

ClaimControl™

Subscription Contract



Client Company Name: _____

Client Company No.: _____

Client Registered/
Statutory Address: _____

Client Postcode: _____

Client e-mail address:

Alphatec e-mail address:

Number of ClaimControl Users:

Initial Term (Months):

Subscription Price:

Contract Start Date (DD/MM/YY):

Special Instructions:

ClaimControl™ is a trademark of Alphatec Software Limited. All rights reserved. Alphatec Software Ltd, North Barn, Dodford Hill Farm, Brockhall Road, Dodford, Northamptonshire, NN7 4GS Registered Office: Eastcroft House, 25 Woodhall Road, Wishaw, North Lanarkshire, ML2 8PY. Registered in Scotland No: 164246

 Please use recycled paper



1. This **Agreement** is made up of the following:
 - a. These Contract Details.
 - b. The terms and conditions overleaf (the “**Terms of Use**”).
 - c. The Schedule to the Terms of Use.

This Agreement has been entered into on the date of signature of the final Party to sign these Contract Details, as set out below.

Signed for and on behalf of
ALPHATEC SOFTWARE LIMITED

Signature

Print Name
an authorised signatory

Dated

Signed for and on behalf of
[THE CLIENT]

Signature

Print Name
an authorised signatory

Dated

Terms & Conditions

Parties to the Agreement

- 1) **ALPHATEC SOFTWARE LIMITED**, incorporated and registered in Scotland with company registration number SC164246, having its registered office at Eastcroft House, Woodhall Road, Wishaw, Lanarkshire, ML2 8PY ("**Alphatec**"); and
- 2) _____, company registration number _____, having its registered address at _____ (the **Client**).

BACKGROUND

- (A) Alphatec has developed its ClaimControl™ application residing at alphatec.net and provided as a software as a service platform for managing incidents, claims, risk, insurance and associated information (the "**Site**").
- (B) Alphatec has agreed to provide Services to the Client and its Affiliates, and the Client has agreed to take and pay for Alphatec's service provided via the Site subject to the terms and conditions of this Agreement.

AGREED TERMS

1. Interpretation

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

Affiliate: means with respect to either Party, any other legal entity which controls such Party, is controlled by such Party or is under common control with such Party, where "control" means the ability, whether directly or indirectly, to direct the management and action of a legal entity by means of ownership, contract or otherwise.

Agreement: has the meaning given to it in the Contract Details.

Alphatec Personnel: means all directors, officers, employees, agents, contractors and consultants of Alphatec.

Authorised Clients: those clients of the Client who are authorized by the Client to use the Services on a read-only basis.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Client Data: the data inputted by the Client, Client's Affiliates, Users, or Alphatec on the Client's behalf, for the purpose of using the Services or facilitating the Client's use of the Services, and any data or information derived from such Client Data.

Client Personal Data: shall have the meaning given to it in clause 8.1.

Content: has the meaning given to it in clause 3.3.

Contract Details: the cover sheet to these Terms of Use.

Contract Start Date: has the meaning given to it in the Contract Details.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: shall have the meanings given in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the 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 Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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

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

Documentation: the documentation and information made available to the Client and its Affiliates by Alphatec online via the Site (or such other web address notified by Alphatec to the Client from time to time) which sets out a description of the Services and the user instructions for the Services.

Domestic Law: the law of the United Kingdom or any part of the United Kingdom.

DPA 2018: Data Protection Act 2018.

Initial Term: the period set out in the Contract Details commencing on the Contract Start Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Law: means all laws, statutes and regulations from time to time in force which apply to which Alphatec is bound to comply in order to carry out its obligations pursuant to the terms of this Agreement.

Party: a party to this Agreement.

Protective Measures: appropriate technical and organisational measures, including those that the Client has authorised Alphatec to undertake as listed in Schedule 1.

Renewal Term: the period described in clause 6.1.

Services: the subscription services provided by Alphatec to the Client and its Affiliates under this Agreement via the Site (or any other website notified to the Client by Alphatec from time to time), as more particularly described in the Documentation.

Sub-processor: any third party appointed to process Client Personal Data on behalf of Alphatec related to this Agreement including those that the Client has authorised as listed in Schedule 1.

Site: the website via which the Services are provided by Alphatec to the Client.

Subscription Price: the sum set out in the Contract Details (as amended from time to time in accordance with the Terms of Use).

Term: has the meaning given in clause 6.1.

Terms of Use: means these terms and conditions.

