer should ensure that it has alternative means of contacting the same

(including, through the use of the fixed telephone number).

## 8.9 Electronic Prescription Service (EPS)

8.9.1 EHCP will provide those elements of the Electronic Prescription Service set out in the relevant Order Form. For the avoidance of doubt, save as expressly provided for below, the terms set out in this clause 8.9 shall apply equally to the electronic prescription service as provided in England and to any equivalent service(s) which may be provided in any other country within the Territory and references to the EPS shall be deemed to refer to the relevant service as appropriate.

8.9.2 The Customer's access to and use of the EPS is dependent upon it having and maintaining at all times an appropriate connection to N3 (or an equivalent).

8.9.3 Prior to the EPS going-live, EHCP will need (either directly or acting via the relevant network services provider) to:

- 8.9.3.1 install a dedicated analogue line and relevant equipment; and
- 8.9.3.2 activate the Service (which the Customer acknowledges may require agreement from the relevant network services provider and any relevant regulatory authority).

8.9.4 If any equipment needs to be installed at the Site(s), EHCP may give the Customer advice on preparing the relevant premises. The Customer shall ensure that it provides a suitable location (and any necessary utilities or facilities) for any equipment to be installed by EHCP and EHCP shall not be liable for any failure or delay in providing the EPS as a result of the Customer's failure to provide the same. Where the Customer is installing equipment which is necessary to provide or receive the EPS (whether supplied by EHCP or a third party) EHCP will notify the Customer of the date when the EPS is anticipated to be available and the date by which such installation must have taken place.

8.9.5 The scope of the Electronic Prescription Service is as detailed in the relevant Order Form, but which will typically include the following elements:

- 8.9.5.1 asset management, anti-virus, remote control, patch management, software distribution and licence management) on all client machines;
- 8.9.5.2 remote backup of Customer Data held within ProScript Connect;
- 8.9.5.3 (in respect of the service in England only) message handling service/message broker;
- 8.9.5.4 use of the Router; and
- 8.9.5.5 helpdesk support (each Business Day between 08.30 to 18:00 and every Saturday from 09:00 to 17:00).

8.9.6 Without prejudice to the obligation to meet the Minimum IT Specification, the Customer shall ensure that its system includes appropriate anti-virus protection (whether purchased via EHCP or otherwise) so as to minimise the risk of a virus entering the N3 system (and the Customer shall ensure that any such anti-virus software is active and kept up to date at all times and that anti-virus scans are run on a regular basis).

8.9.7 If the Customer requires routers to be configured as a virtual private network then an upgrade to the standard Router may be required (which will need to be configured to meet the Customer's individual requirements and the Customer acknowledges that additional charges may apply).

8.9.8 The Customer shall ensure:

8.9.8.1 (in respect of relevant Service(s) provided in England only) availability of a 'smart card' and PIN number, with the appropriate roles added, to connect to EPS on installation; and

8.9.8.2 it achieves (and maintains) a satisfactory (green) NHS Information Governance Toolkit assessment.

8.9.9 If EHCP is providing a remote backup service in respect of the relevant Customer Data then the Customer shall:

8.9.9.1 maintain its information systems to which the backups relate ("System") such that the remote back up software operates correctly;

8.9.9.2 ensure that the System remains connected (as specified by EHCP) and operational at all times in order to allow the remote back up software to operate correctly;

8.9.9.3 ensure that the data backups made each evening do not exceed 1Gb in compressed form and that only PMR data is backed-up;

8.9.9.4 ensure that only authorised users within the Customer hold the decryption key required to recover data from a back-up;

8.9.9.5 be responsible for restoring its data (EHCP accepts no liability for any inaccuracies, errors, overwrites or misuse of such back-ups); and

8.9.9.6 comply at all times with any relevant third party terms of use regarding access to and use of any remote back up software.

8.9.10 If EHCP is providing a remote backup service in respect of the relevant Customer Data then EHCP shall store the latest copy of the relevant backup Customer Data for a period of not less than five (5) days from the date of termination of the Service.

## 8.10 Pharmacy Buyer

8.10.1 EHCP shall provide the Pharmacy Buyer package (which consists of a central ordering module and a warehousing module so as to enable the Customer to hold and control centrally the 'buying rules' it wishes to apply across its branch network), and it will install and set-up the same in accordance with its standard processes.

8.10.2 If the Pharmacy Buyer package includes the provision of a scanner (as detailed in the Order Form) then it will be Goods for the purposes of the Agreement.

8.10.3 For the purposes of this clause 8.10, the term "Data" refers to data stored by the Customer in drug transaction records but it does not include any Personal Data.

8.10.4 The Customer acknowledges that EHCP may collect Data for the purposes of providing aggregated statistical data regarding the retail pharmacy market to third party customers. For the avoidance of doubt, EHCP shall not extract or provide any Personal Data pursuant to this clause.

## 8.11 Multepos

8.11.1 For the purposes of the Agreement, the Multepos solution is a Solution and the related hardware are Goods.

8.11.2 The Customer may use the Multepos Solution for the purposes of scanning counter line pharmacy products and referencing them against a pricing/stock database for sale and replenishment purposes (including, the management of general sales list and pharmacy lines and prescription charges). For the

avoidance of doubt, this does not include prescription only medicines.

## 8.12 Robot/EMAR API

8.12.1 EHCP shall configure the Robot/EMAR API so as to enable the bi-directional flow of the relevant Customer Data to and from ProScript Connect in relation to the Customer's nominated third party provider of robot/electronic medicine administration record services (as detailed in the Order Form).

