

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

THIS AGREEMENT IS DATED

2025

THIS AGREEMENT is made between:

- (1) **CLEARCARE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 04808834 whose registered office is at Suite 1& 2 The Limes, 120 Newport Road, Stafford, ST16 1BY
- (2) «F1» incorporated and registered in England and Wales with company number «Company_Number» whose registered office is at «Registered_Address»

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of administering residential care homes.
- (B) The Customer wishes to use the Supplier's services in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

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

“Agreement”	means this agreement and the Schedules together;
“AI Functionalities”	has the meaning given to it in clause 10.1;
“Authorised Users”	means those employees, agents, temporary staff workers and independent contractors of the Customer who are expressly authorised by the Customer to use the Services and the Documentation;
“Benchmark Data”	has the meaning given to it in clause 6.5(a);
“Bug”	means an unwanted or unintended property of the Solution that can be reproduced and causes the Solution to malfunction but does not affect the availability of the Solution;
“Business Day”	means any day which is not a Saturday, Sunday or public holiday in the UK;
“Business Hours”	means 9am-5pm local UK time, on each Business Day;
“Confidential Information”	means any and all information in any form whatsoever relating to the Supplier or the Customer, or the business, prospective business, finances, technical process, computer software (both source code and object code) and IPR of the Supplier or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party's possession as a result of this

	Agreement or provision of the Solution or Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;
“Consequential Loss”	means pure economic loss, special loss, losses incurred by any Authorised User or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time;
“Customer”	the entity first referred to at the beginning of this Agreement;
“Customer Data”	means all data imported into the Solution or Services by the Customer, Authorised Users or the Supplier on the Customer’s behalf for the purpose of using the Solution or Services or facilitating the Customer’s use of the Solution or Services;
“DP Agreement”	means the data processing agreement set out in Schedule 4 of this Agreement;
“Disaster”	means an event described as a disaster in the Disaster Recovery Plan.
“Disaster Recovery Plan”	means a plan which sets out the procedures to be adopted by the Supplier in the event that the Solution becomes unavailable by reason of a Disaster as set out in the SLA;
“Documentation”	means the documents made available to the Customer by the Supplier online via www.clearcare.co.uk or such other web address notified by the Supplier to the Customer from time to time which includes training materials and user manuals relating to the use of the Solution and Services, as well as any additional documentation that the Supplier specifically creates for the Customer or otherwise provides to the Customer to assist in the correction of any issue with the Solution or Services;
“Effective Date”	means the
“Excessive Use”	has the meaning given to it in clause 10.3;
“Emergency Maintenance”	means maintenance, upgrades, Updates, repairs to hardware and software related to resolving immediate problems causing instability in the Solution;
“EULA”	means the Supplier’s end user licence agreement which applies in connection with use of certain Services by Authorised Users (and which Authorised Users will need to agree to each time they use those Services), as may be amended from time to time at the Supplier’s discretion;
“Feedback”	means feedback, innovations or suggestions for improvement or development provided by Authorised Users regarding the attributes, performance or features of the Solution, Services or Documentation;
“Fees”	means the fees set out in the Order Form payable by the Customer during the Term of this Agreement, plus

	any Other Fees added to this Agreement during the Term;
“Force Majeure Event”	means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where the Supplier ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;
“Functional Description”	means the description of the Solution set out in Schedule 3 of this Agreement;
“Hosting Services”	means the hosting setup services set out in the Order Form and referred to further in the SLA;
“Implementation Fee”	means the fee set out in any applicable Order Form for the implementation of the Solution;
“Implementation Period”	means the implementation period set out in the Order Form;
“Implementation Services”	means the services set out in the Order Form and referred to further in the SLA;
“Incident”	means a malfunction of the Solution which can be reproduced, is not a Bug and whose root cause is found in the hosting service, network, hardware or third party software components;
“Initial Term”	means a period of 3 years commencing on the Effective Date;
“IPR”	means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;
“Minimum Fee”	means the minimum fee set out in the Order Form that shall be paid by the Customer to the Supplier throughout the Term, which the Customer acknowledges and agrees shall be payable to the Supplier notwithstanding the extent to which the Customer actually uses the Solution, Services and/or Documentation;
“Non-Supplier Defect”	has the meaning given to it in clause 9.4;
“Order Form”	means the order form set out in Schedule 1 of this Agreement;
“Other Fees”	means any additional fees payable by the Customer during the Term of this Agreement either (a) set out in the Order Form signed by the parties and added to this Agreement after the Effective Date or (b) agreed by the Customer or its Authorised Users via

	the Solution (for example, by adding additional functionalities from time to time such as the AI Functionalities). The amount of such additional fees shall be calculated on a Time and Materials Basis unless stated otherwise in such Order Form or displayed on the Solution;
“Other Services”	means any additional services to be provided to the Customer during the Term of this Agreement set out in any Order Form signed by the parties and added to this Agreement after the Effective Date;
“Planned Maintenance”	means maintenance, upgrades, Updates, installation of new versions and repairs which are non-critical and not urgent, to hardware and software;
“Release”	means a modification in the functionality of the Solution which results in a change in the version number set out in the SLA;
“Renewal Term”	means a period of 12 months;
“Schedules”	means the Order Form, SLA, Functional Description and DP Agreement;
“Services”	means all services provided by the Supplier to the Customer as set out in an Order Form and provided pursuant to the terms of the Agreement during the Term;
“SLA”	means the service level agreement set out in Schedule 2 of this Agreement;
“Sites”	means the Customer’s locations at which the Customer will be licensed to use the Solution and Services as set out in the Order Form and as updated from time to time.
“Site Subscriptions”	means the annual Site subscriptions set out in the Order Form and purchased by the Customer to permit Authorised Users to access and use the Solution, Services and the Documentation in relation to the Sites;
“Solution”	means the online software applications provided by the Supplier as part of the Services known as Clear Care Integrated Management System and described in more detail in the Functional Description (Schedule 3).
“Subscription Fees”	means the subscription fees set out in the Order Form (Schedule 1) payable by the Customer to the Supplier for the Site Subscriptions during the Term;
“Supplier”	means Clear Care Solutions Limited;
“Supplier Defect”	has the meaning given to it in clause 9.3;
“Supplier’s Project Manager”	means the individual appointed from time to time by the Supplier who shall serve as the Customer’s primary contact in relation to this Agreement;
“Term”	means the Initial Term together with any subsequent Renewal Terms;
“Time and Materials Basis”	means the Supplier’s standard daily consultancy rates;

“Travel Fees”

means all reasonable costs associated with any travel and subsistence expenses incurred by the Supplier (or its employees, permitted subcontractors or agents) in performing its obligations under this Agreement (including during the Implementation Period);

“Update”

means any new or updated applications services or tools (including any software programmes) made available by the Supplier as part of the Solution or Services during the Term.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 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.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re- enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. SUPPLY OF THE SERVICES AND SOLUTION

The Customer engages the Supplier and the Supplier agrees to provide the Solution, Services and Documentation to the Customer in accordance with the terms of this Agreement from the Effective Date for the Term.