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

Users: those employees, agents and independent contractors of the Client and its Affiliates, and (subject always to clause 3.1) Authorised Clients who are authorised by the Client to use the Services and the Documentation (and the initial number of users, as of the Contract Start Date, are set out in the Contract Details).

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:

1.2.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.2.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.3 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.

- 1.4 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 assigns.

2. Services

- 2.1 Alphatec shall, during the Term, provide the Services and make available the Documentation to the Client and its Affiliates on and subject to the terms of this Agreement.
- 2.2 Alphatec shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for planned maintenance of the Site carried out as and when notified to the Client from time to time.
- 2.3 Subject to clause 2.4 and the remainder of this clause 2.3, Alphatec warrants that the Services will be performed substantially in accordance with the Documentation and the requirements set forth in this Agreement, with reasonable skill and care and in compliance with all applicable laws and regulations. Where the Client makes any request to Alphatec that any Users may be based outside of the United Kingdom, at the time of such request, the Client undertakes to highlight to Alphatec any local applicable laws and/or regulations which Alphatec will need to comply with if it agrees to provide Services to Users in such jurisdiction(s).
- 2.4 Alphatec will not be responsible to the extent of any non-conformance which is caused by use of the Services contrary to Alphatec's instructions, or modification or alteration of the Services by any party other than Alphatec or Alphatec's duly authorised contractors or agents. Without prejudice to any other rights or remedies to which Client may be entitled under law or this Agreement, if the Services do not conform with the foregoing undertaking, Alphatec will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.

3 License Grant & Restrictions

- 3.1 Alphatec hereby grants the Client and its Affiliates a non-exclusive, non-transferable (other than as provided for in this Agreement) right and licence, without the right to grant sub-licences (other than as provided for in this Agreement), to permit the Users to use the Services during the Term, in the specified jurisdictions, solely for the Client's own internal business purposes, subject to the terms of the Agreement. If agreed in writing by Alphatec, on a case by case basis, the Client shall be able to license/allow Authorised Clients to access/use the Services.
- 3.2 All rights not expressly granted to the Client and its Affiliates are reserved by Alphatec and its licensors. Alphatec reserves the right to grant licenses to use the Service and the Site to any other party or parties provided any such licenses shall not affect the provision of the Service to the Client and its Affiliates.
- 3.3 The Client shall not and shall procure that its Affiliates shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party (other than to Authorised Clients, strictly as may be permitted in accordance with clause 3.1) the Services or the content of the Site (the "**Content**") in any way; (ii) modify or make derivative works based upon the Services or the Content; (iii) create internet links to the Services or frame or mirror any Content on any other server or wireless or internet-based device (other than to give access to Authorised Clients, strictly as may be permitted in accordance with clause 3.1); or (iv) reverse engineer or access the Site, the Services or the Content in order to: (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services. The Client shall not and shall procure that its Affiliates shall not amalgamate, amend or incorporate the Services or the Content (or any software therein) into or with any other software without the consent of Alphatec.
- 3.4 User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Services.
- 3.5 The Client shall, and shall procure that its Affiliates shall, use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Alphatec.
- 3.6 The Client shall not and shall procure that its Affiliates shall not:
- 3.6.1 distribute or transmit to Alphatec, via the Services, any Viruses;
 - 3.6.2 store, access, publish, disseminate, distribute or transmit via the Services any material which:
 - 3.6.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.6.2.2 facilitates illegal activity;

- 3.6.2.3 depicts sexually explicit images;
- 3.6.2.4 promotes unlawful violence;
- 3.6.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
or
- 3.6.2.6 is otherwise illegal or causes damage or injury to any person or property;

and Alphatec reserves the right, on no less than thirty (30) days' prior written notice to the Client, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Client's and/or Affiliate's (as applicable) access to the Services for the duration of time that the breach remains unremedied.