8.12.2 The Customer Data will be transferred from ProScript Connect (where it is held at a local level) to the relevant third party solution. It is the Customer's responsibility to ensure that it has the necessary agreements in place with the third party service provider regarding the EMAR service (including, covering the relevant data privacy requirements).

## 8.13 Prescription Collection Points API

8.13.1 EHCP may configure the PCP API so as to enable the bi-directional flow of the relevant Customer Data to and from ProScript Connect in relation to the Customer's nominated third party provider of a prescription collection point solution. (as detailed in the Order Form).

8.13.2 The Customer Data will be transferred from ProScript Connect (where it is held at a local level) to the relevant third party solution. It is the Customer's responsibility to ensure that it has the necessary agreements in place with the third party service provider regarding the prescription collection point service (including, covering the relevant data privacy requirements; ensuring the security of the relevant locker/delivery system; patient identification solution and systems to ensure that the correct medications are released to the right individual).

## 8.14 Hardware Refresh

8.14.1 In the event that, at any time during the Term, the Customer places an order for a Hardware Refresh (which is accepted by EHCP) then this will have the effect of creating, in respect of ProScript Connect, a new 48 month initial term with effect from the date of the relevant hardware order being accepted by EHCP in accordance with the terms of the Agreement.

By way of example only, if a customer ordered ProScript Connect and it went live on 1 June 2018 then the initial term of the Agreement would, in the ordinary course, end on 1 June 2022. If, however, that customer ordered a Hardware Refresh on 15 March 2021 then the initial term of the Agreement would be automatically revised so as to end on 15 March 2025 (and it would then continue thereafter on an annual rolling basis unless or until terminated in accordance with the terms of the Agreement).

## 8.15 FMD Service

8.15.1 The FMD Service is designed to assist community pharmacies in Northern Ireland in complying with the requirements of the Falsified Medicines Directive (FMD) 2011/62/EU (as may be implemented into local legislation).

8.15.2 The FMD Service will comprise the following elements:

8.15.2.1 EHCP facilitating the on-boarding and registration of the Customer with the relevant UK Medicines Verification System provider (for the avoidance of doubt, access to or use of the National Medicines Verification System (NMVS) will be subject to acceptance by the Customer of such separate terms of use as may be required by the UK Medicines Verification System provider at the relevant time);

8.15.2.2 EHCP facilitating the installation on the Customer's system of the relevant electronic

certification (as provided by the UK Medicines Verification System provider);

8.15.2.3 transmission of the UI data to the NMVS and receipt of information from the NMVS as to the current status of the relevant product(s);

8.15.2.4 FMD scanning feedback will be integrated within ProScript Connect, notifying the Customer of verification and decommissioning errors (together with expiry date checks) as identified by the NMVS; and

8.15.2.5 FMD reporting functionality will be available within ProScript Connect, enabling the Customer to create reports relating to its FMD activities.

8.15.3 In addition, the Customer will be able to purchase from EHCP scanners which are designed to be capable of reading the unique identifier (UI) encoded via a 2D data matrix (barcode) to be applied by the relevant manufacturers.

8.15.4 For the avoidance of doubt, the Customer will still need to undertake a visual inspection of the relevant product(s) to ensure that any tamper proof seals remain intact.

#### 8.16 Hub and Spoke

8.16.1 These terms shall apply to any Customer that uses any element of the Hub and Spoke Solution, regardless of whether or not the Hub and Spoke Solution is detailed on any Order Form between EHCP and the Customer.

8.16.2 The Customer shall be responsible for ensuring that the actual underlying hub and spoke service it is a party to and which is being administered via the Hub and Spoke Solution, is fit for purpose and in particular that it:

8.16.2.1 complies with all applicable laws and regulations (including, the Medicines Act 1968 and The Human Medicines Regulations 2012 (as may be updated or replaced from time to time)); and

8.16.2.2 is properly administered with appropriate risk assessments, audits, record keeping, training and guidance (in accordance with any regulations or guidance published by any applicable regulatory body (from time to time)).

8.16.3 EHCP gives no warranty as to the accuracy of any prescription ordered, prepared or dispensed using the Hub and Spoke Solution and it is the sole responsibility of the Customer to ensure that prescriptions are checked and properly dispensed to patients.

8.16.4 The Customer must ensure that it has appropriate backup systems (whether manual or otherwise) in place in the event that the Hub and Spoke Solution is unavailable to the Customer for any reason. EHCP accepts no liability for any claims or losses arising out of the Hub and Spoke Solution being unavailable to the Customer for any period of time.

8.16.5 Unless provided by EHCP to the Customer in accordance with the Solution(s), Goods and/or Service(s) ordered in the Order Form, the Customer shall be responsible for ensuring that it has in place (and that it properly maintains) all appropriate hardware and network connectivity necessary to ensure that it can: (i) properly receive and use the Hub & Spoke Solution; (ii) access and use the full functionality of the Hub & Spoke Solution (including, in relation to the receipt of electronic prescriptions), and (iii) allow remote access by EHCP to the relevant the Hub & Spoke Solution as it may require to enable to provision of any support and maintenance (and any other diagnostic) services

#### 8.17 ProScript Connect Alerts

8.17.1 EHCP may from time to time provide drug related or other alerts (each an “Alert”) to the Customer that will appear within ProScript Connect (as ‘pop ups’ or as otherwise determined by EHCP) that contain information or guidance in respect of the relevant drug or service being dispensed or provided by the Customer. The Alerts may or may not be sponsored by third parties (and this will be indicated on the relevant Alert).