3. LICENCE TO USE THE SOLUTION AND SERVICES

- 3.1 Subject to the Customer's payment of the Fees, the Supplier hereby grants to the Customer a non-exclusive, non-sub-licensable and non-transferable right and licence to permit the Authorised Users to use the Solution, Services and Documentation from the Effective Date for the Term in relation to business operations at the Sites, subject to the restrictions set out in this clause 3 and elsewhere in this Agreement. No additional express or implied right or licence is granted beyond that which is specifically mentioned in this Agreement. All such rights are reserved by the Supplier.
- 3.2 Save as permitted by applicable laws that are incapable of exclusion, no right to modify, adapt, or translate the Solution, Services or Documentation or to create derivative works from the Solution, Services or Documentation is granted to the Customer under this Agreement.
- 3.3 Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Solution or Services. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Solution or Services is expressly prohibited. To the extent that the Customer is granted the right by applicable laws to decompile such software in order to

obtain information necessary to render the Solution or Services interoperable with other software of the Customer, the Supplier will provide access to any relevant source code or information provided that the Customer makes a written request identifying the relevant details of the Solution or Services with which operability is sought and the nature of the information needed. The Supplier has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access, information and interoperability services.

3.4 The Customer undertakes that it shall:

- (a) use the Solution, Services and/or Documentation only as set out or approved by this Agreement and always for the normal business purposes of the Customer as a provider of care and education services to third parties; and
- (b) not:
 - (i) access all or any part of the Solution, Services and Documentation in order to build a product or service which competes with the Solution, Services and/or the Documentation;
 - (ii) license, sell, resell, rent, lease, loan, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Solution, Services and/or Documentation available to any third party except the Authorised Users; or
 - (iii) permit access to or use of the Solution, Services and/or Documentation by or on behalf of any third party, except as permitted in this Agreement.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Solution, Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier and take such steps that the Supplier requires in order to ensure the prompt cessation of such unauthorised access or use (as the case may be).

4. ADDITIONAL SITE SUBSCRIPTIONS

4.1 If the Customer wishes to purchase additional Site Subscriptions or Services after the Effective Date, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request and respond to the Customer with approval or rejection of the request.

4.2 If the Supplier approves the Customer's request to purchase additional Site Subscriptions or Services, the Supplier shall grant access to the Solution, Services and the Documentation to Authorised Users for use of the Solution, Services and Documentation in relation to business operations at such additional Sites and the Customer shall pay the relevant Fees for any such additional Site Subscription or Services in accordance with the provisions of clause 12.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 All IPR and title to the Solution, Services and Documentation (save to the extent these incorporate any Customer Data, Customer IPR or third party owned IPR) shall remain the exclusive property of Supplier and/or its licensors and subcontractors. No interest or ownership in the Solution, Services, Documentation, IPR or otherwise is transferred to the Customer under this Agreement.

5.2 The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have the sole responsibility for the legality, reliability, integrity, accuracy, completeness and quality of the Customer Data and its pre-existing IPR. Except as expressly stated herein, this Agreement does not grant the Supplier any rights to or in any IPR or any other rights to or in the Customer Data.

5.3 The Customer is not allowed to remove any proprietary marks or copyright notices from the Solution, Services or Documentation.

- 5.4 The Customer grants the Supplier a non-exclusive, non-transferable, sublicensable and revocable licence to:
- (a) receive, copy, modify, adapt and otherwise incorporate the Customer Data into the Solution, Services and Documentation; and
 - (b) display the Customer's name, logo and trade marks, as designated and/or amended by the Customer from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of the Services.
- 5.5 In respect of any Feedback:
- (a) the Customer assigns with full title guarantee all rights, title and interest in any Feedback to the Supplier;
 - (b) if for any reason such assignment is ineffective, the Customer shall grant the Supplier an exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction; and
 - (c) the Customer undertakes that it shall not, and the Authorised Users shall not, seek to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without the prior written consent of the Supplier (which may be provided subject to further conditions being met).
- 5.6 The Supplier may take and maintain technical precautions as it considers necessary in its own discretion to protect the Solution and Services from improper or unauthorised use, distribution or copying.

6. CUSTOMER DATA

- 6.1 The Supplier shall take reasonable precautions to preserve the integrity of the Customer Data and other data which it processes to prevent its corruption or loss.
- 6.2 The Supplier shall make back-up copies of all Customer Data regularly and in any case not less frequently than daily. Such back-up copies shall be stored securely on a separate media to the live Customer Data.
- 6.3 In the event that the Supplier becomes aware of any loss or damage to Customer Data, the Supplier shall notify the Customer and use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier.
- 6.4 In the event that the Customer, in addition to the standard back up provided by the Supplier under clause 6.2, requires a local back-up of Customer Data involving the export of such Data out of the Supplier's servers, the Customer acknowledges and agrees that, in relation to any such exported Customer Data, the Supplier:
- (a) shall have no control over Customer Data;
 - (b) shall have no responsibility for the maintenance, support or recovery of Customer Data; and
 - (c) shall not be liable for any loss, destruction, damage, corruption, alteration or disclosure of Customer Data (unless caused as a result of the Supplier's breach of this Agreement),
- and the Customer shall at all times have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Customer Data.
- 6.5 The Customer acknowledges and agrees that the Supplier may use the Customer Data for the following purposes:
- (a) generating statistical, aggregated and/or anonymised data for benchmarking, analytics and internal reporting ("**Benchmark Data**");

- (b) to provide and otherwise improve the Services, Solution and Documentation; and
 - (c) to develop additional products, features or services.
- 6.6 Where the Customer Data includes Personal Data (as defined in the DP Agreement), the Supplier shall ensure that such Customer Data is:
 - (a) anonymised in accordance with good industry practice before inclusion in any Benchmark Data; and
 - (b) used in such a manner that does not and cannot reasonably be used (or reverse decompiled) to identify any individual Data Subject (as defined in the DP Agreement).

7. DATA PROTECTION

The parties shall enter into the DP Agreement contained in Schedule 4 on or around the date of this Agreement.

8. THIRD PARTY PROVIDERS

The Customer acknowledges that the Solution, Services and/or Documentation may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Solution, Services and/or Documentation.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 Each party warrants and represents that:
 - (a) it has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;
 - (b) the execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
 - (c) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 9.2 The Supplier warrants and represents to the Customer that:
 - (a) it has the right to licence the Solution and Services to the Customer;
 - (b) the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice and that the Services will be provided substantially in accordance with the SLA, provided always that any timeframes expressed in the SLA (or elsewhere in this Agreement) shall be estimates only and time shall not be of the essence for the Supplier's compliance with them; and
 - (c) subject to clauses 9.6 and 9.8, the Solution will operate to provide in all material respects the facilities and functions implemented by the Supplier as set out in the Functional Description.
- 9.3 If there is a breach of the warranty contained in clause 9.2(c) that results in a defect concerning the Solution (a "**Supplier Defect**"), the Supplier shall use reasonable commercial endeavours, to correct that Supplier Defect or to replace the defective Solution without any additional charge

to the Customer, which the Customer acknowledges and agrees shall be its sole and exclusive remedy (in lieu of any right to claim damages or strict performance) in connection with such Supplier Defect. Notwithstanding the aforesaid, the Supplier shall only be obliged to remedy any Supplier Defect in the Solution if:

- (a) the Customer notifies the Supplier in writing immediately upon discovering the Supplier Defect;
- (b) following the Supplier's examination of the Solution, it is established that such a Supplier Defect exists.