4. Payment of Fees

- 4.1 In consideration of the provision of the Services, the Client shall pay the Subscription Price to Alphatec in accordance with the terms of this clause 4.
- 4.2 Subject to the remainder of this clause 4.2, Alphatec shall be permitted to invoice in advance for the provision of the Services and an invoice in the sum of the Subscription Price will be issued on an annual basis up to 30 days before the Contract Start Date and in accordance with clause 6.3 in respect of each Renewal Term.
- 4.3 For previously approved jurisdictions only, Additional Users may be added at any time by the Client (on a self-serve basis via the Site) and Alphatec shall commence the provision of the Services to such Users at the Client's request (the "**User Commencement Date**"). The Client will be invoiced pro-rata for the additional Users, on a quarterly basis, in respect of the period from the User Commencement Date to the end of the current Initial Term or Renewal Term (as applicable) and such fees shall be charged as a pro-rated increase to the then current annual Subscription Price in respect of such period and each Renewal Term thereafter.
- 4.4 Where the Client wishes to add Users in a new jurisdiction, the Client shall submit a request in writing to Alphatec which complies with clause 2.3 and specifies: (i) which jurisdiction(s) it wishes to add; and (ii) the number of Users in each new jurisdiction. Each such request shall be made to **[insert details]**. Alphatec shall consider each request made in accordance with this clause 4.4 and, if it is willing to agree to such request, shall provide a quotation which specifies the additional fees payable. If the Client agrees to pay the additional fees quoted, the Contract Details shall be updated accordingly and the Services shall be extended to the new Users in the new jurisdiction(s).
- 4.5 Following the Initial Term, Alphatec reserves the right to increase the Subscription Price on at least three months' written notice to the Client to reflect any increase in the Retail Prices Index during the period since the Contract Start Date or, if later, the date of the last increase to the Subscription Price in accordance with this clause 4.4 (on the basis that the increase in the Subscription Price shall be no more than the percentage increase in the Retail Prices Index during the relevant period).
- 4.6 The Client shall pay all fees or charges (including the Subscription Price) to Alphatec's nominated bank account by direct debit or standing order within the period of 30 days of issue of the relevant invoice.
- 4.7 Fees for services other than the Services will be charged on an as-quoted basis. Alphatec's fees and charges are exclusive of VAT or other applicable sales taxes. Any such taxes shall be paid by the Client at the rate and in the manner prescribed by law.

5 Non-Payment and Suspension

- 5.1 In addition to any other rights granted to Alphatec herein, Alphatec reserves the right to suspend or terminate this Agreement and the Client's access to the Service if:
 - 5.1.1 the Client fails to make any undisputed payment due to Alphatec on or before the due date and fails to make payment in full within 30 days' of receiving notification from Alphatec of its default; or
 - 5.1.2 is in material breach of the Agreement.
- 5.2 Interest shall accrue on a daily basis at the rate of 1.5% per year over the base lending rate of the Bank of England and will be charged by Alphatec on any outstanding balance, plus all expenses of collection. The Client will continue to be charged for the Subscription Price during any period of suspension. Alphatec reserves the right to impose a reconnection fee in the event the Client is suspended and thereafter request access to the Service.

6 Renewal and Termination

- 6.1 This Agreement shall commence on the Contract Start Date and shall continue, unless terminated earlier in accordance with its terms, for the Initial Term and this Agreement shall thereafter automatically be extended for successive periods of 12 months (each, a “Renewal Term”) unless:
- 6.1.1 either Party notifies the other Party of termination, in writing, at least 3 months before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or
 - 6.1.2 otherwise terminates in accordance with the provisions of this Agreement, and the Initial Term together with any subsequent Renewal Term shall constitute the **Term** of the Agreement.
- 6.2 Save for any provision of this Agreement that expressly allows for an amendment of the Subscription Price, the Subscription Price for each Renewal Term will be equal to the Subscription Price for the previous Initial Term or Renewal Term (as applicable).
- 6.3 An invoice in respect of a Renewal Term shall be produced and sent to the Client up to 30 days prior to the commencement date for that Renewal Term.
- 6.4 Without affecting any other right or remedy available to it, either Party may at its option terminate the Agreement with immediate effect by giving notice to the other Party in writing if:
- 6.4.1 in the case of Client only, fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 6.4.2 commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 6.4.3 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 6.4.4 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 6.5 On termination of this Agreement:
- 6.5.1 by Alphatec in accordance with clause 6.4, Alphatec will be under no obligation to repay to the Client any advance payments of the Subscription Fee which the Client has made; and
 - 6.5.2 for any reason:
 - 6.5.2.1 all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;
 - 6.5.2.2 the Client shall immediately pay to Alphatec all sums due to it under this Agreement for Services actually performed up to the termination date of this Agreement, and subject to clause 6.5.1 the Client shall be entitled to receive a pro-rata refund for any prepaid Subscription Price for the remaining Term from the date of termination;
 - 6.5.2.3 any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect;
 - 6.5.2.4 subject to reaching agreement on the applicable fees for doing so, Alphatec shall provide such assistance as Client may reasonably require to enable the transition of those Services in-house or to an alternative provider; and
 - 6.5.2.5 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
 - 6.5.3 On expiration of this Agreement, or upon request of the disclosing Party, the receiving Party shall promptly destroy or return (as reasonably requested by the disclosing Party) any or all of the disclosing Party's Confidential Information and confirm in writing of such destruction. The receiving Party may retain copies

of the disclosing Party's Confidential Information required for compliance with its obligations under this Agreement, its recordkeeping, legal, regulatory or quality assurance requirements or which is retained automatically as part of a computer back-up, recovery or similar system, provided the receiving Party shall continue to comply with its obligations regarding such retained Confidential Information.