8.17.2 The Alerts are for information purposes only and may not always be relevant. The Customer must use its own clinical judgment as to whether (or not) the content of an Alert is relevant to their customer/patient and shall at all times remain responsible and liable for the dispensing of medications and/or advice to customers/patients.

8.17.3 EHCP shall have no liability to the Customer whatsoever in relation to the content or placement of the Alerts or any subsequent actions taken by the Customer in relation to, or based on the contents of, the Alerts. If the Customer has an issue with any Alert then it should address those concerns to the relevant author.

8.17.4 EHCP shall be entitled to monitor, collect and use analytical data in relation to the Alerts including in relation to how often Alerts appear and actions taken by the Customer in response to the Alerts (i.e. acknowledge, printed, URLs clicked on or dismissed) and this data may be shared with the relevant Alert sponsor(s).

#### 8.18 Delivery Optimisation Barcode Services

8.18.1 EHCP may from time to time work with third parties that provide delivery optimisation services for the delivery of prescriptions to an individual’s home (each a “Delivery Partner”). As part of such services, EHCP may agree to enable functionality within ProScript Connect that allows the Customer to print 2D barcodes and/or QR codes (the “Codes”), as relevant, that contain information required by the relevant Delivery Partner(s), including, address details for the relevant recipient (the “Code Services”).

8.18.2 If the Customer wants to take the Code Services then it will confirm in writing to EHCP:

8.18.2.1 the name of the relevant Delivery Partner(s) that the Customer wishes to work with; and

8.18.2.2 confirmation to EHCP to enable the Code Services at all of the Customer’s Sites.

8.18.3 Subject to the Delivery Partner nominated under clause 8.18.2 being verified by EHCP as being a third party it is working with, EHCP will make the Code Services available to the Customer in accordance with the terms of this clause 8.18.

8.18.4 The Customer shall:

8.18.4.1 be responsible for its own direct contract with the Delivery Partner(s);

8.18.4.2 ensure that it has the appropriate software and hardware necessary to receive the Code Services (including relevant hardware necessary to print the codes); and

8.18.4.3 only use the Codes and Barcode Services for the purposes of receiving services from the relevant Delivery Partner(s).

8.18.5 EHCP shall use its reasonable endeavours to deliver the Code Services with reasonable care and skill however, EHCP shall have no liability to the Customer in relation to:

- 8.18.5.1 the information contained within the Codes being incorrect, incomplete or incompatible with the Delivery Partner's software or hardware;
- 8.18.5.2 the services being provided by the Delivery Partner(s) to the Customer (and/or its patients/customers); and/or
- 8.18.5.3 any use of the Codes by the Customer for any other purpose other than taking services from the relevant Delivery Partner(s).

8.18.6 The Customer agrees and acknowledges that the Codes will include Personal Data and that the Customer's use of the Code Services shall be deemed to be a written instruction from the Customer to EHCP to share such Personal Data with the relevant Delivery Partner(s) for the purposes of clause 14.

8.18.7 EHCP reserves the right to immediately terminate the Code Services, in relation to all or any Delivery Partner(s), acting in its absolute discretion, without notice and without liability to the Customer.

#### 8.19 RTEC Exchange

8.19.1 EHCP will endeavour to make the RTEC Exchange available and active for all ProScript Connect Customers. By using the RTEC Exchange the Customer is deemed to have accepted the terms of this clause 8.19.

8.19.2 The RTEC System is provided by NHS BSA and the Customer may be required to accept NHS BSA conditions of use before access to the RTEC System is granted. EHCP gives no warranty or guarantee that by providing the RTEC Exchange, the Customer will actually be able to use the RTEC System.

8.19.3 The RTEC Exchange is made available on an 'as is' basis and no representations, conditions, warranties or other terms of any kind are given in respect of it, including in terms of its performance or availability.

8.19.4 The Customer assumes sole responsibility for accessing the RTEC System and/or RTEC Exchange, and any results obtained from the use of the RTEC Solution and/or RTEC Exchange and for any conclusions drawn or actions taken in relation to any such use.

8.19.5 To the extent that any information the Customer shares with the RTEC System via the RTEC Exchange contains Personal Data, this shall be deemed to be a written instruction from the Customer to EHCP for the purposes of clause 14.

#### 8.20 Transaction Data

8.20.1 The Customer may choose to sell Transaction Data in exchange for credits against the Charges equal to the Transaction Data Credit.

8.20.2 The Supplier will collect the Transaction Data on your behalf from the Sites via the Solution (and any dispensing data will be anonymised). The Transaction Data may be used by the Supplier, and/or made available for use by third party recipients, each on a perpetual non-exclusive basis.

8.20.3 The Customer may give notice to the Supplier to cease the provision of the Transaction Data at any time by giving not less than one month's notice (to take effect from the end of the following calendar month). The Supplier may choose to cease (or suspend) collecting the Transaction Data at any time. The Transaction Data Credits will cease to apply following cessation

(or during any suspension) of the collection or service for any reason.

8.20.4 The Supplier may combine the Transaction Data with that of other pharmacies or sources and use cases may include the development of services for marketing, sales and promotion and market research within the health care and pharmaceutical industries.

8.20.5 The Supplier shall apply the Transaction Data Credit pro rata on a quarterly basis per Customer Site in respect of the collection of the data. The credit due will be calculated on a pro rata basis for each complete month of supply, should the data only be supplied for part of each quarter.

