



## TERMS AND CONDITIONS

These terms and conditions (“**Conditions**”) govern the Services (as defined) as provided by Egton Medical Information Systems Limited (“**Egton**”) to you (the “**Customer**”) and/or, where agreed by the parties in writing, for the benefit of any Service Recipients. These Conditions, together with any quotation or order form as may be provided by Egton, form the entire agreement between Egton and the Customer in respect of the supply of Equipment (as defined), licence of software and provision of the Services (the “**Agreement**”).

### BACKGROUND

Egton has created a service in which it will install internet and wifi equipment at the Customer’s Site (as defined) to allow the Customer’s staff secure wifi access as well as a separate and restricted wifi offering for its patients.

### AGREED TERMS

#### 1. INTERPRETATION

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

**Affiliates:** means any business entity from time to time controlling, controlled by, or under common control with, either party, whereby a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

**ADSL:** means an asymmetric digital subscriber line which is a type of data communications technology used for connecting to the internet.

**Approved Users:** means any user authorised by the Customer to use the Full Wifi.

**Booster:** means a device used to boost the wifi connection at the Site so as to improve wifi access.

**Commencement Date:** means the date from which Egton starts to perform its obligations under the Agreement.

**Connectivity Equipment:** means the Router (and Boosters, if any).

**Connectivity Services:** means the connectivity services to be provided by Egton to the Customer as detailed at clause 6 and comprising the Full Wifi and the Patient Wifi.

**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 Agreement.

**Data Protection Legislation:** means (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and

secondary legislation, as amended or updated from time to time, in the UK including the Data Protection Act 2018 and then (ii) any successor legislation to the GDPR.

**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.

**Egton Materials:** means any and all Documents, information and materials provided by Egton (or its subcontractors) in relation to the Services (including, any computer programs, data, reports and specifications (as the same may be updated from time to time)).

**Equipment:** means any equipment, including tools, systems, cabling or facilities, provided by Egton or its subcontractors and used directly or indirectly in the supply of the Services and which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Full Wifi:** means the enhanced wifi services for use by Approved Users as detailed in clause 6.5.

**In-put Material:** means all Documents, information and materials provided by the Customer relating to the Services.

**Initial Term:** means the period detailed in Egton’s written quote or as otherwise agreed in writing with Egton.

**Landing Page:** means the website which will automatically open when a Patient accesses the Patient Wifi.

**Losses:** means any claims, demands, actions, liabilities, costs and expenses, fines, monetary penalties, losses and/or damages.

**N3:** means the national broadband network for the English National Health Service which securely links acute hospitals and GP surgeries in England and Scotland.

**Patient:** means a visitor to the Site who the Customer allows to access the Patient Wifi.

**Patient Wifi:** means the wifi services made available for use by Patients as detailed in clause 6.6.

**Patient Wifi Disclaimer:** means the terms of use which each Patient must agree to in order to use the Patient Wifi (as detailed at Annex 1).

**Router:** means the router supplied by Egton in connection with the Services and which is capable of providing a wifi connection.

**Service Charge:** means the charges payable by the Customer to Egton under the Agreement as detailed in Egton's written quote or as otherwise agreed in writing with Egton.

**Service Recipient(s):** means, where the Customer is contracting for delivery of the Services to one or more third parties (for example GP practices), those third parties as identified in Egton's written quote or as otherwise agreed in writing with Egton.

**Services:** means the services to be provided by Egton to the Customer as detailed at clause 5.1.

**Site:** means the site of the relevant GP practice at which Egton provides the Services pursuant to the Agreement (as stated in Egton's written quote or as otherwise agreed in writing with Egton).

**Support Hours:** means 24 hours a day, 365 days per year.

**Term:** means the term of the Agreement, being (subject to any earlier termination in accordance with the terms of the Agreement) the Initial Term and any extension thereof, as detailed at clause 14.1.

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

**Working Day:** means a day, other than a Saturday, a Sunday, a public holiday or a statutory holiday in England.

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

1.3 A reference to: (i) 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; (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; and (vi) writing or written includes communications sent by email.

1.4 References to clauses and Annexes are to the clauses and annexes of the Agreement; references to paragraphs are to paragraphs of the relevant Annex.

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 To the extent Egton supplies Equipment, and/or licences software, and/or performs Services for the benefit of any Service Recipients, the Customer shall:

1.6.1 procure that the Service Recipients comply with the Customer's obligations pursuant to the Agreement to the extent such Customer obligations relate to the Equipment supplied to, software licensed to and/or Services received by the Service Recipients (other than the obligation to pay the Service Charges) or that are otherwise stated in the Agreement to apply to such Service Recipients (including pursuant to clause 1.7) (collectively the "**Service Recipient Obligations**"); and

1.6.2 be liable to Egton for the acts and omissions of such Service Recipients to the extent they breach the Customer's or the Service Recipient Obligations, as if they were acts or omissions of the Customer.