7 Account Information

- 7.1 Alphatec does not own any of the Client Data. The Client, not Alphatec, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, or right to use of all Client Data, and Alphatec shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data resulting from the Client's use of the Service.
- 7.2 In the event this Agreement is terminated, Alphatec will make available to the Client a file of the Client Data within 30 days of termination if the Client so requests at the time of termination. All Client Data will be automatically deleted 30 days after termination of the agreement.

8 Data Protection

- 8.1 This clause 8 shall apply to the processing of Personal Data comprising the Client Data by Alphatec on behalf of the Client (the "**Client Personal Data**"). The Parties acknowledge that for the purposes of the Client Personal Data, under the Data Protection Legislation, the Client is the Controller and Alphatec is the Processor. If there are other Controllers, the Client will identify and inform Alphatec of any such other Controllers prior to providing their Personal Data. The only processing that Alphatec is authorised to do by the Client is listed in Schedule 1 and Alphatec shall not determine the purposes for the processing of Client Personal Data.
- 8.2 The Client has access through the Service to respond to all requests relating to Client Personal Data. Alphatec will assist in any changes that restrict the Client from accessing the relevant data to this subject; however, any such assistance in extracting accessible data shall be chargeable.
- 8.3 Alphatec shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.
- 8.4 Alphatec is not responsible for determining the requirements of laws applicable to Client's business or that Alphatec's provision of the Services meet the requirements of such laws. However, if requested to do so by the Client, Alphatec shall provide its reasonable assistance (at the Client's cost) to the Client in the preparation of any Data Protection Impact Assessment. As between the parties, the Client is responsible for the lawfulness of the processing of the Client Personal Data. For the avoidance of any doubt, if the Client permits Users to access the Services in any jurisdiction which has not been pre-approved by Alphatec in accordance with clause 4.4, this shall be at the Client's sole risk and subject to clause 8.5.
- 8.5 The Client agrees to indemnify on demand and hold Alphatec harmless from and against any demands, loss, liability, claims or expenses (including legal fees and expenses), made against Alphatec by any third party due to or arising out of or in connection with a breach by the Client of its obligations under clause 8.4.
- 8.6 The Client represents and warrants that it:
- 8.6.1 has complied with the requirements of the right to be informed under the Data Protection Legislation, including where required to inform Data Subjects that their Personal Data will be passed to Alphatec for the purposes of the provision of the Services and has obtained explicit consent to do so from such Data Subjects where required under the Data Protection Legislation;
 - 8.6.2 has the right under Data Protection Legislation to instruct Alphatec to process the Client Personal Data; and
 - 8.6.3 will not use the Services in conjunction with Personal Data to the extent that doing so would violate applicable Data Protection Legislation,
- and the Client will be liable for a breach by the Client of this clause 8.6.
- 8.7 Alphatec shall, in relation to any Client Personal Data processed in connection with its obligations under this Agreement:
- 8.7.1 process that Client Personal Data only in accordance with Schedule 1, unless otherwise agreed between the parties and/or Alphatec is required to do otherwise by Domestic Law. If it is so required by Domestic Law, Alphatec shall promptly notify the Client before processing the Client Personal Data unless prohibited by Domestic Law;

8.7.2 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

8.7.2.1 nature of the data to be protected;

8.7.2.2 harm that might result from a Data Loss Event;

8.7.2.3 state of technological development; and

8.7.2.4 cost of implementing any measures;

8.7.3 ensure that:

8.7.3.1 Alphatec Personnel do not process Client Personal Data except in accordance with this Agreement (with reference to Schedule 1);

8.7.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Alphatec Personnel who have access to the Client Personal Data and ensure that they:

8.7.3.2.1 are aware of and comply with Alphatec's duties under this clause 8;

8.7.3.2.2 are subject to appropriate confidentiality undertakings with Alphatec;

8.7.3.2.3 are informed of the confidential nature of the Client Personal Data and do not publish, disclose or divulge any of the Client Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and

8.7.3.2.4 have undergone training in the use, care, protection and handling of Client Personal Data;

8.7.3.3 not transfer Client Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

8.7.3.3.1 the transfer is to a country determined by the UK in accordance with the Data Protection Legislation as having an adequate level of data protection;

8.7.3.3.2 the Client or Alphatec has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation;

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

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

8.7.3.3.5 Alphatec complies with any instructions detailed in Schedule 1 with respect to the processing of the Client Personal Data; and

8.7.3.4 at the written direction of the Client, delete or return Client Personal Data (and any copies of it) to the Client on termination of the Agreement in accordance with clause 7.2 (unless Alphatec is required by Law to retain the Client Personal Data).