8.20.6 Data Quality Standards: from time to time the Supplier may notify the Customer of certain quality criteria which must be met in order for the credits to apply – this may relate to the number of days per week the Customer Site is trading and/or a minimum volume of transactions. If these standards are not met then the Supplier may revise the rate of the Transaction Data Credits on a fair basis and it will notify the Customer accordingly.

8.20.7 For the avoidance of doubt, if the Customer undergoes a change of control during the Term then the Transaction Data service will continue to be delivered in respect of the relevant Site(s) unless or until the service is terminated in accordance with these Master Terms. If the Customer acquires another Site then it will inform EHCP and: (i) if that Site was previously providing Transaction Data then it will continue to do so unless or until the Customer gives notice; or (ii) if that Site was not previously providing Transaction Data but the Customer is then it will automatically be included within the scope of this Service and the Transaction Data Credit revised accordingly.

#### 8.21 Pharmoutcomes

8.21.1 EHCP shall configure an interface within Proscript Connect so as to enable the Customer to manage the exchange of data to and from ProScript Connect with the Pharmoutcomes solution.

8.21.2 Data relating to patients will be transferred from Proscript Connect (where it is held at a local level) to the Pharmoutcomes Solution (where it is understood it will be validated via the NHS's Personal Demographic Service (PDS) functionality by the Customer utilising the same). It is the Customer's responsibility to ensure that it has the necessary agreements in place regarding the Pharmoutcomes service which is subject to its own terms of use (including, in respect of access to the PDS function).

#### 8.22 Microsoft

8.22.1 If EHCP acts as a reseller of any Microsoft solutions (including, Office, Sequel Server and/or Windows Server software, as detailed in the relevant Order Form or otherwise) then use of the same by the Customer is subject to the terms of the Microsoft Customer Agreement (MCA): (<https://www.microsoft.com/licensing/docs/customeragreement>)

8.22.2 The terms of the MCA (including the relevant product specific terms accessible via the link above) are incorporated into the Agreement by reference and the Customer shall ensure that its use of the relevant solutions is in compliance with the same.

### 9. SUPPORT

9.1 EHCP shall, during the Term, use its reasonable endeavours to provide the support Service(s) (including, remote support services) in accordance with its standard support processes and procedures (and, where relevant, as more fully detailed in the Order Form).

9.2 The Service(s) and Solution(s) may, from time to time, be unavailable due to planned maintenance activities. EHCP shall, where practicable communicate in advance the details of any planned maintenance of the relevant Service(s) or Solution(s) to the Customer.

9.3 EHCP shall only provide support Service(s) in respect of its most current version of the relevant Solution(s) and the preceding two (2) versions.

## **10. CHARGES AND PAYMENT**

10.1 In consideration of the provision of the relevant Service(s), Goods and/or Solution(s) by EHCP, the Customer shall pay the Charges as set out in the relevant Order Form(s) (as may be amended in writing from time to time in accordance with the terms of the Agreement).

10.2 Save as expressly provided for in the relevant Order Form, all Charges are payable in advance (with frequency being detailed in the Order Form (or in the absence of any such detail, annually in advance)) and on the dates specified in the Order Form (or in the absence of any such detail, on the date on which the relevant Order Form is entered into and each anniversary thereof). Where applicable the Transaction Data Credit will be applied in respect of the Charges on a quarterly basis as detailed in the relevant Order Form or as otherwise notified by EHCP from time to time.

10.3 In the event that an Order Form provides for payment upon receipt of an invoice, then the Customer shall pay each undisputed invoice in full and in cleared funds, within thirty (30) days of the date of such invoice to a bank account nominated in writing by EHCP (save that, if EHCP appoints an authorised reseller (as detailed in clause 3.3) then it may (at its discretion) instruct the Customer to pay the relevant Charges to the relevant reseller rather than directly to EHCP (and it may cancel any such instruction at any time by notice in writing)).

10.4 Subject to any fixed pricing agreed in the relevant Order Form, EHCP may adjust the Charges on an annual basis during the Term. EHCP shall notify the Customer in writing of any change in the Charges.

10.5 For the avoidance of doubt all Charges are exclusive of VAT, which EHCP shall add to its invoices at the appropriate rate.

10.6 EHCP may increase the price of any Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to EHCP that is due to any factor beyond the control of EHCP (including, any increase in price imposed by the relevant third party manufacturer).

10.7 EHCP may, by giving not less than three (3) months' notice to the Customer, change the basis on which it determines the Charges payable under the Agreement so as to adopt a model which includes an element of transactional charges rather than a solely flat fee model. If the Order Form includes details of the relevant alternative transactional model then it shall take effect at the end of the period of notice provided by EHCP. If the Order Form does not include such details then when notifying the Customer, EHCP shall provide details of the revised Charges structure and the Customer shall, upon receipt, consider the same and if it believes that the change to the method of determining the Charges would result in a material increase to the Charges then it may, by giving notice within one (1) month of receipt of the revised Charges detail, terminate the Agreement by itself giving three (3) months' notice during which time no changes to the Charges shall apply (unless, during that three (3) month period EHCP gives notice that it is withdrawing the proposed change to the Charges methodology in respect of the Customer in which

case the Agreement shall continue as drafted in full force and effect).

10.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay EHCP on the due date, EHCP may:

10.8.1 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 the Customer shall pay the interest immediately on demand (or, EHCP may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or

10.8.2 suspend all Service(s), the delivery of any Goods and any licence to use (and access) any Solution(s), without any liability to the Customer, unless or until payment has been made in full.