9.4 The warranties contained in clauses 9.2 (and the remedy set out in clause 9.3) shall not apply in respect of any defect, deficiencies or damages relating to the Solution that arises as a consequence of:

- (a) any third-party components not provided by the Supplier;
- (b) any third party provided connectivity necessary for the provision or use of the Solution and Services;
- (c) compliance with third party software or products, non-Supplier programmes or data used in combination with the Solution or Services except as set out in the Order Form;
- (d) a failure of the Solution to conform with the Functional Description caused by the use or operation of the Solution by the Supplier with an application or in an environment other than that set out in the Order Form;
- (e) use of the Solution or Services contrary to the Supplier's instructions;
- (f) any modification or alteration of the Solution by any party other than the Supplier or the Supplier's duly authorised contractors or agents;
- (g) the Customer's own breach of this Agreement or its failure to comply with the Supplier's instructions in connection with the Solution (or, in the absence of such instructions, good industry practice relating to the same); or
- (h) otherwise due to the occurrence of a Force Majeure Event,

(each a "**Non-Supplier Defect**").

9.5 The Supplier shall be entitled to levy additional charges in the event that it is requested by the Customer to remedy any Non-Supplier Defect.

9.6 No warranty or assurance is made regarding the results the Customer can achieve from using the Solution and Services or that the Solution and Services will operate uninterrupted or error free.

9.7 All third-party content or information provided by the Supplier via the Solution or Services, for example prices, is provided "as is". The Supplier provides no warranties or assurances in relation to such content or information and shall have no liability whatsoever to the Customer for its use or reliance upon such content or information.

9.8 The Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's, or any third party's, communications networks and facilities, including the internet.

9.9 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9.10 All warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

10. AI FUNCTIONALITIES

- 10.1 Where specified in the Order Form, the Solution may include access to certain third-party artificial intelligence functionalities and features (which are incorporated into the Solution as Third-Party Software) including (without limitation) proofreading and enhancing content inputted by the Authorised Users ("**AI Functionalities**"). Where AI Functionalities are specified in the Order Form as forming part of the Solution, the Supplier shall make the AI Functionalities available to the Customer for the duration of the Term or such shorter period that may be provided for in the Order Form.
- 10.2 The proportion of the Fees that shall be paid by the Customer to the Supplier in connection with the AI Functionalities shall be specified in the Order Form.
- 10.3 The Supplier shall be entitled to monitor usage of the AI Functionalities in order to identify any usage that the Supplier (acting reasonably) deems to be excessive (an "**Excessive Use**"). Examples of use of the AI Functionalities that would likely amount to being an Excessive Use include (without limitation) the following:
- (a) significantly exceeds typical usage by the Supplier's other customers;
 - (b) causes undue burden on the Supplier's infrastructure or degrades performance for other users; or
 - (c) includes high-frequency or automated submissions,
- 10.4 In the event of any Excessive Use the Supplier may, at its sole election but with prior reasonable notice:
- (a) restrict or suspend access to the AI Functionalities (whether to an individual Authorised User or all Authorised Users); or
 - (b) require any continued use of the AI Functionalities to be subject to payment of additional Fees by the Customer.
- 10.5 In respect of Customer Data that is inputted into the AI Functionalities, the Supplier confirms:
- (a) that such Customer Data will not be used to train the AI Functionality or be retained by the Supplier (or the relevant third-party supplier) for any purpose beyond generating the immediate response; and
 - (b) the AI Functionality will process the Customer Data only ephemerally and will not store it after the session ends.
- 10.6 The Customer acknowledges and agrees that:
- (a) there are inherent risks in its use of the AI Functionalities, including (without limitation) inaccuracies in AI-generated content, bias and hallucinations (outputs which may initially appear to be believable but are in fact highly inaccurate or fabricated); and
 - (b) the accuracy and relevance of AI-generated content is highly dependent upon the nature of the Customer Data provided and, to this end, the Customer assumes sole responsibility for ensuring that the Customer Data it provides when using the AI Functionalities will be true, complete and accurate in all respects and fit for its intended purpose.
- 10.7 The AI Functionalities are provided on a strict "as is" and "as available" basis and the use of the AI Functionalities is at the Customer's sole risk. The Customer agrees that it shall be solely responsible for verifying the accuracy and completeness of any content that is generated through its use of the AI Functionalities and to ensure that such content is fit for its intended purpose.
- 10.8 The Supplier makes no representations or warranties of any kind, express or implied, regarding the availability, accuracy, reliability, or completeness of the AI Functionalities or the outputs generated by such AI Functionalities. The Customer acknowledges and agrees that it shall be

its sole responsibility (on behalf of itself and all Authorised Users) to independently verify all such outputs.

- 10.9 To the greatest extent permissible by applicable laws, the Supplier shall not be liable for any loss or damage arising from the Customer's reliance on the AI Functionalities or the outputs generated by such AI features, including any decisions, advice, or actions taken based on AI-generated results.

11. CUSTOMER'S GENERAL OBLIGATIONS

11.1 The Customer shall:

- (a) provide the Supplier with all necessary:
 - (i) co-operation in relation to this Agreement; and
 - (ii) access to such information and employees of the Customer as may be required by the Supplier;

in order for the Supplier to provide the Solution and Services, including but not limited to Customer Data, security access information and the Implementation Services;

- (b) maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Solution and Services granted under this Agreement is limited as set out under this Agreement. In particular the Customer shall and shall procure that its Authorised Users treat any identification, password or username or other security device for use of the Solution and Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Supplier in writing. The Customer shall be liable for any breach of this Agreement by an Authorised User;
- (c) ensure that its network and systems comply with the relevant specification provided by the Supplier from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's systems to the Supplier's data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet;
- (d) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that the Authorised Users use the Solution, Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Solution and Services;
- (g) ensure that its network and systems comply with any relevant specifications provided by the Supplier; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Internet, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

11.2 The Customer that it shall, in relation to the Authorised Users:

- (a) not allow or suffer the Solution, Services or the Documentation to be used or operated in relation to any operations at any location other than the Sites;

- (b) ensure that each Authorised User agrees to the terms of any EULA that applies in connection with the Solution, Services or the Documentation;
- (c) ensure that each Authorised User keeps a secure password for their use of the Solution, Services and Documentation and that each Authorised User keeps their password confidential;
- (d) permit the Supplier to electronically monitor and audit the use of the Solution, Services and Documentation in order to establish the location, name and password of each Authorised User. Such audit may be conducted no more than once per 6 months at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) put in place industry-standard measures in its contracts of employment with the Authorised Users which restricts:
 - (i) any Virus or material being stored, uploaded or transmitted in connection with the Solution, Services or Documentation;
 - (ii) knowing access, storage, distribution or transmit any Viruses, or any material, through, on, via or onto the Solution during the course of use of the Services that:
 - (A) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (B) facilitates illegal activity;
 - (C) depicts sexually explicit images;
 - (D) promotes unlawful violence;
 - (E) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
 - (F) causes (or is intended to cause) damage or injury to any person or property.