1.7 In the Agreement, unless the context requires otherwise:

1.7.1 references to the Customer receiving the Equipment, licensed software and/or Services shall include, to the extent that they are receiving the Equipment, licensed software and/or Services, the Service Recipients;

1.7.2 references to the Customer's:

1.7.2.1 assets, systems, business, operations and the like; and

1.7.2.2 customers, contractors, advisors and other similar third parties,

shall include, to the extent that they are receiving the Equipment, licensed software and/or Services, those of the Service Recipients; and

1.7.3 other references to the Customer shall be deemed to include the Service Recipients where such reference relates to a right of the Customer which the Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Equipment, licensed software and/or Services under the Agreement.

Without prejudice to the generality of this clause 1.7, a number of clauses refer specifically to both the Customer and/or the Service Recipients for the sake of clarity.

## 2. APPLICATION OF TERMS

2.1 These Conditions shall apply to the provision of all Services under the Agreement and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Documents supplied by the Customer (and/or any Service Recipient), or implied by law, trade custom, practice or course of dealing.

2.2 The Agreement shall come into effect upon the Commencement Date.

2.3 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or any other Document issued by or on behalf of the Customer shall not govern the delivery of the Services.

2.4 Any quotation given by Egton is given on the basis that no contract shall come into existence except in accordance with this clause 2. Each quotation is valid for a period of thirty (30) days from its date, provided that Egton has not previously withdrawn it.

### **3. EGTON'S OBLIGATIONS**

3.1 Egton shall use its reasonable endeavours to:

3.1.1 provide the Services in accordance in all material respects with the terms of the Agreement;

3.1.2 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 performance of the Services);

3.1.3 observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Customer's premises 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; and

3.2 ensure that each Egton engineer has the necessary skills, qualifications and experience to perform the relevant Services.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

4.1.1 co-operate with Egton in all matters relating to the Services;

4.1.2 liaise with Egton to schedule and enable the provision of the Services (including, the installation of any Connectivity Equipment or ADSL lines) at the Site(s);

4.1.3 allow Egton engineers and representatives access to the Site(s) as reasonably required to perform the Services;

4.1.4 provide Egton with such remote access to its systems as Egton may reasonably require for the purposes of providing the Services and complying with its obligations under the Agreement;

4.1.5 co-operate with any Egton engineers carrying out the installation of any Equipment;

4.1.6 promptly contact Egton's customer support line to register any faults with the Services;

4.1.7 where required by Egton, run self-test procedures or correct problems with remote telephone support;

4.1.8 provide such information and assistance as Egton may require in connection with the provision of the Services or support;

4.1.9 where relevant, provide a copy of these Conditions to the Service Recipients and ensure that each is aware of the same;

4.1.10 provide Egton with up to date and relevant contact details;

4.1.11 only use the Services in accordance with any and all applicable laws and regulations, (including, the Data Protection Legislation);

4.1.12 provide to Egton, in a timely manner, such In-put Material and other information as Egton may require and ensure that it is accurate in all material respects; and

4.1.13 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Equipment, in all cases before the date on which the Services are due to start.

4.2 The Customer shall not (and shall ensure that no third party or Patient at the Site(s) shall) misuse the Services in any manner.

4.3 In order for the Customer to use the Services, and in particular access the N3, the Customer must first secure (and maintain) appropriate authorisation from the relevant authority.

### **5. SERVICES**

5.1 Egton shall during the Term use its reasonable endeavours to provide the Customer with the Connectivity Services detailed in clause 6.

5.2 The Customer acknowledges that it is responsible for ensuring that the Services detailed in the Agreement meet its requirements and that Egton shall not be liable for any failure to deliver any service which is not so detailed.

5.3 Egton may, at its discretion, add additional functionality to the Services during the Term.

5.4 For the avoidance of doubt Egton reserves the right to sub-contract any or all of its obligations under the Agreement.

5.5 Egton shall use its reasonable endeavours to maintain the Services so that the Customer can access them on a continual basis, 24 hours a day.

5.6 Should the Customer require training in relation to the Services, then the Customer shall contact Egton providing details of its requirements and requesting a quote from Egton for the provision of such training services.

## 6. CONNECTIVITY SERVICES

6.1 Egton shall use its reasonable endeavours to:

6.1.1 provide the Customer with a service enabling the Customer's Approved Users to connect to and access the Full Wifi and Patients to connect to and access the Patient Wifi;

6.1.2 provide a managed N3 network connectivity offering; and

6.1.3 install a Router at the relevant Site(s) and a number of Boosters, subject to clause 6.2.3.