10.9 Notwithstanding any provision in the Agreement to the contrary, all sums payable to EHCP under the Agreement shall become due immediately on its termination. This clause 10.9 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

10.10 If EHCP is unable to deliver any Service(s) ordered by the Customer (including, installation services, support service or training services) due to any act or omission on the part of the Customer (including, as a result of Sites being unsafe or the unavailability of the relevant members of the Customer's staff) then EHCP shall be entitled to charge the Customer in respect of any time spent attempting to deliver the same (in addition to any charges due in respect of any replacement Service(s) provided).

10.11 EHCP may, without prejudice to any other rights it may have, set off any liability of the Customer to EHCP against any liability of EHCP to the Customer.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 In the event that new inventions, designs or processes evolve in performance of, or as a result of delivering the Service(s) (including, any consulting services) or providing the Solution(s), the Customer acknowledges that the same shall be the property of EHCP.

11.2 All Intellectual Property Rights and all other rights subsisting in any Solution(s), Goods, Service(s) and/or any EHCP Materials shall remain exclusively with EHCP (or its third party licensor(s) as appropriate) and the Customer shall have no rights in or to the same other than the right to use the same in accordance with the terms of the Agreement.

11.3 The Customer acknowledges that where EHCP does not own the Intellectual Property Rights in any Solution(s) or EHCP Materials, then the Customer's use of such Solution(s) or EHCP Materials shall be conditional on EHCP obtaining the necessary licence(s) from the relevant licensor(s) of such materials on such terms as will entitle EHCP to sub-license such rights to the Customer.

11.4 The Customer shall not remove or alter any copyright or trade mark notices included in any Solution(s), Goods or EHCP Materials and it shall reproduce the same in any and all copies which it may make in accordance with the terms of the Agreement.

11.5 In the event a claim, relating to the infringement of any third party rights, is made, or in EHCP's reasonable opinion is likely to be made, against the Customer in relation to any of the Solution(s), Service(s) and/or EHCP Materials, EHCP may, at its sole option:

11.5.1 procure for the Customer the right to continue to use the relevant Solution(s), Service(s) and/or EHCP Material(s) in accordance with the terms of the Agreement;

11.5.2 modify the relevant Solution(s), Service(s) and/or EHCP Material(s) so that it ceases to be infringing;

11.5.3 replace the relevant Solution(s), Service(s) and/or EHCP Material(s) with non-infringing materials; or

11.5.4 terminate the Agreement immediately by notice in writing to the Customer.

## **12. CONFIDENTIALITY**

12.1 Each party receiving Confidential Information belonging to the other party shall:

12.1.1 hold all Confidential Information in strict confidence and keep it secure, applying to any Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (and in any case not less than a reasonable standard of care);

12.1.2 seek to access Confidential Information, and use Confidential Information, in each case only:

12.1.2.1 for the purpose of performing its obligations under the Agreement; and

12.1.2.2 in accordance with the Agreement;

and specifically refrain from seeking to access Confidential Information, and from using Confidential Information, for its own or any third party's benefit or in any other manner not authorized in writing by the disclosing party;

12.1.3 disclose, or permit access to, Confidential Information only to persons who are its employees, or its independent contractors, who both:

12.1.3.1 have a need to know the Confidential Information in order to give effect to the Agreement or advise in connection with it (or both); and

12.1.3.2 are subject to nondisclosure obligations substantially similar to those of the Agreement,

12.1.4 accept responsibility for any access to, use, or disclosure of any Confidential Information in violation of the terms of the Agreement and to take such steps as may be required by applicable law to enforce this obligation;

12.1.5 return to the disclosing party (or, at the disclosing party's request, destroy in such manner as not to allow its recreation and confirm to the disclosing party the receiving party's compliance with this obligation) within fourteen (14) days of the expiry (or earlier termination) of the Agreement (or the relevant Order Form or such earlier date as the disclosing party may reasonably request) all materials (in writing or otherwise, including copies) containing any Confidential Information; and

12.1.6 promptly notify (where it is permitted to do so by law) the disclosing party if the receiving party is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing party may if it chooses seek an appropriate protective order.

12.2 Notwithstanding clause 12.1, a receiving party's obligations of confidentiality contained in the Agreement shall not apply:

12.2.1 to the extent required by law, by any court of competent jurisdiction, or by an official regulatory body; or

12.2.2 to information that:

12.2.2.1 at the time of disclosure was in the public domain or comes into the public domain other than through breach of the Agreement by the receiving party;

12.2.2.2 was known by the receiving party (as established by its own records or other competent proof) before it received the Confidential Information, or was exposed to it, or had the ability to access it; or

12.2.2.3 is lawfully disclosed to the receiving party by a third party acting in good faith and not bound by a confidentiality obligation.

12.3 The obligations of confidentiality contained in the Agreement shall continue in force during the Term and for a period of seven (7) years following the termination or expiry of the Agreement.

12.4 The parties acknowledge that either party's breach of this clause 12 may cause the other party irreparable injury for which damages would not be an adequate remedy. Therefore, in the event of such breach, the non-breaching party shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.

12.5 Without prejudice to clause 12.1.5, EHCP shall, within thirty (30) days of the expiry (or earlier termination) of the Agreement for any reason (or such earlier date that the Customer may reasonably request), applying its standard Charges in respect of such Service(s):

12.5.1 return, in an industry standard format, a copy of any Customer Data that it (or its subcontractors) is electronically storing (or is under its (or its subcontractors') possession or control);

12.5.2 following the Customer's confirmation of receipt of the returned Customer Data referred to above, delete or destroy, in accordance with its standard operating procedures, the relevant Customer Data; and

12.5.3 notify the Customer, in writing, that the relevant Customer Data have been successfully returned and destroyed in accordance with this clause 12.5.