11.3 The Supplier may, without liability to the Customer, disable access to the Solution, Services or Documentation (whether to an individual Authorised User or all Authorised Users) where there is a breach of clause 11.2, the restrictions contained in clause 3 or any EULA.

12. FEES, INVOICING AND PAYMENT

12.1 The Supplier shall invoice the Customer the Fees set out in the Order Form or otherwise via the Solution (where the Customer requests that the Supplier is to provide additional functionalities) in the currency set out therein.

12.2 All Fees shall be invoiced monthly or in an annual lump sum, as specified in the Order Form.

12.3 The Subscription Fee shall be payable either:

- (a) within 90 days of the date on which the Implementation Fee is received by the Company; or
- (b) 90 days after the Effective Date if the Solution is not "live" on the Customer's system on expiry of such 90-day period;

whichever occurs first.

12.4 If the Customer's system is "live" within 90 days of the Effective Date, the Subscription Fee shall be invoiced pro-rata for the amount of days used within the first calendar month.

12.5 Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise.

- 12.6 Fees remain fixed for the Initial Term of the Agreement. After the Initial Term, the Supplier reserves the right to review and increase the Fees on each subsequent anniversary of the Effective Date. Price increases if applied will be by the higher of 3% or the rate of the official UK RPI increase as published by the ONS.
- 12.7 Where Fees are charged at a daily rate, the Fees are calculated on a per bed, per Site basis using the values specified on the Order Form. For the avoidance of doubt, all beds at all Sites are included in such calculation, whether or not such beds are in use
- 12.8 The Customer is permitted during the Initial Term, to reduce the number of homes (provided that the number of homes shall not be reduced to below one) or beds they have on their system by giving the Company at least 30 days' notice in writing and the Subscription Fee shall be adjusted on expiry of the 30-day period on a pro-rata basis. Any associated data files stored within the system will incur a storage fee as shall be agreed between the parties in writing.
- 12.9 The Customer shall pay the Supplier the Fees for the provision of the Solution and Services under this Agreement. The Customer acknowledges and agrees that the total Fees payable shall not reduce below the Minimum Fees.
- 12.10 Where the Customer has requested, and the Supplier has agreed to provide, bespoke reports, the Supplier may charge a nominal maintenance fee to keep such reports up-to-date following scheduled backroom codebase changes. The maintenance fee will be notified to the Customer from time to time and upon request.
- 12.11 Unless stated otherwise in an Order Form or Statement of Work, the Customer shall pay all invoices within 30 days of the date of each invoice in full, by direct debit to the bank account of the Supplier.
- 12.12 Where payment of any Fee is not received by the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Solution or Services and the Supplier shall be under no obligation to provide any or all of the Solution or Services while the invoice(s) concerned remain unpaid;
 - (b) interest shall accrue on all overdue amounts at an annual rate equal to 4% above the Bank of England's base rate from time to time in force, commencing on the due date and continuing until fully paid, whether before or after judgment;
 - (c) the Supplier may instruct a debt collection agency to recover any amounts due to it; and
 - (d) the Supplier reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments.
- 12.13 All amounts and Fees stated or referred to in this Agreement:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable; and
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

13. CONFIDENTIALITY

- 13.1 Each party may use the Confidential Information from the other party only for the purposes of performing its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or after the Effective Date becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;

- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 13.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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.
- 13.3 Each party shall ensure that access to the other's Confidential Information is only disclosed to those employees, agents or subcontractors who strictly need access to it to enable the receiving party to comply with its obligations and exercise its rights under this Agreement and the receiving party shall ensure that such employees, agents or subcontractors bound by confidentiality undertakings equivalent to those set out in this clause 13. The receiving party shall at all times remain liable for its employees, agents and subcontractors' compliance with this clause 13.
- 13.4 The Customer acknowledges that details of the Solution or Services, and the results of any performance tests of the Solution or Services, constitute the Supplier's Confidential Information.
- 13.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.6 This clause 13 shall survive expiry or termination of this Agreement, however arising.
- 13.7 If either party is required to disclose any Confidential Information pursuant to this clause 13 such party shall, where lawfully permitted to do so:
 - (a) Promptly consult with and take into account any comments from the other party prior to making any disclosure; and
 - (b) Work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 13.8 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 13 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is:
 - (a) Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or
 - (b) A trade secret of the disclosing party; and
 - (c) Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

14. INDEMNITY

- 14.1 The Supplier shall defend the Customer against any claim brought against the Customer, by a third party, that the Customer's use of the Solution, Services or Documentation in accordance with the terms of this Agreement infringes any third-party IPR, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim on the Customer becoming aware of the same;
 - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim without the prior written consent of the Supplier;

- (c) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim; and
 - (d) the Supplier is given sole authority to defend or settle the claim.
- 14.2 In the defence or settlement of any claim referred to in clause 14.1, the Supplier may procure the right for the Customer to continue using the Solution or Services (including, where applicable, associated Documentation), or replace or modify the Solution or Services so that they become non-infringing.
- 14.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer under clause 14.1 to the extent that the alleged infringement is based on or otherwise arises due to:
 - (a) a modification of the Solution, Services or Documentation by anyone other than the Supplier;
 - (b) the Customer's use of the Solution, Services or Documentation in a manner inconsistent with this Agreement;
 - (c) the Customer's use of the Solution, Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority;
 - (d) the combination, operation or use of the Solution or Services with other services or software not provided by the Supplier if such infringement would have been avoided in the absence of such combination, operation or use;
 - (e) the Customer Data;
 - (f) the Supplier's compliance with the instructions of the Customer;
 - (g) the negligence or wilful misconduct of the Customer; or
 - (h) the occurrence of a Force Majeure Event;
- 14.4 The foregoing states the Customer's sole and exclusive rights and remedies and the Supplier's (including Supplier's employees', agents' and sub-contractors') entire obligations and liabilities for infringement or alleged infringement of any IPR by the Supplier.
- 14.5 The Customer shall defend, indemnify and hold harmless the Supplier and its employees, sub-contractors or agents against any costs, losses, liabilities damages and expenses (including without limitation court costs and reasonable legal fees) relating to or resulting directly or indirectly from:
 - (a) any claimed infringement or violation by the Customer or Authorised User of any IPR with respect to use of the Solution, Services or Documentation outside of the scope of this Agreement;
 - (b) use by the Supplier of any Customer Data or Customer or Authorised User provided item, documentation, materials or data;
 - (c) breaches of data protection law or regulations resulting from the Supplier processing data on behalf of and in accordance with the instructions of the Customer or an Authorised User; or
 - (d) any breach of this Agreement or the terms of the EULA by an Authorised User.