6.2 Egton shall:

6.2.1 register the Customer on the Egton customer database;

6.2.2 where required deploy an Egton engineer to the Site to map out the number of items of Connectivity Equipment required, suitable locations to install them and any other hardware or Services requirements;

6.2.3 prepare a report for the Customer with details and prices of its recommended hardware packages;

6.2.4 liaise with the Customer to schedule the installation of the Connectivity Services and the ADSL at the Site(s);

6.2.5 preconfigure, deliver and install the Connectivity Equipment at the Site(s); and

6.2.6 if the Customer is purchasing the ADSL, subject to clause 6.3, use its reasonable endeavours to complete the installation within ten (10) Working Days.

For the avoidance of doubt, time shall not be of the essence of the Agreement in relation to this clause 6.2.

6.3 If an Egton engineer identifies any additional technical work which is needed in order for Egton to perform the Connectivity Services and which requires a Site visit from a BT engineer then:

6.3.1 the Customer acknowledges that Egton will have no control over the time that it takes a BT engineer to perform such additional works (and any timescales under clause 6.2 shall be revised accordingly); and

6.3.2 Egton reserves the right to charge the Customer for any additional costs incurred.

6.4 In the event of a failure of the ADSL Egton shall perform the Support Services in accordance with clause 8.

6.5 Egton shall use its reasonable endeavours to ensure that the Full Wifi shall:

6.5.1 (subject to clause 4.3) allow Approved Users to access the N3 (including N3 DNS) and access the public internet (including WWW DNS) using any compatible device with wifi;

6.5.2 allow Approved Users to physically move around the Site while maintaining a connection to the Full Wifi;

6.5.3 be hidden from Patients;

6.5.4 use secure WPA wifi encryption and device access control so that only Approved Users are authorised to connect to the Customer's network;

6.5.5 allow the Customer to add and remove Approved Users (by contacting Egton's service desk); and

6.5.6 allow the Customer to apply internet content filtering to both the Full Wifi and Patient Wifi.

6.6 The Patient Wifi shall:

6.6.1 allow Patients to access the internet free of charge using a compatible wifi device subject to them agreeing to the Patient Wifi Disclaimer; and

6.6.2 be delivered through a separate broadband connection to the Full Wifi.

6.7 EGTON DOES NOT GUARANTEE UNINTERRUPTED PERFORMANCE OF THE CONNECTIVITY SERVICES BUT WILL USE ITS REASONABLE ENDEAVOURS TO KEEP DOWNTIME TO A MINIMUM. THE CUSTOMER ACCEPTS THE SERVICES "AS IS" WITH ANY FAULTS OR FAILINGS AND, SAVE AS EXPRESSLY PROVIDED IN THE AGREEMENT AND TO THE EXTENT PERMITTED BY LAW, WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTEE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF QUALITY, CONTINUITY OF SERVICE, CONNECTIVITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 7. INTERNET USE

7.1 The Customer undertakes to comply with generally accepted principles of internet usage (whether governed by the laws of any jurisdiction or not) including:

7.1.1 refraining from sending "spam" mail (i.e. unsolicited mass communications);

7.1.2 never sending mail bombs, trojan horses, viruses, malware or other disruptive programs or devices;

7.1.3 never pirating or otherwise illegally copying software or other proprietary material; and

7.1.4 never violating the security of any website or engaging in unauthorised decryption of protected material.

## 8. SUPPORT SERVICES

8.1 Egton shall, during the Term:

8.1.1 provide telephone support during Support Hours; and

8.1.2 aim to send an Egton engineer to the Site to repair the fault by the next Working Day, if the fault cannot be resolved via remote telephone support.

8.2 The Services may from time to time be unavailable due to planned maintenance activities. Egton shall, subject to clause 4.1.10, where practicable communicate in advance the details of any planned maintenance of the Services to the Customer.

**8.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW EGTON SHALL NOT BE LIABLE FOR ANY INTERRUPTION, DEGRADATION OR UNAVAILABILITY OF THE SERVICES DURING OPERATIONAL HOURS OR ANY LOSS OF DATA. THE CUSTOMER'S SOLE REMEDY IN RELATION TO SUCH EVENTS SHALL BE FOR EGTON TO ENDEAVOUR TO RECTIFY SUCH FAULTS IN ACCORDANCE WITH THIS CLAUSE 8.**

## **9. DELAYS**

9.1 If Egton is prevented or delayed from performing the Services, including meeting its obligations in the Agreement, or otherwise suffers any costs, expenses or loss, due to any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Customer shall:

9.1.1 agree with Egton a reasonable extension of time corresponding to the delay so caused; and

9.1.2 fully indemnify and hold harmless Egton for all costs, fees, damages, lost revenue or other expenses arising from any such event,

and for the avoidance of doubt Egton 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.