## **13. LIMITATIONS OF LIABILITY**

13.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 13, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

13.2 This clause 13 sets out the entire financial liability of EHCP (including any liability for the acts or omissions of its employees, agents, consultants, third party licensor(s) and subcontractors) to the Customer in respect of:

13.2.1 any breach of the Agreement;

13.2.2 any use made by the Customer of the Service(s), the Goods and/or Solution(s) (or any part of them); and

13.2.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

13.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement (including, any terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982).

13.4 Nothing in the Agreement limits or excludes the liability of either party for:

13.4.1 death or personal injury resulting from negligence;

13.4.2 any damage or liability incurred as a result of fraud or fraudulent misrepresentation; or

13.4.3 any liability which cannot be excluded or limited pursuant to applicable law.

13.5 Subject to clause 13.4, EHCP shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

13.5.1 loss (whether direct or indirect) of revenue or profits;

13.5.2 loss (whether direct or indirect) of business opportunity;

13.5.3 loss (whether direct or indirect) of goodwill or injury to reputation;

13.5.4 loss (whether direct or indirect) of anticipated savings;

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

13.5.6 indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement (including, pursuant to any Order Form).

13.6 Subject to clause 13.4 and clause 13.5, EHCP's (and its affiliates and sub-contractors) total aggregate liability (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise) arising out of or in connection with the Agreement:

13.6.1 in respect of all claims arising in any Contract Year in respect of a specific Solution, Goods or Service will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to EHCP under the relevant Order Form in that Contract Year (or in respect of any and all such claims arising after the relevant Order Form has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid and/or due to be paid in the final twelve (12) months of the relevant Order Form); and

13.6.2 in respect of all other claims arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Charges paid or payable by the Customer to EHCP under the Agreement in that Contract Year (or in respect of any and all claims arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Charges paid or due to be paid in the final Contract Year of the Agreement).

13.7 For the avoidance of doubt, if EHCP appoints an authorised reseller and the Customer pays the Charges to the reseller (rather than directly to EHCP) then the relevant Charges paid to the reseller shall apply for the purposes of determining the appropriate limits under clause 13.6.

13.8 For the avoidance of doubt, the terms of clauses 13.4 to 13.6 shall apply equally to any claim brought against any third party licensor of EHCP (with those clauses being read as though a reference to EHCP were to the relevant licensor) whose solution(s) or service(s) are provided to the Customer under the Agreement (and such third party may rely upon and enforce the same in accordance with the terms of the Agreement and the Contracts (Rights of Third Parties) Act 1999).

13.9 EHCP recommends that the Customer obtains appropriate business continuity (or other) insurance cover in

order to protect its business in the event that there is any issue with the delivery of any Service, Solution or Goods.

## **14. DATA, DATA PROTECTION & SECURITY**

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2 The parties acknowledge that in relation to the Agreement and for the purposes of the Data Protection Legislation, the Customer is a data controller and EHCP is a data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

14.3 Annex 1 sets out the scope, nature and purpose of processing by EHCP, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation).

14.4 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to the EHCP for the duration and purposes of the Agreement

14.5 EHCP shall, in relation to any Personal Data processed in connection with the performance by EHCP of its obligations under the Agreement:

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

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

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

14.5.4 not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

14.5.4.1 the Customer or EHCP has provided appropriate safeguards in relation to the transfer;

14.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

14.5.4.3 EHCP complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

14.5.4.4 EHCP complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

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

14.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;

14.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this agreement unless required by law to store the Personal Data; and

14.5.8 allow for audits by the Customer or the Customer's designated auditor in respect of EHCP's data processing activities under this agreement.

14.6 EHCP is given general authorisation to engage third-parties to process the Personal Data ("**Sub-Processors**") without obtaining any further written, specific authorisation from the Customer (and without prejudice to the generality of this statement it is given specific permission to engage its affiliate EMIS as a Sub-Processor). EHCP shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. EHCP is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of EHCP's material sub-processors as at the date of the Agreement is set out on its website (under the 'legal' section of the site or will otherwise be notified to the Customer). Any objection to an amendment to the list of Sub-Processors may be escalated for discussion within 10 days after receipt of a notification of any change. If the parties are (acting reasonably) unable to resolve the objection and EHCP informs the Customer that it nevertheless intends to appoint the relevant Sub-Processor then the Customer may either: (i) accept the change; or (ii) terminate the Agreement upon written notice within one month of raising the objection (and as the Customer's sole and exclusive remedy, EHCP will refund any unused prepaid fees).

14.7 The Customer shall ensure that, throughout the Term, it has all necessary rights, consents and permissions (including from any Data Subjects) such that EHCP's processing of any Customer Data in accordance with the terms of the Agreement will not breach any third party rights or relevant law.

14.8 In the event of any loss of, or damage to, any Customer Data, EHCP shall use its reasonable endeavours to restore the lost or damaged Customer Data from the latest backup version of the Customer Data available to it. If the loss or damage was caused by EHCP then it shall undertake such restoration at its own cost and expense and in any other circumstances it shall be entitled to charge the Customer in respect of any time spent at its then standard rates.

14.9 Without prejudice to clause 8.20, EHCP may, from time to time, use the Transaction Data (either alone or amalgamated) for its own internal business purposes. For the avoidance of doubt, Transaction Data used for such purposes will be anonymised.