8.8 Subject to clause 8.10, to the extent permitted by Law, Alphatec shall notify the Client within 2 Business Days if it:

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

8.8.2 receives a request to rectify, block or erase any Client Personal Data;

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

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

8.8.5 receives a request from any third party for disclosure of Client Personal Data where compliance with such request is required or purported to be required by Law.

- 8.9 Alphatec shall notify the Client without undue delay as soon as reasonably practicable as it becomes aware of a Data Loss Event.
- 8.10 It is Alphatec's obligation to notify under clause 8.6 but the Client shall be responsible to respond to such requests of Data Subjects. If a Data Subject brings a claim directly against Alphatec for a violation of their Data Subject rights under the Data Protection Legislation, the Client will indemnify Alphatec on demand for any cost, charge, damages, expenses or loss arising from such a claim, provided that Alphatec has notified the Client about the claim in accordance with clause 8.6 and given the Client the opportunity to cooperate with Alphatec in the defence and settlement of the claim.
- 8.11 Upon reasonable notice and at the cost of the Client, Alphatec shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor provided that the Client shall ensure that any individual auditing of the Services is appropriately skilled and the Client shall be responsible for any loss or damage to Alphatec resulting from the acts or omissions of any such individual during such audit.
- 8.12 Before allowing any Sub-processor to process any Client Personal Data related to this Agreement, Alphatec must:
- 8.12.1 notify the Client in writing of the intended Sub-processor and processing; and
- 8.12.2 obtain the written consent of the Client (provided that any Sub-processors listed in Schedule 1 shall be deemed to be so authorised).
- 8.13 Alphatec has entered, or (as the case may be) will enter, into written agreements with each Sub-processor incorporating terms which are substantially similar to those set out in this clause 8.
- 8.14 Alphatec shall remain fully liable for all acts or omissions of any Sub-processor.
- 8.15 The Parties shall take account of any guidance issued by the Information Commissioner's Office. The Client may, on not less than 30 Business Days' notice to Alphatec, amend this clause 8 to ensure that it complies with any guidance issued by the Information Commissioner's Office subject to the written consent of Alphatec (not to be unreasonably withheld, delayed or conditioned). Alphatec accepts and acknowledges that it shall not be reasonable to withhold consent where failure to make such requested changes will render this Clause 8 incompatible with the Data Protection Legislation.

9 Intellectual Property Ownership

- 9.1 Alphatec alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the ClaimControl™ technology, the Site, the Content, the Documentation and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Client or any other party relating to the Service. Nothing in this Agreement will grant or transfer any right, title or interest, including any Intellectual Property Rights, in and to any information or materials that: (i) are owned or licensed by a Party; or (ii) anything created independently of this Agreement ("**Background IP**") of either party, except for the limited license granted in this Agreement.
- 9.2 This Agreement is not a sale agreement and does not convey to the Client any rights of ownership in or related to the Site, the Content, the Documentation, the Service, the ClaimControl™ technology or the Intellectual Property Rights owned by Alphatec or its licensors. The ClaimControl™ name and the ClaimControl™ logo are trademarks of Alphatec and no right or license is granted to use them.
- 9.3 Subject to the limitations of liability specified in clause 12.3, Alphatec shall defend the Client against any claim from a third party that the Client's use of the Services in accordance with this Agreement infringes any Intellectual Property Rights, and shall indemnify the Client for any amounts awarded against the Client in judgement or settlement of such claims, provided that:
- 9.3.1 Alphatec is given prompt notice of any such claim;
- 9.3.2 the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Alphatec in the defence and settlement of such claim, at Alphatec's expense; and
- 9.3.3 Alphatec is given, at its own cost, sole authority to defend or settle the claim.
- 9.4 Without derogating from the foregoing defence and indemnification obligations, if Alphatec believes that the Services, or any part thereof, may so infringe a third party's Intellectual Property Rights, then Alphatec may (at Alphatec's sole discretion) procure the right for the Client to continue using the Services, replace or modify the Services (with substantially the same benefit that the Client would have had had it not been prohibited from using the Services) so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 30 Business Days' notice to the Client and in such event Client shall receive a prorated refund of any Subscription Price prepaid for the unused portion of the Term for the infringing Services.