9.2 Egton shall not be liable for any delays, faults or interruptions in the Services where caused by a failure or inadequacy in any Customer or third party equipment or processes or any incompatibility between any Customer and third party equipment or processes.

## **10. CHARGES AND PAYMENT**

10.1 The Customer shall pay Egton the Service Charge due in respect of the Services during the Term.

10.2 Subject to clause 10.12, Egton shall raise invoices in relation to the Service Charges following the Commencement Date in accordance with the frequency for such payments detailed in Egton's written quote or as otherwise agreed in writing with Egton. Should Customer not receive such invoices from Egton then Customer shall notify Egton in writing that it has not received such invoice and Egton shall duly issue the invoice.

10.3 The Customer shall pay each 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 Egton.

10.4 Egton may adjust the Service Charge at any time following the Initial Term. Egton shall notify the Customer in writing of any change in the Service Charge prior to the expiration of the Initial Term, or any subsequent extension of the Term.

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

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

10.6.1 charge interest on such sum from the due date for payment at the annual rate of four percentage points above the above the Bank of England's base rate, 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 Egton may in the alternative and at its option claim interest under the Late Payment of Commercial Debts (Interest) Act 1998); and/or

10.6.2 suspend all Services without any liability to the Customer until payment has been made in full.

10.7 Time for payment shall be of the essence of the Agreement.

10.8 Notwithstanding any provision in the Agreement to the contrary, all sums payable to Egton under the Agreement shall become due immediately on its termination (without prejudice to any right to claim for interest under the law, or any such right under the Agreement).

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

10.10 Where the Customer is purchasing, software licences, Services and/or the supply and use of Equipment for the benefit of a number of Service Recipients the date of actual receipt of Services, software licences and/or delivery and installation of Equipment may not be uniform across all Service Recipients, and accordingly Service Recipients will likely receive the benefit of the same at various points following the Commencement Date.

10.11 For the purposes of clause 10.12, Service Recipients who have received the benefit of the Services, software licences, Equipment are referred to as "**Actual Service Recipients**", and those who have not yet received the benefit of the same are referred to as "**Pending Service Recipients**".

10.12 Notwithstanding clause 10.10, Egton shall be entitled to invoice the Customer in respect of Service Charges as follows:

10.12.1 for the first Contract Year, Egton shall be entitled to invoice the Customer in advance, immediately following the Commencement Date, for all Service Charges due in respect of all Service Recipients in the first Contract Year, on the basis that all Service Recipients are deemed to be Actual Service Recipients on or immediately following the Commencement Date;

10.12.2 where the Term exceeds 12 months:

10.12.2.1 for the second Contract Year, Egton shall adjust the Service Charges, on a pro rata basis, to reflect any period in the first Contract Year during which any Service Recipients were Pending Service Recipients; and

10.12.2.2 for the third and subsequent Contract Years, Egton shall be entitled to invoice the Service Charges in full, in respect of all Service Recipients; and/or

10.13 where the Term is only 12 months (or less), then at the expiry of the Term, Egton shall issue the Customer with a credit note in respect of the Service Charges on a pro rata basis, equivalent to the period during the Term that any Service Recipients were Pending Service Recipients.

## 11. CONFIDENTIALITY

11.1 The Customer shall keep in strict confidence all Egton Materials and any technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and which have been disclosed to the Customer and/or where appropriate any Service Recipient by Egton, (its employees, agents, consultants or subcontractors) and any other confidential information concerning Egton's business or its services which the Customer may obtain (collectively, the "Confidential Information").

11.2 The Customer and/or where appropriate any Service Recipient may disclose the relevant Confidential Information:

11.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Agreement and/or of receiving the Services; and

11.2.2 as may be required by law, court order or any governmental or regulatory authority.

11.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any Confidential Information keep the same confidential and otherwise comply with this clause 11.

11.4 The Customer shall not use any Confidential Information for any purpose other than as necessary in receipt of the Services or to perform its obligations under the Agreement.

11.5 All materials, equipment and tools, drawings, specifications and data supplied by Egton to the Customer (including, Egton Materials and the Equipment) shall, at all times, be and remain the exclusive property of Egton, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Egton, and shall not be disposed of or used other than in accordance with Egton's written instructions or authorisation.

## 12. LIMITATIONS OF LIABILITY

12.1 THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 12, WHICH THE CUSTOMER ACKNOWLEDGES IS A FAIR

## AND EQUITABLE APPORTIONMENT OF RISK UNDER THE AGREEMENT.

12.2 This clause 12 sets out the entire financial liability of Egton (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) in respect of:

12.2.1 any breach of the Agreement;

12.2.2 any use of the Services (or any part of them); and

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

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

12.3.1 death or personal injury resulting from its negligence;

12.3.2 any Losses incurred as a result of fraud or fraudulent misrepresentation by Egton; or

12.3.3 any Losses which cannot be excluded or limited pursuant to applicable law.