15. LIMITS OF LIABILITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

- 15.1 The following definitions apply in this clause:
 - (a) **contract year** means a 12-month period commencing on the Effective Date and each anniversary of it; and
 - (b) **liability** means every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. References to **liable** shall be construed accordingly.

- 15.2 Nothing in this Agreement limits any liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any liability that cannot legally be limited.
- 15.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 15.4 Nothing in this clause 15 shall limit the Customer's payment obligations under this Agreement.
- 15.5 Subject to clause 15.2 and clause 15.3, the Supplier shall under no circumstances whatsoever be liable to the Customer for any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill; and
 - (f) indirect, special or Consequential Loss,
- that arises under or in connection with this Agreement.
- 15.6 Subject to clause 15.2, clause 15.3 and clause 15.5, the Supplier's maximum aggregate liability to the Customer arising under or in connection with this Agreement shall under no circumstances exceed the total Fees (excluding VAT) actually paid by the Customer to the Supplier in the Contract Year to which the relevant liability relates. Where a liability arises in respect of a matter occurring in more than one Contract Year and that matter gives rise to a single claim or a series of connected claims, the Supplier's total liability for those claims shall not exceed the total Fees (excluding VAT) actually paid by the Customer across those Contract Years
- 15.7 This clause 15 shall survive termination of the Contract.

16. TERM AND TERMINATION

- 16.1 This Agreement shall commence on the Effective Date for the Initial Term of 3 years. At the expiry of the Initial Term, this Agreement will automatically renew for consecutive Renewal Terms and continue until either party terminates the Agreement by giving the other at least 30 days' notice in writing prior to the expiry of the Initial Term or any Renewal Term. Except as set out in clause 16.7, neither party may terminate the Agreement without cause during the Initial Term.
- 16.2 Either party may at any time terminate this Agreement with immediate effect, with cause, by giving written notice to the other party if:
- (a) ceases or threatens to cease or carry on business; or
 - (b) is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or
 - (c) convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or
 - (d) has an administrator, receiver, manager or similar official appointed; or
 - (e) is affected by a similar event under the law of any other jurisdiction; or
 - (f) a Force Majeure Event lasts for more than 30 days.

- 16.3 Without limiting its other rights or remedies and without incurring any liability whatsoever towards the Customer, the Supplier may terminate this Agreement immediately on written notice if:
- (a) the Customer fails to pay any amount due under this Agreement by the due date for payment or remains in default following the provision of 14 days' notice to make payment;
 - (b) the Customer (or an Authorised User) has used or permitted use of the Solution, Services or Documentation other than in accordance with this Agreement; or
 - (c) the Supplier is prohibited under applicable law, or otherwise from providing the Solution or Services.
- 16.4 Without limiting its other rights or remedies, the either party shall have the right to terminate this Agreement if the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 10 days of being notified of that breach.
- 16.5 Without limiting its other rights or remedies, the Supplier may suspend access to the Solution, Service or Documentation, or portion thereof, at any time, if:
- (a) the Customer becomes subject to any of the events listed in clauses 16.2(a) to 16.2(f), or the Supplier reasonably believes that the Customer is about to become subject to any of them; or
 - (b) the Customer fails to pay any amount due under this Agreement by the due date for payment; or
 - (c) in the Supplier's sole reasonable discretion, the integrity or security of the Solution or Services is in danger of being compromised by acts of the Customer or Authorised Users. The Supplier shall give the Customer 24 hours written notice, before suspending access to the Solution or Services in such circumstances, giving specific details of its reasons for suspension.
- 16.6 Upon termination of this Agreement, without limiting the rights and remedies of the parties:
- (a) the Customer shall promptly pay the Supplier all unpaid Fees;
 - (b) all licences granted under this Agreement shall immediately terminate;
 - (c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - (d) for a period of 3 months after the effective date of termination of this Agreement, the Supplier shall make all Customer Data stored in the Supplier's database available to the Customer in its then current format, free of charge, for the purpose of the export of Customer Data to the Customer or a replacement service provider. If the Customer requires any Customer Data to be returned in a different format the Supplier reserves the right to charge for this additional service on a Time and Materials Basis. The Customer acknowledges and agrees that it shall be responsible for the export of Customer Data within the period specified in this clause;
 - (e) the Supplier shall provide reasonable assistance to the Customer, at the Customer's cost, in transferring any or all of the Customer Data to a third party replacement service provider and shall co-operate with the replacement service provider. Such assistance shall be charged for on a Time and Materials basis;
 - (f) upon expiry of 3 months after the effective date of termination of this Agreement, the Supplier shall securely destroy all or any of the Customer Data in its possession, unless it is required to keep this for regulatory or backup purposes for a longer period. The Customer acknowledges and agrees that the Supplier shall be entitled to destroy Customer Data under this clause regardless of the fact that the Customer failed to export it under clause 16.6(d); and
 - (g) except as stated the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

- 16.7 Notwithstanding the above, the Customer shall be entitled to terminate this Agreement within 28 days of the Effective Date by giving the Supplier notice in writing of such termination if:
- (a) the Customer is a new entrant to its market and requires the approval of a regulatory body before commencing its business; and
 - (b) such approval is not received.

- 16.8 If the Customer terminates the Agreement pursuant to clause 16.7 above, the Supplier agrees to refund the Customer the Fees received in connection with the Services, less any reasonable costs and expenses incurred by the Supplier in providing the Services up to and including the date of termination.

17. FORCE MAJEURE

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event provided that it promptly notifies the other party of such event and uses all reasonable endeavours to mitigate the effects of such event. If the Force Majeure Event prevents the non-breaching party's performance under this Agreement for more than 30 days, the other party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the non-breaching party.

18. ASSIGNMENT

Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer or charge, all or any of its rights or obligations under this Agreement, however the Supplier shall be entitled to assign the Agreement without the prior consent of the Customer to:

- (a) any company in the Supplier's group of companies; or
- (b) any entity that purchases the shares or assets of the Supplier as the result of a merger, takeover or similar event.

19. RELATIONSHIP BETWEEN THE PARTIES

The Supplier and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

20. MISCELLANEOUS

20.1 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or sent by email to the other party's main email address.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission.
- (c) This clause 20.1 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail, unless this Agreement specifically allows service via email.

20.2 Waiver:

- (a) A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this 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.
- (b) Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

20.3 Entire agreement:

- (a) This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, save that it shall not affect any rights or remedies that either party shall have under any prior agreement.
- (b) Each party agrees that it 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

20.4 Severance:

- (a) If a court or any other competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20.5 Prevails clause: In the event of any inconsistency between the content of this Agreement and its Schedules, the provisions of the Schedules shall prevail. If after the Effective Date any subsequent Order Form is signed by the parties and added to this Agreement during the Term and there is a conflict between the terms of such subsequent Order Form and any earlier Order Form, the last signed Order Form shall prevail and, where stated in that Order Form, amend the terms of this Agreement.

20.6 No partnership: Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20.7 Third parties: A person who is not a party to this Agreement shall not have any rights under or in connection with it and nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.8 Announcement: Neither party shall make any public statement, press release or other announcement relating to the terms or existence of this Agreement, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Supplier may use the Customer's name and trademarks (logo only) to list the Customer as a client of the Supplier on its website and in other marketing materials and information.