- 9.5 In no event shall Alphatec, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 9.5.1 a modification of the Services or Documentation by anyone other than Alphatec; or
 - 9.5.2 the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Alphatec; or
 - 9.5.3 the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Alphatec or any appropriate authority.

- 9.6 This Section 9 and clause 12.3 state the Client's sole and exclusive rights and remedies, and Alphatec's (including Alphatec's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any third party Intellectual Property Rights.

10 Third Party Interactions

- 10.1 The Site may contain links to other independent third party Web sites ("**Linked Sites**"). These Linked Sites are provided solely as a convenience to our visitors. Such Linked Sites are not under Alphatec's control, and Alphatec is not responsible for and does not endorse the content of such Linked Sites, including any information or materials contained on such Linked Sites. The Client will need to make the Client's own independent judgment regarding the Client's interaction with these Linked Sites.

11 Representations & Warranties

- 11.1 Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and Alphatec has obtained all necessary and required licences, consents and permits to perform the Services. Alphatec will provide the Services with reasonable skill and care.
- 11.2 The Site, the Service and the Content are provided to the Client on an "as-is" basis.
- 11.3 Subject the remainder of this clause 11.3, Alphatec warrants that it shall employ security measures at all times which are at least equivalent to those measures which Alphatec has in place at the date of this Agreement.
- 11.4 The Client represents and warrants that the Client has not falsely identified itself nor provided any false information to gain access to the Service and that the Client's billing information is correct.
- 11.5 This Agreement sets out the full extent of Alphatec's obligations and liabilities in respect of the provision of the Service. All other conditions, warranties and representations concerning the provision of the Service which might otherwise be implied in this Agreement are expressly excluded.
- 11.6 Subject to Clause 8, the Client agrees to indemnify on demand and hold Alphatec harmless from any proven foreseeable and fully mitigated demands, loss, liability, claims or expenses (including legal fees and expenses), made against Alphatec by any third party due to or arising out of or in connection with the Client's use of the Site or the provision of Client Data to Alphatec.

12 Limitation of Liability

- 12.1 Nothing in this Agreement excludes the liability of either Party:
- 12.1.1 for death or personal injury caused by its negligence;
 - 12.1.2 for fraud or fraudulent misrepresentation; or
 - 12.1.3 for any other liability which cannot be excluded or limited by law.
- 12.2 Subject to clause 12.1, in no event will either Party, except where prohibited by law, be liable to the other, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
- 12.3 Subject to clauses 12.1, 12.2 and 12.5, Alphatec's total aggregate liability in each year of this Agreement (the first such year commencing on the date of this Agreement and continuing for a period of 12 months ("**Year**")) for all causes of action which arise in that Year, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to an amount equal to 100% of the total Subscription Price paid and/or payable by the Client to Alphatec in that Year.

- 12.4 Subject to clauses 12.1 and 12.2 and 12.6, and without prejudice to the Client's obligation to pay the Subscription Price as and when it falls due for payment, the Client's total aggregate liability in each Year of this Agreement for all causes of action which arise in that Year, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to an amount equal to 100% of the total Subscription Price paid and/or payable by the Client to Alphatec in that Year.
- 12.5 Alphatec's maximum aggregate liability to the Client in respect of all claims, losses or damages in connection with breaches of clause 8 (Data Protection), clause 9 (IP) and clause 25 (Confidentiality) whether arising from tort, breach of contract, statutory duty or otherwise out of or in connection with this Agreement, will in no event, exceed one million British pounds sterling (£1,000,000).
- 12.6 The Client's maximum aggregate liability to Alphatec in respect of all claims, losses or damages in connection with breaches of clause 8 (Data Protection), clause 9 (IP), clause 11.7 (indemnity) and clause 25 (Confidentiality) whether arising from tort, breach of contract, statutory duty or otherwise out of or in connection with this Agreement, will in no event, exceed two million British pounds sterling (£2,000,000). In the event this limitation of liability is reached, Alphatec may terminate this Agreement immediately on written notice, without incurring any liability to the Client.

13 Force Majeure

- 13.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**"). The Party affected shall provide prompt notice to the other Party detailing the Force Majeure Event, the estimated duration, and what steps are being taken to deal with the Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed provided that if the period of delay or non-performance continues for 6 weeks, the Party affected may terminate this Agreement by giving 14 days' written notice to the other Party and Alphatec shall refund any unused prepaid Subscription Price for the remainder of the Term.