12.4 Subject to clause 12.3, Egton shall under no circumstances whatsoever be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any:

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

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

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

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

12.4.5 loss (whether direct or indirect) of use;

12.4.6 loss (whether direct or indirect) of or corruption to data or information; or

12.4.7 indirect, consequential or special loss or damage,

in each case arising out of or in connection with the Agreement.

12.5 Subject to clause 12.3, Egton's (and its Affiliates and sub-contractors) total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, equity, restitution or otherwise, arising out of or in connection with the Agreement in respect of all Losses (including, under any indemnities) arising in any Contract Year will be limited to a sum equal to one hundred and twenty percent (120%) of the total Service Charge(s)

paid and/or due to be paid by the Customer under the Agreement in that Contract Year (or in respect of any and all Losses arising after the Agreement has terminated or expired, a sum equal to one hundred and twenty percent (120%) of the Service Charge(s) paid and/or due to be paid in the final Contract Year of the Agreement).

12.6 Any Losses suffered by a Service Recipient under or in connection with the Agreement (“**Service Recipient Losses**”) shall be deemed for the purposes of the Agreement to be Losses suffered by Customer under the Agreement, and that Customer shall be entitled to seek to recover from Egton any such Service Recipient Losses, subject always to the provisions of this clause 12, as though the relevant Losses had been suffered by the Customer (provided always that under no circumstances shall any Service Recipient have any right to bring any claim or action against Egton other than via the Customer and subject to the terms of the Agreement and if any such claim should be brought then the Customer will indemnify Egton in respect of the same).

### 13. DATA PROTECTION & SECURITY

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer (or the Service Recipient as appropriate) is the data controller and Egton is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

13.3 Annex 2 sets out the scope, nature and purpose of processing by Egton, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation). The parties may, from time to time, update Annex 2 to reflect any changes to the scope of the processing.

13.4 Without prejudice to the generality of clause 13.1, the Customer (and/or where appropriate the relevant Service Recipient) will ensure that it has all necessary rights and notices in place to enable the lawful transfer of the Personal Data to Egton for the duration and purposes of the Agreement.

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

13.5.1 process that Personal Data on the written instructions of the Customer or where appropriate the relevant Service Recipient (unless otherwise required by law);

13.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer (and/or where appropriate the relevant Service Recipient), 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;

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

13.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer (and/or where appropriate the relevant Service Recipient) has been obtained and the following conditions are fulfilled:

13.5.4.1 the Customer (and/or where appropriate the relevant Service Recipient) or Egton has provided appropriate safeguards in relation to the transfer;

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

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

13.5.4.4 Egton complies with reasonable instructions notified to it in advance by the Customer (and/or where appropriate the relevant Service Recipient) with respect to the processing of the Personal Data;

13.5.5 assist the Customer (and/or where appropriate the relevant Service Recipient), 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;

13.5.6 notify the Customer (and/or where appropriate the relevant Service Recipient) without undue delay on becoming aware of a Personal Data breach;

13.5.7 at the written direction of the Customer (and/or where appropriate the relevant Service Recipient), delete or return Personal Data and copies thereof to the Customer (and/or where appropriate the relevant Service Recipient) on termination of the Agreement unless required by law to store the Personal Data; and

13.5.8 allow for audits by the Customer (and/or where appropriate the relevant Service Recipient) or its designated auditor in respect of Egton's data processing activities under the Agreement.

13.6 Egton 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 or where appropriate the relevant Service Recipient. Egton shall complete a written sub-processor agreement with any Sub-Processors which shall include protections substantially similar to those under the Agreement. Egton is accountable for any Sub-Processor in the same way as for its own actions and omissions. A list of Egton's material sub-processors as at the date of the Agreement is set out on Egton's website (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 Egton 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, Egton will refund any unused prepaid fees).

13.7 The parties may, acting reasonably, agree to amend the Agreement to ensure that it complies with any applicable guidance issued by the Information Commissioner's Office from time to time.

13.8 Egton acknowledges that the Customer has (and the relevant Service Recipients have) duties and obligations under the Freedom of Information Act 2000 (FOIA) and Egton will upon request give reasonable assistance where appropriate or necessary in relation to their compliance with such duties.

#### **14. TERM AND TERMINATION**

14.1 The Agreement shall commence on the Commencement Date. Unless terminated earlier pursuant to these Conditions, the Agreement shall continue for the Initial Term and shall automatically renew at the end of the Initial Term (and on each anniversary of that date) for a further period of twelve (12) months.