20.9 Variation: No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. DISPUTES

21.1 Any dispute arising out of, or in connection with, this Agreement, including (without limitation) disputes as to whether the Solution or Services are defective for the purposes of clause 9.2, shall be subject to the following resolution procedure, subject always to clause 21.3:

- (a) a representative of each party's senior management or board of directors (as each party may so choose) will discuss the dispute in good faith and will attempt to resolve the dispute within 20 Business Days; and
- (b) in the event that the Parties are unable to resolve the dispute within 20 Business Days, the dispute shall be referred to arbitration in accordance with clause 21.2 below.

21.2 Any arbitration under clause 21.1(b) above shall take place as follows:

- (a) it shall be under the Arbitration Rules of the London Court of International Arbitration ("**Rules**"), which Rules are deemed to be incorporated by reference into this clause, save for as may be amended by the remainder of this clause;
- (b) it shall be determined by one arbitrator, appointed by the President at the relevant time of the London Court of International Arbitration, or his/her nominee;
- (c) the language of the arbitration shall be English;
- (d) the costs of the arbitration will be borne equally between the parties, or otherwise as the arbitrator may direct;
- (e) the arbitrator will be free to determine its own procedural requirements for the arbitration (including as to timing and the use and cost of expert evidence) as it sees fit; and
- (f) the arbitrator's decision will be final and binding save in the case of manifest error or fraud, in which such case the arbitration will be re-performed in accordance with this clause 21.2 with a new arbitrator.

21.3 The arbitration provisions shall be strictly subject to the following:

- (a) nothing in this clause 21 will act so as to prevent a Party from seeking urgent legal redress via a court where it is necessary and reasonable in the circumstances to do so; and
- (b) the arbitration provisions in this clause 21 shall not apply in respect of the Supplier's recovery of undisputed Fees and other charges that arise under or in connection with this Agreement,

and in both scenarios the parties irrevocably agree that the courts of England have exclusive jurisdiction to determine such matter.

22. GOVERNING LAW.

This Agreement (including the arbitration agreement contained in clause 21), 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.

This Agreement has been entered into on the date stated at the beginning of it.

SIGNED on behalf of the parties



Signed by Philip McVay

for and on behalf of
the Supplier

Date:

Signed by
for and on behalf of
the Customer

Date:

ORDER FORM

THIS ORDER FORM is made between:

- (3) **CLEAR CARE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 04808834 whose registered office is at Suite 1& 2 The Limes, 120 Newport Road, Stafford, ST16 1BY
- (1) «F1» incorporated and registered in England and Wales whose registered office is at «Registered_Address»

The Customer shall purchase the Solutions and Services set out in this Order Form from the Supplier for use at the Sites by the Authorised Users for Site Subscriptions named in this Order Form.

The Supplier shall provide the Solution and Services set out in this Order Form subject to the terms of the agreement between the Supplier and the Customer for the provision of the Services entered into on or around the date of this Order Form (the “**Agreement**”) in return for payment of the Fees set out in this Order Form and any attached Statement or Work.

All terms in capitals used in this Order Form shall have the meaning given to them in the Agreement unless defined otherwise in this Order Form.

1. Site and Site Subscriptions

Site	«F1»
Site Subscriptions	HOMES

2. Services

Services	
Implementation Services	Includes the following: 2 x System Admin training days - Online 1 x Online training day before 'going live' date with system admin for system overview. 5 Free Forms (to be provided within your implementation period)
Hosting Services	As set out in the SLA.
Maintenance and Support Services	As set out in the SLA.
Other Services	N/A

3. Fees

The Customer shall pay the Supplier the following Fees for the implementation, access and use of the Solution and Services during the Term:

Item	Fee (GBP)	Invoicing	Payment
Mandatory Fees			
Implementation Services	£1,000 + VAT	One lump sum payment from the Effective Date.	Within 7 days of the date of the invoice and prior to your system administrator training taking place
Subscription Fees Payable after your 12-week implementation period	£0.00 + VAT per month	Monthly in advance from the Effective Date.	Within 30 days of the date of each invoice via GoCardless (DD)
Minimum Fees	£-		
Additional Services or Features			
Ai Module (Text Enhancer and Reporting) <i>Pricing based on number of beds per home / per month as detailed above (1-3 Bed £30.00 + vat, 4-6 Bed £55.00+ vat, 7+ Bed £80.00 + VAT)</i>	£0.00 + VAT per month	Monthly in advance from the Effective Date.	Within 30 days of the date of each invoice via GoCardless (DD) Can be cancelled at anytime by contacting support@clearcaresolutions.co.uk
Training+ £50 per hour (minimum of 2 hours required each month)	£0.00 + vat per month	Monthly in advance from the Effective Date.	Within 30 days of the date of each invoice via GoCardless (DD)

A Direct Debit Mandate is to be set up by clicking <https://xero.gocardless.com/pay/co/GEN4596649084>

Please provide the email address for all invoices to be sent:

4. Additional Solutions and Services

If after signature of this Order Form the Customer wishes to add additional Sites, Site Subscription or Services to the Agreement, the Customer can purchase these during the Term by completing additional Order Forms where Implementation Services are provided. Any additional Order Form shall only be binding upon the Supplier after signature by both parties and shall then be incorporated into the terms of the Agreement.

Upon signing this Order Form, the Customer acknowledges that it has read, understood and agrees to be bound by the terms of the Agreement and the Schedules to the Agreement being:

- Schedule 1 – Order Form
- Schedule 2 - SLA
- Schedule 3 – Functional Description
- Schedule 4 – DP Agreement

SIGNED on behalf of the parties

A handwritten signature in blue ink, appearing to read 'Philip McVay', is written over a horizontal line. A vertical line is drawn to the right of the signature.

Signed by Philip McVay
for and on behalf of
the Supplier

Date:

Signed by
for and on behalf of
the Customer

Date:

SCHEDULE 2

Service Level Agreement

This Service Level Agreement (“SLA”) forms part of the Agreement and any capitalised terms used in this SLA shall have the meaning given to them in the Agreement unless defined otherwise in this SLA.

PART 1 – IMPLEMENTATION SERVICES

1. INTRODUCTION

Below is a summary of the Implementation Services to be delivered under this SLA:

- A. Configuration of the Solution
- B. Hosting Setup Services
- C. Training

2. PROVISION OF IMPLEMENTATION SERVICES

The Supplier shall provide the Implementation Services in accordance with the terms of this SLA and other terms of this Agreement in all material respects.

The Implementation Services shall be provided as follows:

Configuration of the Solution

2.1 Timetable (TO BE REPLACED BY LATEST AGREED PROJECT PLAN and TRAINING)

The Implementation Period will start on **xx** and shall end 12 weeks later.

The Implementation Period shall be extended by the length of any delay in the implementation process if:

- The Customer changes its requirements after the Implementation Plan has been agreed; or
- The Supplier’s ability to comply with the terms of this Order Form is impaired by any act or omission of the Customer or breach of the Agreement, which shall include but not be limited to the Customer failing to provide timely support and resources or having a lack of bandwidth or other technical requirements; or
- The parties agree to extend the Implementation Period; or
- A Force Majeure Event occurs.