## **15. TERMINATION**

15.1 EHCP shall (subject to the terms of the Agreement) provide (and the Customer shall pay for) the relevant Solution(s) and/or Service(s) (or deliver the relevant Goods) during the Term (subject to any specific period being specified in the relevant Order Form).

15.2 Termination of an individual Order Form (by providing the necessary notice under clause 2.1 or under this clause 15) shall result in the termination of the relevant Goods, Service(s) and/or Solution(s) detailed in the relevant Order Form.

15.3 Subject to clause 15.4, in the event that the provision of all Services, Goods and/or Solutions under the Agreement are terminated pursuant to the relevant Order Form(s) then either party may give not less than one month's notice in writing to the other party to terminate the Agreement.

15.4 Subject to any earlier termination in accordance with this clause 15, the Agreement will terminate on the date on which the ProScript Connect Order Form is terminated (for whatever reason) in accordance with the terms of the Agreement.

15.5 No Charges paid by the Customer pursuant to the Agreement shall be refundable by EHCP on termination of the relevant Service(s) or Solution(s) except if the termination was pursuant to clause 15.7 or caused by EHCP's breach in which case EHCP will refund a pro rata amount of any relevant Charges paid in advance by the Customer for the relevant Service(s) or Solutions(s).

15.6 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement (and/or the relevant Order Form(s)) without liability to the other immediately on giving written notice to the other if:

15.6.1 the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and it remains in default not less than ten (10) Business Days after being notified in writing to make such payment;

15.6.2 the other party commits a material breach of any of the terms of the Agreement provided, if such a breach is remediable, the party in breach fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or

15.6.3 the other party becomes insolvent, is the subject of a petition for creditor protection or a petition in bankruptcy or of any other proceedings under bankruptcy, insolvency or similar laws or makes an assignment for the benefit of creditors (or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the events mentioned in this clause).

15.7 EHCP can terminate (i) the Agreement, at any time, by giving the Customer not less than three (3) months' notice in writing and/or (ii) any individual Service(s) at any time by giving the Customer not less than one (1) month's notice.

15.8 In the event that the Customer wishes (for operational reasons or otherwise) to terminate the Agreement (or any individual Order Form) early for convenience then it may request that EHCP consent to such termination (such consent not to be unreasonably withheld, provided always that the Customer pays to EHCP any Charges due to be paid, or which would be due to be paid had the Agreement (or the relevant Order Forms) not been terminated early).

15.9 In the event that that Customer wishes to sell, or otherwise divests, one or more Sites then:

15.9.1 it acknowledges that the entity buying the Sites (or branch or similar) will not have any right to use any Service(s), Goods or Solution(s) provided under the Agreement (and will need to secure their own right to use the same through an agreement with EHCP);

15.9.2 it will use reasonable efforts to give EHCP not less than six (6) weeks' notice of the proposed sale or divestiture to enable it to take the necessary steps as a result of the change; and

15.9.3 it acknowledges that once EHCP has been notified as to the change of ownership then data streaming in respect of the relevant Site(s) will stop with effect from the relevant date.

15.10 On termination of the Agreement (or on termination of an Order Form) for any reason:

15.10.1 the Customer shall immediately pay to EHCP any and all outstanding unpaid invoices and interest and, in respect of any relevant Service(s), Goods and/or Solution(s) supplied but for which no invoice has been submitted, EHCP may submit an invoice, which shall be payable immediately on receipt; and



15.10.2 the Customer shall immediately destroy or return to EHCP (at EHCP's option) all relevant EHCP Materials and/or Solution(s) then in its possession, custody or control and, in the case of destruction, certify to EHCP that it has done so. Until they have been returned or destroyed, the Customer shall be solely responsible for their safe keeping.

15.11 Expiry or termination of the Agreement for any reason (whether under the Agreement or otherwise) will:

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

15.11.2 not affect any provision of the Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

15.12 Without prejudice to the generality of clause 15.11, the provisions of clauses 11, 12, 13, 14, 15, 17, 18, and 27 will survive expiry or termination of the Agreement for any reason.

## **16. CORRUPT GIFTS AND PAYMENT**

Each party shall ensure that it (and any person associated with it in connection with the Agreement) shall refrain from committing, facilitating, encouraging or allowing a Prohibited Act. Each party shall be responsible for any Prohibited Act carried out by any person associated with it in connection with the Agreement.

## **17. INDEMNIFICATION**

The Customer shall defend, indemnify and hold harmless EHCP (its directors, officers, agents and employees) at all times from and against any claims, liabilities, suits, losses, injuries, expenses, damages and/or costs suffered, sustained or incurred by EHCP in relation to any claim relating to or arising from the Customer's use of any Solution(s), Goods and/or any Service(s) other than in accordance with the terms of the Agreement.

## **18. NON-SOLICITATION**

18.1 During the Term and for six (6) months thereafter, the Customer shall not employ or contract for the services of any individual who is or has been:

18.1.1 in the employ of EHCP; or

18.1.2 working as a contractor for EHCP

and in either case has been concerned with the performance of any Service(s) and/or delivery of any Solution(s) or Goods under the Agreement.

18.2 In the event of any breach of clause 18.1, the Customer shall promptly pay to EHCP (as liquidated damages, being a reasonable pre-estimate of EHCP's loss) a sum equal to fifty per cent (50%) of the annual compensation payable by EHCP to the person so hired plus all recruitment agency costs incurred in appointing a replacement for such person.