14.2 Without affecting any other right or remedy available to it, either party may give written notice to the other party, not later than ninety (90) days before the end of the Term, to terminate the Agreement at the end of the Term.

14.3 No element of the Service Charge paid by the Customer pursuant to the Agreement shall be refundable by Egton on termination of the Agreement.

14.4 Egton reserves the right to terminate the Agreement on notice without liability to the Customer at any time while performing its obligations detailed in clauses 6.2.1 to 6.2.4 (inclusive).

14.5 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if:

14.5.1 the other party fails to pay any amount due under the Agreement on the due date for payment and it remains in default not less than seven (7) days after being notified in writing to make such payment;

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

14.5.3 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).

14.6 On termination of the Agreement for any reason:

14.6.1 the Customer shall immediately pay to Egton all of Egton's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has

been submitted, Egton may submit an invoice, which shall be payable immediately on receipt; and

14.6.2 the Customer shall (and shall ensure that any Service Recipients shall) destroy or return (as appropriate) all of the Equipment and Egton Materials. If the Customer fails to do so, then Egton may enter the Customer's (and/or where appropriate the relevant Service Recipient's) premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

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

14.7.1 be without prejudice to any obligation or right of either 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

14.7.2 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.

14.8 Without prejudice to the generality of clause 14.7, the provisions of clauses, 11, 12, 13, 14, 15 and 24 will survive expiry or termination of the Agreement for any reason.

#### **15. INDEMNIFICATION**

15.1 The Customer shall defend, indemnify and hold harmless Egton (its directors, officers, agents and employees) at all times from and against any Losses suffered, sustained or incurred by Egton in relation to any claim relating to or arising from the Customer's and/or any Service Recipient's (or any of its or their directors, officers, agents and employees) use of the Services other than in accordance with the terms of the Agreement.

15.2 In the event Egton is able to claim under the indemnity in clause 15.1 (or such a claim seems likely to arise), then Egton may suspend delivery of the Services unless or until such time as Egton is certain, in its reasonable opinion, that there is not likely to be a claim or the claim has been resolved.

#### **16. WARRANTY DISCLAIMER**

16.1 Except as expressly stated in the Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Egton. Any condition, warranty, representation or other term concerning the supply of the Equipment, licence of any software and provision of the Services which might otherwise be implied into, or incorporated in, the Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

16.2 EGTON DOES NOT WARRANT THAT ANY LICENSED SOFTWARE WILL BE ERROR FREE.

16.3 The Customer acknowledges that any licensed software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of any licensed software meet its requirements.

## 17. FORCE MAJEURE

Egton shall have no liability 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 as a result of any strikes, lock-outs or other industrial disputes (whether involving the workforce of Egton 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.

## 18. VARIATION

18.1 Egton may, from time to time and without notice, change the Services in order to comply with any applicable safety or legal requirements, provided that such changes do not materially affect the nature of, scope of, or the charges for, the Services. If Egton requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

18.2 Subject to clause 18.1, no variation of the Agreement or of any of the documents referred to hereunder, shall be valid unless it is agreed in writing and signed by or on behalf of each party.

## 19. WAIVER

19.1 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.

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

## 20. SEVERANCE

Should any of the provisions of the Agreement be ineffective due to being invalid, illegal or unenforceable (each 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.

## 21. ENTIRE AGREEMENT

21.1 The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

21.2 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.

21.3 Nothing in this clause 21 shall limit or exclude any liability for fraud.

## 22. ASSIGNMENT

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

22.2 Egton 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.

22.3 Save as expressly provided for under the Agreement in respect of any Service Recipients each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

22.4 The Agreement does not create or confer any rights or benefits enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except always that, subject to clause 22.5 each Service Recipient shall have the right to enforce any rights or benefits conferred under the Agreement.

22.5 Notwithstanding clause 22.4, the parties may by agreement rescind, vary or terminate the Agreement without the consent of any Service Recipient, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

## 23. NOTICES

23.1 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 its registered office address (or in the absence of the same, its primary place of business), or such other address as may have been notified by that party for such purposes, or (in the case of the Customer) by email to [ContractBidsandFulfilment@emisgroupplc.com](mailto:ContractBidsandFulfilment@emisgroupplc.com).

23.2 A notice delivered by hand or email shall be deemed to have been received when delivered (or if delivery is not before 5:00pm on a Working Day, at 9:00am on the first Working 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.

23.3 All notices sent to Egton shall be marked for the attention of Legal Counsel.

**24. GOVERNING LAW AND JURISDICTION**

24.1 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 law of England and Wales.