14 Internet Delays

- 14.1 The Service may be subject to limitations beyond the control of Alphatec. Alphatec is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

15 Modification to Terms

- 15.1 The Client acknowledges that the Alphatec aims to continuously improve the Services and that this Agreement may, from time to time, need to be updated to comply with changes in applicable laws. This being the case, Alphatec reserves the right to: (i) introduce modifications which improve the Services; and (ii) update this Agreement as necessary to comply with applicable laws, in each case effective 90 days after notification to the Client (the "**Modification Date**"). Where an update to the Agreement is needed to comply with applicable laws and such update is specific to the Client (and not Alphatec's clients generally), Alphatec may pass on any increase in its cost of providing the Services (resulting from the update) to the Client.
- 15.2 The Client has the right, at any time after receiving notice of a proposed update to the Agreement in accordance with clause 15.1 but prior to the Modification Date, to serve notice in writing to Alphatec to terminate the Agreement, such notice expiring (and the Agreement terminating) on the Modification Date.

16 Assignment

- 16.1 Subject to the remainder of this clause 16.1, this Agreement may not be assigned by either Party without the prior written approval of the other Party (such consent not to be unreasonably withheld or delayed). This Agreement may be assigned without the Client's consent by Alphatec to: (i) a member of the same group of companies as Alphatec; or (ii) the acquirer of the assets of Alphatec; or (iii) a successor to Alphatec by merger, provided in each case that the assignee shall not be a direct competitor of the Client. For the avoidance of doubt, Alphatec is not permitted to sub-contract the provision of the Services to any direct competitor of the Client, whether in whole or in part, except with the prior written approval of the Client.

17 Waiver

- 17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18 Rights and Remedies

- 18.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19 Severance

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20 Entire Agreement

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 20.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

21 No Partnership or Agency

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

22 Third Party Rights

- 22.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23 Counterparts

- 23.1 The Agreement (via the Contract Details) may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24 Notices

- 24.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:
- 24.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 24.1.2 sent by email to address set out in the Contract Details (or an address substituted in writing by the Party to be served).
- 24.2 Any notice shall be deemed served:
- 24.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 24.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
 - 24.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours (being Monday to Friday 9am to 5pm) in the place of receipt, when Business Hours resume.
- 24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25 Confidentiality

- 25.1 Each Party may be given access to confidential information, regardless if it is marked as confidential, concerning the business, affairs, customers, clients or suppliers of the other Party and its Affiliates ("**Confidential**

Information") in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- 25.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
 - 25.1.2 was in the other Party's lawful possession before the disclosure;
 - 25.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - 25.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 25.2 Subject to clause 25.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 25.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 25.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 25.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 25.5 The Client acknowledges that:
- 25.5.1 save for any Client's Background IP and Client Data, the details of the Services, and the results of any performance tests of the Services, constitute Alphatec's Confidential Information; and
 - 25.5.2 each User shall be granted a registration, account ID and password for their use of the Services and Documentation and the Client undertakes to procure that each User maintains the security and confidentiality of such information.
- 25.6 Alphatec acknowledges that the Client Data is the Confidential Information of the Client.
- 25.7 The above provisions of this clause 25 shall survive termination or expiry of this Agreement, however arising.

26 Miscellaneous

- 26.1 Alphatec actively and aggressively enforces its Intellectual Property Rights to the fullest extent of the law. Alphatec works closely with the Business Software Alliance (BSA) and the Software Information Industry Association (SIIA) to combat software piracy worldwide.
- 26.2 Each Party warrants that it shall perform its obligations under this Agreement in accordance with all applicable laws, including the UK Bribery Act 2010.
- 26.3 Alphatec agrees to maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as is customarily carried by responsible companies/firms in Alphatec's industry engaged in similar businesses and in similar geographic areas. If the Client reasonably requests, Alphatec agrees to provide the Client with a summary of its insurance coverage or a copy of a certificate of insurance as it relates to providing the Services to the Client.

27 Business Continuity

- 27.1 Alphatec shall have a business continuity plan ("**Business Continuity Plan**") and an IT disaster recovery plan ("**IT Disaster Recovery Plan**"), to be implemented in the case of a disruption ("**Business Continuity Disruption**") to the Services provided to Client.
- 27.2 The Business Continuity Plan shall include the following: (i) a means of contacting nominated Client representative; (ii) location of an alternative facility to continue Services; (iii) criteria for Business Continuity Disruption declaration and recovery; (iv) notification and escalation procedures; (v) maintenance procedures; (vi) prioritised activity; (vii) recovery information, procedures, and schedules; and (viii) Services or service locations specifically excluded.
- 27.3 The IT Disaster Recovery Plan shall be tested and maintained, as appropriate, with a view to ensuring the recovery of systems required to continue providing Services to the Client. Following any such test, the IT Disaster Recovery Plan shall be updated as necessary based on the results and any recommendations arising from the test.
- 27.4 Alphatec must notify Client of any Business Continuity Disruption affecting Services to the Client as soon as reasonably practicable.