The Supplier may increase the Implementation Fee should the Implementation Period be extended for any of the reasons set out above. The price increase shall be in proportion to the extension of time if the Implementation Fee is payable in advance. If the Implementation Fee is payable in instalments, then the price increase shall be on a Time and Materials Basis.

During the Implementation Period the Customer shall test the Solution for defects and compliance with the Functional Description. Such tests shall include testing the material software programme features. Any defects that are discovered shall be notified to the Supplier in writing within 7 days of delivery.

2.2 Planning

The Supplier shall prepare the Project Plan in co-operation with the Customer during this stage of the Implementation Services.

2.3 Design

The supplier shall develop a configuration design of hosting servers designed to provide access to the Solution, submit them to the Customer as part of the Project Plan and follow the process set out in the Project Plan. The design shall include redundancy across application servers and database servers, in order to allow for continued service in the event of certain component malfunctions.

2.4 Acceptance criteria

The Supplier shall prepare the Acceptance Criteria in co-operation with the Customer as part of the Project Plan, submit them to the Customer and follow the procedure set out in the Project Plan.

2.5 Implementation

The Supplier and the Customer shall co-operate in implementing the Solution in accordance with the implementation provisions of the Project Plan.

2.6 Rollout

The Supplier and the Customer shall co-operate in rolling out the Solution to the Customer's Authorised Users in accordance with the roll-out provisions of the Project Plan.

2.7 Acceptance tests

On approval of the Acceptance Criteria, the Supplier shall carry out the Acceptance Tests based on the Acceptance Criteria. The Acceptance Tests shall be considered to be successfully passed if they the Implementation Services are operating in accordance with the Project Plan. In that event, the Supplier shall notify the Customer in writing to that effect. If the Acceptance Tests are not successfully passed, the Supplier shall also notify the Customer to that effect in writing and promptly. In any event the Supplier shall within three (3) Business Days carry out all necessary remedial work and resubmit the Implementation Services to the Acceptance Tests as set out above, whereupon the above procedure will be repeated.

The Implementation Services shall be performed by the company's employees, agents or subcontractors at the offices of the Supplier, unless agreed otherwise in writing between the parties.

Hosting Setup Services

The set-up phase of the Hosting Services includes those services provided by the Supplier to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.

2.8 Installation and configuration

The Supplier shall procure, install and configure the hosting equipment to provide access to the Solution and Services. The hosting equipment shall comply with the specification set out in the Project Plan.

2.9 Facility

The hosting equipment and the Solution shall be operated in accordance with the terms of the SLA.

2.10 Internet Connectivity

The Customer shall ensure that its Authorised Users make their own arrangements for internet access in order to access the Software and when accessing the Software otherwise than at the Customer's facility or facilities detailed in the Project Plan.

2.11 Continuing Hosting Services

The continuing Hosting Services provided by the Supplier include internet connectivity (as detailed above), load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

2.12 Load distribution management

The Supplier shall provide load-balancing services to distribute load and redundancy across application servers.

2.13 Administration services

These services include the installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the Hosting Services.

Training

The following training courses are offered by Clearcare Solutions Ltd

- Administrator Training (Onsite / Virtual Classroom)
- Online training day before going live date with System admin for system overview.

2.14 Customer Provision of Resources

The Customer shall provide the Supplier with any equipment, software, and software licenses, technical information, designs, or documentation reasonably required by the Supplier to perform the Implementation Services.

The Customer shall ensure that competent personnel are available during normal working hours to provide information and other support to the Supplier while providing the Implementation Services.

3. SCHEDULE OF SITES

(Please list the names of all homes where Clearcare will be used)

Home Name	Home Address	Home Postcode	Number of Registered Beds

4. DOMAIN NAME

Please list in order of reference your preferred domain name, this should be a variation of the Company Name eg. if the company is Horizon Care Ltd, you may choose horizon.clearcare.co.uk (max 12 characters)

- 1.
- 2.
- 3.

5. SYSTEM ADMINISTRATORS

As part of the rollout process we will create the user accounts for your 3 System Administrators. Please provide their full name and email address below.

Full Name	Email address

PART 2 – HOSTING SERVICES

1. INTRODUCTION

Hosting Services shall include hosting of the Solution together with related components and Customer owned content as set out below.

1.1 Availability

The Supplier will use commercially reasonable measures in terms of redundancy, monitoring and platform management to make any Solution available via the Internet 24 hours a day 7 days a week during Business Hours. Availability shall be measured annually and the items set out in clause 7 of this SLA and all planned maintenance shall be excluded from the calculation of availability of the Solution.

2. SECURITY

The following infrastructure and security is provided at the Supplier's data centres, which are currently located in the UK and managed by NEXT2IT Ltd. The Supplier reserves the right to change the data centres during the Term provided that any new data centre provides at least the same level of services and security as the current data centres. If the Supplier decides to change its data centres it shall provide the Customer with reasonable prior notice of any proposed change. If the Customer objects to the proposed change in data centre, the Customer shall be entitled to terminate the Agreement.

2.1 Security Consideration

The Supplier provides web servers, application servers, database servers and physical data storage in which data is stored in a redundant multi-drive configuration that provides mirrored storage and the necessary software to host the Solution. Web-based application use Secure HTTP (HTTPS) to protect data transmissions over the Internet..

2.2 System Security and Environment

The Hosting Services are provided in a secure, limited access environment. There is an uninterrupted power source, climate control and the data centre is hardened against natural disaster. The Supplier continuously provides and maintains up to date virus protection. In case there are reasonable doubts about the security of the data centre, the Customer may instruct an independent third party to check the security systems at the data centre at its own cost and provided that the Customer reimburses the Supplier for all costs it incurs in assisting with such inspection, in particular any fees that the Supplier must pay to the data centre. Access to the data centre infrastructure will be at the sole discretion of the data centre.

Access to the data centre is limited to specific staff members and a select number of production support specialists and information technology specialists, who only access the data centre to perform routine maintenance and Updates.

2.3 Monitoring

The Supplier provides the following 24x7 monitoring:

- server hardware;
- system availability;

- network infrastructure;
- operating systems services (WWW, SMTP, SQL);
- Application availability.

All Supplier servers are protected by firewall appliances. All servers accessible from the Internet are located in a DMZ, servers storing Customer data are located within the protected network. All servers are installed with the latest security patches and are hardened as per manufacturer's recommendations.

2.4 System Backup

The Supplier ensures that data is protected using backup to disk. Incremental backups are taken on an hourly basis and full backups are taken at 5am each day.

2.5 Disaster Recovery

In the event of a disaster, the Supplier will initiate its disaster recovery procedure. Disasters shall be notified to the Customer within 4 hours of the Supplier being notified by its data centre that there is a disaster.

In the event of a disaster, recovery time is expected to be less than 48 hours. The procedures for disaster recovery are tested by the Supplier once a year.