24.2 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 – PATIENT WIFI DISCLAIMER

These are the terms and conditions on which your GP practice's wireless internet access services (the "**WiFi Service**") will be provided to you (the "**Contract**"). Please read the Contract carefully, so that you fully understand the WiFi Service that you are planning to use. By continuing to use the WiFi Service in your GP practice (the "**Practice**") you agree to the terms and conditions of the Contract.

You will be able to access the WiFi Service using compatible portable devices.

References below to "we" or "us" are to your Practice.

### AGREED TERMS

#### 1. ACCESS TO THE WIFI SERVICE

1.1 You may access the WiFi Service at no cost to you while you are attending our Practice but restrictions may apply including but not limited to the length of connection time. The WiFi Service is a service which we have chosen to make available to our patients, but we are under no obligation to do so and we may terminate this access at any time without notice to you.

1.2 The WiFi Service is a wireless data service which allows you to access data services when attending the Practice and within an appropriate distance of one of our hotspots.

1.3 You acknowledge that the WiFi Service is not a private network and that there is an inherent risk when using any publically accessible network that other people may be able to intercept or access your data.

1.4 You are responsible for all charges incurred when accessing any subscription based websites or other chargeable services and for all your other activities when using the WiFi Service.

1.5 You agree that we may modify, restrict, suspend or temporarily cease your access to the WiFi Service at any time in order to test the operation of the WiFi Service, carry out maintenance, technical repair, enhancement or emergency work or for any other reason.

#### 2. DEVICES AND HOTSPOTS

2.1 In order to access the WiFi Service, device(s) must meet any minimum hardware, systems and software requirements and be in proper working condition (each a "**Device**").

2.2 Although you should be able to access the WiFi Service when attending the Practice, the WiFi Service may not be available or fully operational at all times and its speed, quality and availability may vary.

2.3 The WiFi Service is intended for e-mail, instant messaging, browsing the internet and using apps. It is not intended for use with any service that requires a high speed or dedicated connection such as streaming media files or downloading large files. It should not be used for any use where a stable or reliable connection is required.

### 3. USE OF THE WIFI SERVICE

3.1 The WiFi Service must not be used for any commercial or business purpose and you do not have the right to resell or enable access to any third party.

3.2 You must comply with our acceptable use terms as set out below in clause 6.

3.3 To protect the WiFi Service and maintain quality we may temporarily or permanently control or restrict your online activities where we consider that such activities may have a detrimental effect on others (e.g. sending "spam" messages or hosting a website).

3.4 You agree to indemnify us against all losses, liabilities, costs (including legal costs) and expenses which we may incur as a result of third party claims against us arising from, or in connection with, your misuse of the WiFi Service or breach of this Contract.

3.5 We may require you to reimburse us for any reasonable and foreseeable losses, costs and expenses which we incur as a direct result of the misuse of the WiFi Service by you.

### 4. LANDING PAGES

4.1 When you start using the WiFi Service you will access a bespoke landing page chosen by the Practice (the "**Landing Page**").

4.2 The content of Landing Pages may be protected by intellectual property laws such as copyright and trade mark. The re-distribution, re-publication, or otherwise making available of such material to third parties is prohibited. Unauthorised use of the Landing Page may give rise to a claim against you for damages and/or be a criminal offence.

### 5. CHANGES TO THE WIFI SERVICE

The WiFi Service is provided (subject to the terms of this Contract) without charge. We may change, replace or withdraw it at any time.

### 6. ACCEPTABLE USE POLICY

6.1 We may block access to general categories of sites that may be deemed inappropriate for public environments or specific URLs for legal or contractual reasons. The type of site categories that we may block include, but is not limited to, those relating to drug use, pornography, offensive or

illegal speech, network malfeasance and material intended for those aged over 18 years.

6.2 We may amend the list of categories in clause 6.1 from time to time.

6.3 You must ensure that you have in place at all times, on any Devices used to access the WiFi Service, 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.

6.4 You undertake to comply with generally accepted principles of online service usage (including when sending, receiving, storing, distributing, transmitting, posting, uploading or downloading any materials or data), whether governed by the laws of any jurisdiction or not, including never:

6.4.1 sending “spam” mail (i.e. unsolicited mass communications);

6.4.2 sending mail bombs, trojan horses, viruses, malware or other disruptive programs or devices;

6.4.3 pirating or otherwise illegally copying software or other proprietary material or infringing any intellectual property rights or any other proprietary right of any third party;

6.4.4 uploading or transmitting any material which constitutes harassment, is unlawful, hateful, obscene, libellous, threatening, offensive or defamatory;

6.4.5 engaging in activities which may be harmful to minors or which promote or encourage illegal or socially unacceptable or irresponsible behaviour;

6.4.6 violating the security of any website or network or engaging in unauthorised decryption of protected material;

6.4.7 engaging in activities with a fraudulent purpose or effect or which involve a user impersonating another person or otherwise misrepresenting himself as the source of any communication; or

6.4.8 damaging or risking damaging our name and/or reputation.