28 Audit

- 28.1 **Routine Audits.** Alphatec shall keep records in connection with the Services ("**Records**") during the Term and for at least five (5) years after the expiration or termination of this Agreement, or as required by applicable laws and regulations, whichever is longer. No more than once every twelve (12) months or at any time immediately following a breach by Alphatec of this Agreement, within fifteen (15) days of Client's written request, Alphatec shall provide the Client, its Affiliates or their third party auditors with access to or copies of specified Records. The Client shall ensure that any such auditing is appropriately skilled and the Client shall be responsible for any loss or damage to Alphatec resulting from the acts or omissions of such auditor(s) during such audit. Where any such audit is carried out as a result of Alphatec's breach of this Agreement, Alphatec's assistance shall be at Alphatec's expense. Otherwise, this expense shall be borne by the Client.
- 28.2 **Regulatory Audits.** "**Regulatory Audits**" means all inspections and audits conducted by any governmental, statutory or regulatory authority ("**Regulators**"). To the extent permitted by Regulators, the Client shall provide reasonable prior notice of any Regulatory Audits but Alphatec acknowledges that Regulatory Audits may be required to be conducted at any time, without prior notice or limitation on frequency. Alphatec shall provide such access to Records, premises, computer systems and Alphatec Personnel as may be required by any Regulatory Audits under applicable law. Alphatec shall, at its own cost, ensure it and all Alphatec Personnel provide such cooperation and assistance as is reasonably required by the Regulatory Audits.

29 Governing Law and Jurisdiction

- 29.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 29.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1
Processing, Personal Data and Data Subjects

1 Introduction

- 1.1 Subject to clause 8.5.1, Alphatec shall comply with the written instructions with respect to processing provided by the Client as set out in this Schedule 1.
- 1.2 The Client accepts that it is responsible for providing any additional appropriate reasonable written instructions with respect to processing by Alphatec which comply with the terms of the Agreement.
- 1.3 Any such further instructions shall be incorporated into this Schedule 1.

2 Subject matter and duration of processing

- 2.1 The subject matter of the processing:
 - 2.1.1 Provision of the Services to the Client and, in particular the processing of information relating to the administration of insurance claims against the Client and incidents of damage and near misses to Client, or third party, property.
 - 2.1.2 The duration of processing is the Term and as necessary thereafter solely as required by any applicable laws and regulations.

3 Nature and purpose of the processing

- 3.1 The use of the Service to record, organise, structure, store, retrieve, amend and delete information for the purposes below.
- 3.2 The purposes of the processing are:
 - 3.2.1 The administration of records relating to insurance claims against the Client.
 - 3.2.2 The administration of records relating to incidents and near misses to Client, and third party, property.
 - 3.2.3 Health and safety and employment purposes.

4 Types of Personal Data

- 4.1 Personal Data:
 - 4.1.1 Names, addresses and contact details of claimants.
 - 4.1.2 Employee information relevant to a claim, incident or near miss.
 - 4.1.3 Claimants' vehicle details if a claim is vehicle related.
 - 4.1.4 Information relating to witnesses and other individuals directly related to the incident or claim.
- 4.2 Special category Personal Data:
 - 4.2.1 Health information (details of injuries or conditions suffered by claimants leading to the claim against the Client or pertinent pre-existing conditions, details of injuries or conditions suffered by employees or elected members relating to incidents and near misses).

5 Categories of Data Subject

- 5.1 Claimants (persons making insurance claims against the Client).
- 5.2 Witnesses to incidents and near misses.
- 5.3 Users, client employees, elected members, Alphatec employees and agents.
- 5.4 Any other parties and their assets directly related to the incidents and claims being managed.

6 Authorised Protective Measures

- 6.1 Ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
- 6.2 The Client will have policies in place for the processing of Data Subject rights exercised under the Data Protection Legislation.
- 6.3 If the Client requires Alphatec to delete data in accordance with these policies the Client agrees this will be undertaken at the standard daily rate.

7 Authorised Sub-processors

- 7.1 Amazon S3 Data Servers in the UK (AWS) are used for the secure storage of document and image uploads from the document and imaging module. These documents may contain Personal Data.
- 7.2 Microsoft Azure in the UK.