## **19. AUDIT**

19.1 EHCP shall have the right (upon giving reasonable notice and within normal business hours) to inspect the Customer's use of the relevant Solution(s), Goods and/or Service(s) and its compliance with the terms of the Agreement.

19.2 EHCP may perform an inspection under clause 19.1:

19.2.1 either itself (e.g. through an internal auditor) or through an external auditor; and

19.2.2 no more than twice per year (and once during the twelve (12) months immediately following the termination or expiry of

the Agreement) unless a breach of the Agreement or of security has occurred in which case a further inspection may take place.

19.3 EHCP shall use its reasonable endeavours to ensure that the conduct of any inspection does not unreasonably disrupt the business of the Customer.

19.4 The Customer shall provide such access and assistance (and access, including, remote access, to the relevant Sites, records and/or systems) as EHCP may reasonably require in connection with any inspection or audit. Each party shall bear its costs of preparing for and undertaking an inspection pursuant to clause 19.1.

19.5 If an inspection pursuant to clause 19.1 finds material irregularities, errors or non-compliance by the Customer then, without prejudice to any other remedies available to EHCP, the Customer shall promptly remedy the same.

## **20. FORCE MAJEURE**

EHCP shall have no liability to the Customer under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including: strikes, lock-outs or other industrial disputes (whether involving the workforce of EHCP or any other party), failure of a utility service or transport network, 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 subcontractors.

## **21. VARIATION**

21.1 Without prejudice to clause 5.8, EHCP may, from time to time, amend the terms of the Agreement by giving the Customer notice in writing. If any change to the terms would have a material adverse effect on the Customer then EHCP shall give not less than thirty (30) days' notice of the relevant amendment and the Customer may, at any time within sixty (60) days of receiving the relevant notice, terminate the Agreement by giving one (1) month's notice to EHCP during which time the original terms shall apply (unless, during that one (1) month period EHCP gives notice that it is withdrawing the proposed variation in respect of the Customer in which case the Agreement shall continue as drafted in full force and effect).

21.2 Subject to clause 21.1, no variation of the Agreement or of any of the documents referred to hereunder, shall be valid unless it is in writing and signed by or on behalf of each party.

21.3 Additional Service(s), Goods and/or Solution(s) may be added to the Service(s), Goods and/or Solution(s) provided by EHCP to the Customer under the Agreement by both parties entering into new Order Forms each of which shall be subject to and be incorporated into (and form part of) the Agreement.

## **22. WAIVER**

22.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement 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.

22.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

## 23. SEVERANCE

Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (an “**Ineffective Provision**”), such Ineffective Provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provisions or the remaining provisions of the Agreement. The parties agree to attempt to substitute for any Ineffective Provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the Ineffective Provision.

## 24. ENTIRE AGREEMENT

24.1 Without prejudice to clause 2.6, the Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

24.2 Each party represents and agrees that in entering the Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. The only remedy available to either party for breach of the warranties will be for breach of contract under the terms of the Agreement.

24.3 In the event that there is any conflict or inconsistency between a term in an Order Form and any term in these Master Terms, the terms set forth in the relevant Order Form shall control unless the parties expressly agree otherwise in writing.

24.4 Nothing in this clause 24 shall limit or exclude any liability for fraud.

## 25. ASSIGNMENT

25.1 The Customer shall not, without the prior written consent of EHCP, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

25.2 EHCP may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under this and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent. Without prejudice to the generality of the foregoing, EHCP may transfer the Agreement to any of its affiliates at any time (EHCP will provide notice of the same to the Customer).

25.3 Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

25.4 Subject to clause 13.8, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, the Agreement. For the avoidance of doubt, the terms of the Agreement may be varied pursuant to clause 21 without reference to any third party.

## 26. NOTICES

26.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at such address as may have been notified by that party for such purposes. Notices may also be sent by email where agreed between the parties to such email address as may have been nominated by the relevant party.

26.2 A notice delivered by hand (or by email (where permitted)) shall be deemed to have been received when delivered

(or if delivery is not during EHCP’s 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.

26.3 All notices sent to EHCP shall be marked for the attention of the Operations Team.

## 27. DISPUTE RESOLUTION; GOVERNING LAW AND JURISDICTION

27.1 Any dispute arising out of or in connection with the Agreement (each a “**Dispute**”) shall be referred by either party first to representatives of each of the parties for resolution.

27.2 If the Dispute cannot be resolved by the relevant representatives of the parties within ten (10) Business Days after the Dispute has arisen, either party may give notice to the other party in writing (each a “**Notice**”) that a Dispute has arisen.

27.3 Within ten (10) Business Days after the date of the Notice, the Dispute shall be referred to a senior executive of each of EHCP and the Customer for resolution. If the Dispute is not resolved by agreement in writing between the parties within ten (10) Business Days after the date of the Notice, then each party shall be entitled to pursue such remedies as may be available to it under the Agreement or otherwise at law or in equity. This clause 27 is without prejudice to either party’s right to seek interim relief against the other party (such as injunction) through local courts, as defined herein, to protect its rights and interests, or to enforce the obligations of the other party.

27.4 The 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.

27.5 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

#### Processing, Personal Data and Data Subjects

Processing by EHCP

**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).

**Nature:** such processing as is necessary to enable EHCP 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).

**Categories of Data Subject:** data subjects may include: members of the Customer's staff (including those of its associated entities or third party suppliers), other clinical staff with whom the Customer or the relevant patients are interacting, patients and members of the public with whom the Customer is interacting.