## **7. HOW LONG YOUR CONTRACT LASTS**

7.1 This Contract commences when you indicate your acceptance of the terms and conditions of the Contract by continuing to use the WiFi Service. This Contract shall continue until terminated in a way set out in this Contract.

7.2 You can discontinue using the WiFi Service at any time which will also terminate this Contract.

7.3 Notwithstanding any other clause in this Contract, we may end your access to the WiFi Service at any time.

7.4 We may, at our discretion, immediately suspend or terminate the provision of the WiFi Service and/or this Contract if:

7.4.1 you breach any term or condition of this Contract;

7.4.2 we consider that you have committed or may be committing any fraudulent activity against us or against any other person or organisation through your use of the WiFi Service;

7.4.3 we are told to do so by the Government or other lawful regulatory authority or the emergency services; or

7.4.4 you act in a way towards our staff or agents which we consider to be inappropriate.

7.5 On termination of the Contract for any reason:

7.5.1 the accrued rights and liabilities of you and us as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected; and

7.5.2 the following clauses shall survive and continue in full force and effect: clauses 1, 3, 7, 8 and 10.

## **8. WHAT WE ARE NOT LIABLE FOR**

8.1 Subject to clause 8.2, we will not be liable under this Contract to you for:

8.1.1 any defect in use of any Device used to access the WiFi Service;

8.1.2 any use made of the WiFi Service nor for any content accessed, sent or received using the WiFi Service, nor for any charges incurred with any third party or for any transactions entered into when using the WiFi Service, unless caused by us;

8.1.3 the act of suspending or terminating access to the WiFi Service in accordance with the terms of this Contract;

8.1.4 any delay or failure by us to provide any element of the WiFi Service;

8.1.5 any loss or damage caused by your use of the WiFi Service, us, or any of our respective officers, employees, sub-contractors or agents in circumstances where there is no breach of a contractual obligation or legal duty of care by us or any of our respective officers, employees, sub-contractors or agents; or such loss or damage is not a reasonably foreseeable result of any such breach;

8.1.6 any loss or damage caused by us, or any of our respective officers, employees, sub-contractors or agents to the extent that such loss or damage results from any breach by you of these terms and conditions;

8.1.7 the security of any data you transmit using the WiFi Service;

8.1.8 the accuracy, completeness, availability or timeliness of any information obtained via the internet (including, without limitation, information or links to other such information on the Landing Page) when using the WiFi Service;

8.1.9 any loss or damage caused by viruses or unauthorised use of, or attempts to access, the WiFi Service or by your Devices;

8.1.10 any loss or corruption of data, indirect or consequential loss, loss of business, contracts, profits, anticipated savings, reputation, or revenue or any other form of economic loss; or

8.1.11 any loss or damages if anyone else, other than you, gains access to your Devices.

8.2 Nothing in this Contract shall limit or exclude in any way any liability we may have to you for (a) death or personal injury as a result of our negligence, (b) fraudulent misrepresentation or (c) any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.

8.3 Subject to clauses 8.1 and 8.2, our total aggregate liability in contract, tort (including negligence or breach of

statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with this Contract will be limited to £1,000.00.

8.4 You shall at all times be under a duty to mitigate any losses you suffer.

## **9. HOW THIS CONTRACT CAN BE TRANSFERRED AND THIRD PARTIES**

9.1 We may assign the Contract or the WiFi Service we provide to you on the same terms to any third party.

9.2 You may not assign this contract or the benefit of the WiFi Service we provide to you unless we agree in writing.

## **10. LAW AND GEOGRAPHICAL LIMITS**

Please note that this Contract is governed by and construed in accordance with English law. You and we both agree to submit to the exclusive jurisdiction of the courts of England and Wales (save that if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are resident of Scotland, you may also bring proceedings in Scotland).

## **ANNEX 2 – Processing, Personal Data and Data Subject**

1. Processing by Egton
  - 1.1 Subject matter of the processing: The solution is a networking technology that uses radio waves to provide wireless high-speed network connections to compatible devices.
  - 1.2 Nature: such processing as is necessary to enable Egton to provide the services and solutions provided for under this agreement (which includes collecting, recording, organising, structuring, storing, adapting and retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, combining, restricting access to, erasing or destroying of data.
  - 1.3 Purpose of processing: for the purposes of delivering the services and meeting other obligations specified in this agreement.
  - 1.4 Duration of the processing: for the term of this 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).
  - 1.5 Types of Personal Data: The media access control address of any device used in conjunction with the solution is captured.
  - 1.6 Categories of Data Subject: patients, staff, healthcare professionals, visitors and system users.