

DATED 27 September 2013

GP Clinical IT Systems

**DEED OF UNDERTAKING FOR
DATA PROCESSING**

THIS DEED OF UNDERTAKING is made on

2013

BY:

- (1) *EGTON MEDICAL INFORMATION SYSTEMS LTD* a company registered in England and Wales under number *211 7205* whose registered office is at *RAWDON HOUSE, GREEN LANE, YEADON LEEDS, LS19 7BY* ("**Supplier**"); and

FOR THE BENEFIT OF:

- (2) GP Practices who, from time to time, receive, or have previously received, GP Clinical IT systems and/or services from the Supplier and/or provide, or have previously provided, data for the purposes of data extraction services ("**Beneficiaries**").

BACKGROUND

- A The Supplier provides systems and services to the Beneficiaries through contract vehicles procured by HSCIC (or predecessor organisations) ("**GP IT Contracts**", as more specifically defined in clause 1.1.6).
- B PCTs (and their successors) use the GP IT Contracts to order systems and services for the Beneficiaries. A further agreement between the PCT and the Beneficiaries governs their relationship. The responsibilities and contracts of the PCTs have now transferred to Clinical Commissioning Groups (CCGs), starting from 1 April 2013.
- C The Suppliers also have contracts with the Health and Social Care Information Centre for the provision of data extraction services under the GPET-E project.
- D The GP IT Contracts reserve appropriate third party rights to enable the CCGs to enforce the contractual obligations directly against the Supplier on behalf of the Beneficiaries.
- E In order to reinforce the obligations of the Supplier which are contained in the GP IT Contracts in relation to data protection, the Supplier is pursuant to this deed giving direct assurances to the Beneficiaries with regards to how personal data is processed and safeguarded.
- F This document is an undertaking which operates as a deed poll to account for the fluctuation in the total number of GP practices receiving systems and services under the GP IT Contracts and/or provided data or receiving services under the Relevant Contracts (as defined in clause 1.1.8).
- G This document is a unilateral undertaking which does not need to be executed by the Beneficiaries but its terms shall be enforceable by any Beneficiary subject to clause 5 (Management of complaints and disputes).

IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this deed, (unless the context otherwise requires) the following words and phrases shall have the following meanings:

1.1.1 **"Authority"** means (including any successor organisations) the Health and Social Care Information Centre (HSCIC) or any other body acting for the Secretary of State for Health, as the context requires.

1.1.2 **"Data Protection Legislation"** the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

1.1.3 **"Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing"** have the meanings given in the Data Protection Act 1998.

1.1.4 **"Processed" and "Process"** shall be construed in accordance with the definition of "Processing".

1.1.5 References in this deed to **"Personal Data"** shall be interpreted as including **"Sensitive Personal Data"** (as defined in the Data Protection Act 1998).

1.1.6 **"GP IT Contracts"** means the contracts between the Authority and the Supplier, pursuant to which the Supplier provides GP clinical IT systems and related services to the Beneficiaries.

1.1.7 **"GPET-E Contract"** means the contract between the Authority and the Supplier for the provision of data extraction services connected with the GP Extraction Service project (GPES).

1.1.8 **"Relevant Contracts"** means the GP IT Contracts, GPET-E Contract and any other contract pursuant to which Personal Data is currently Processed, has been Processed or will be Processed by the Supplier on behalf of the Beneficiaries.

2. Responsibilities under the Data Protection Legislation

2.1 The Beneficiaries are Data Controllers in relation to all Personal Data held in its clinical IT systems and the Supplier is a Data Processor in connection with that Personal Data.

3. Undertaking relating to Data Processing

3.1 Where Personal Data is Processed on behalf of each Beneficiary by the Supplier, its agents, sub-contractors or employees, the Supplier undertakes that it shall, and shall procure that its agents, sub-contractors and employees shall:

- 3.1.1 only Process the Personal Data in accordance with instructions from the relevant Beneficiary or Beneficiaries which may be specific instructions or instructions of a general nature provided either directly to the Supplier or via the Authority;
- 3.1.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of services under the Relevant Contracts;
- 3.1.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Data and to the nature of the Personal Data which is to be protected;
- 3.1.4 take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
- 3.1.5 inform all personnel, who access to the Personal Data, of the confidential nature of the Personal Data and ensure that they do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Beneficiary or the Authority;
- 3.1.6 Process the Personal Data in accordance with the Data Protection Legislation and not do or permit anything to be done which might cause the Beneficiaries in any way to be in breach of the Data Protection Legislation;
- 3.1.7 cooperate as requested by the Beneficiaries to enable the Beneficiaries to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data processed by the Supplier or comply with any assessment, enquiry, notice or investigation under the Data Protection Legislation which shall include the provision of all data requested by the Beneficiaries within the timescale specified by the Beneficiaries in each case;
- 3.1.8 appoint and identify to the relevant Beneficiary or Beneficiaries a named individual within the Supplier to act as a point of contact for any enquiries from the Beneficiaries, via the Authority or directly at the Beneficiaries' option, relating to Personal Data;
- 3.1.9 cease Processing the Personal Data immediately upon the termination or expiry of the service to which it relates under the Relevant Contracts and as soon as possible thereafter, at the relevant Beneficiary or Beneficiaries' option, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains and the Supplier shall confirm in writing that this obligation has been complied with in full.
- 3.2 The Supplier shall not Process any Personal Data outside England without the prior written consent of the relevant Beneficiaries, which may be communicated by the Authority on the Beneficiaries' behalf.
- 3.3 Any Beneficiary may, on reasonable notice, request a detailed written description of the technical and organisational methods employed by the Supplier and its sub-contractors for the Processing of Personal Data. Within ten (10) days of receipt by the Supplier of each written request from a Beneficiary, the Supplier shall deliver a written report to that Beneficiary, with a copy sent to the Authority. The Supplier's report shall have sufficient detail to enable the

Beneficiary to reasonably determine whether or not Personal Data is being, has been, and will be, processed in compliance with the Data Protection Legislation.

4. Indemnity

- 4.1 The Supplier shall indemnify each Beneficiary and keep each Beneficiary indemnified against damages, costs and/or monetary penalty notices arising from enforcement by the Information Commissioner's Office (or its successor enforcement body) and/or assertion of rights by Data Subjects, arising from a breach by the Supplier of the data processing conditions set out in clause 3 of this deed of undertaking.
- 4.2 The financial liability of the Supplier under this deed of undertaking shall be limited for each Beneficiary to an amount equal to the maximum monetary penalty notices which can be enforced by the Information Commissioner's Office (or its successor enforcement body) against each Beneficiary for breaches of the Data Protection Legislation.

5. Management of complaints and disputes

- 5.1 Where it is reasonably practicable, any complaint, dispute or action against the Supplier for breach of the data processing conditions set out in this deed shall be managed by the Authority on behalf of the Beneficiaries and CCGs (or successors) under the processes and provisions set out in the Relevant Contract. Where it is not reasonably practicable for the Authority to do so, then the Beneficiaries shall be able to deal directly with the Supplier to, for example, escalate a complaint or dispute or take action against the Supplier.

Executed as a deed by

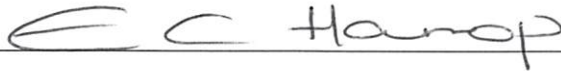


(signature)

D. L. SOXANLON

(full name)

a director, on behalf of the Supplier EGTON MEDICAL INFORMATION in the presence of:
SYSTEMS LTD



signature of witness

EMMA HARROP

name of witness

RANDON HOUSE, GREEN LANE
YEADON LEEDS LS19 7BY

address of witness

P. A.

occupation of witness