3. SUPPORT SERVICES

Support services shall include maintenance of the Solution and Customer platform including corrective maintenance and enhancements and a customer support service for the Solution, Services and Customer platform as set out below.

3.1 Scope of Support Services

Maintenance and support services shall not be provided for issues arising from: (i) modifications, alteration or configuration of any of the Solution by the Customer or a third party that has not been authorised in writing by the Supplier; and/or (ii) technology or IPR that has not been provided by the Supplier pursuant to the Agreement.

3.2 Problem Notification

The Supplier provides support services from a UK based network of support engineers working for the Supplier. Support services are provided in English.

Problems may be reported to the support centre by email only (support@clearcaresolutions.co.uk).

3.3 Problem Acknowledgement

Upon receipt of a problem notification the Supplier shall respond to the Customer, within the time frame set out in clause 4.2 of this SLA as applicable, based on the severity and type of problem. Such response shall specify the severity level and type of problem.

3.4 Support Hours

The Supplier offers support for the Solution during Business Hours on Business Days in English.

4. PROBLEM RESOLUTION

Problems with the Solution will be dealt with in accordance with their level of severity. The time frame in which problems will be resolved will depend upon whether they are classified as a bug or incident as set out below.

4.1 Problem Severity Classification

Severity	Description
High	A problem is classified as high if the Solution is not available, or the Customer or Authorised Users cannot log in or if there appear to be serious performance or access problems.

Medium	A problem is classified as medium if a key feature or service is unavailable and the availability of the Services are not affected.
Low	A problem is classified as low if there is any other problem that does not fall into another severity category.

4.2 Response and Target Resolution Times

Severity	Response Time	Target Resolution Time for Incidents		Target Resolution Time for Bugs
		Temporary work around	Permanent	
High	Within 1 Business Hour	1-6 Business Hour	4-12 Business Hours	Next Release
Medium	Within 4 Business Hours	3-8 Business Hours	3-5 Business Days	Next Release
Low	Within 1 Business Day	1 Business Day	7-10 Business Days	Next Release

5. MAINTENANCE SERVICES

5.1 Releases

Releases will contain new or amended features. There may be some need for configuration and additional user training in order to obtain the maximum benefit of the new features. Releases do not significantly impact the existing technical setup of the Customer or training materials. Releases are numbered as follows: 3.1, 3.2, 3.3, etc.

The Supplier reserves the right to vary the frequency of Releases but will always give Customers at least 24hrs prior notice of a planned date for the new release.

5.2 Patches

Patches provide bug fixes, performance and SLA improvement. Such features and functionality do not impact the current configuration of the Customer, nor require additional training.

There are 2 categories of patches:

Normal Patches which include fixes on medium or low severity bugs, as well as a combination of change requests and small features. These patches are deployed weekly during the maintenance window.

Emergency Patches include fixes on issues that are qualified as urgent by the Supplier, or relate to high severity bugs, security threats, performance, or availability. Emergency patches are deployed as and when necessary.

Patches are deployed as required for all Customers of a given release. Deployment usually takes place during low system traffic time. The deployment is usually 100% automatic. All existing setup and data will remain unchanged. No user or administrator intervention is required. No manual intervention of the Customer administrator is required.

5.3 Planned Maintenance

The Supplier usually carries out planned maintenance in the maintenance windows set out below. If planned maintenance is to be performed outside of these windows the Supplier shall give the Customer at least 48 hours prior notice.

Normal Patch	
Deployment window	1 hours
Deployment schedule	Weekends or evenings
Interruption of service	Usually none

Maximum interruption of service	1 hours
Upfront Notice Period	Usually no notification

Release	
Deployment window	5 to 12 hours
Deployment schedule	Weekends or evenings
Interruption of service	Usually
Maximum interruption of service	2 hours
Upfront Notice Period	24 hrs (if no downtime is required) 3 days (if downtime is required)

Platform Upgrades	
Deployment window	12 to 24 hours
Deployment schedule	Weekends or evenings
Interruption of service	Yes
Maximum interruption of service	12 hours
Upfront Notice Period	5 Business days

5.4 Emergency Maintenance

The Supplier shall where possible, provide the Customer with prior notice of emergency maintenance. However, work may commence at any time and shall continue until completed. The Supplier shall attempt, but cannot guarantee scheduling emergency maintenance during non Business Hours.

Emergency Patch	
Deployment window	1 hours
Deployment schedule	As required
Interruption of service	Usually none
Maximum interruption of service	1 hours
Upfront Notice Period	1 hours

6. CUSTOMER'S OBLIGATIONS

The Customer has the following obligations under this SLA:

- to provide access to a computer system capable of running the TCP/IP network protocol and an Internet web browser and uses a web browser that supports JavaScript;
- to provide all suitable hardware and software and telecommunications equipment required for accessing the Solution;
- responsibility for the network connection between the Supplier's hosting centres and the Customer's premises (backend) connection to a telecommunications network;
- to inform the Supplier without delay of any problems with the Solution;
- to purchase upgrades for its own software, if necessary, for the error free operation of its own software with the Solution;
- to check its systems for the most commonly known worms and viruses;
- to have a current virus scanner installed for each Customer system accessing the Solution.

7. **SUPPLIER'S OBLIGATIONS**

Without prejudice to clauses 9.3, 14 (Limits of Liability) and 16 (Force Majeure) of the Agreement, the Supplier shall not be liable for, and shall have no obligation to fix, any errors, Incidents, problems or bugs or any lack of availability of the Solution caused by the following:

- any breach of the Customer's obligations set out in clause 6 above;
- use of the Solution on a system not supported by the Supplier or specifically agreed in writing in the Agreement;
- unavailability of telecommunications;
- faults or omission of ISPs;
- any lack of connectivity caused by a third party;
- any bugs or defects in any third-party software that interacts with the Customer's data once it leaves the Supplier's data centres;
- any denial of service attacks, network floods and hacking;
- interconnection of the Solution with other software products not supplied by the Supplier except as expressly agreed in writing in the Agreement;
- any DNS issues not within the direct control of the Supplier i.e. a fault on the Customer's network or own equipment configuration;
- problems or errors that occur while the Supplier is waiting for the Customer to provide information to enable it to rectify a fault or restore services;
- faults caused by the Customer's management or connection to the Solution;
- the Customer failing to take part in training offered by the Supplier, necessary for use of the Solution; or
- In respect of the Test Version, reasonable delays in Target Resolution Time for Incidents and Bugs during the trial period.

8. **BETA TESTING**

From time to time the Customer may be invited to participate in a beta test for a new version of the Solution ("**Beta Version**"). The Customer acknowledges that due to the nature of a Beta Version, there is a likelihood of increased downtime and higher occurrence of Bugs and Incidents. If the Customer opts to be provided with a Beta Version, the service levels set out in this SLA shall not apply and the parties shall agree the applicable service levels to reflect the testing to be undertaken.

FUNCTIONAL DESCRIPTION

The Solution - ClearCare Integrated Management System - is an online SaaS (software as a service) solution which provides innovative bespoke IT solutions to the care industry via its online SaaS (software as a service) solution.

The Solution is a user-friendly solution for residential homes to integrate different levels of documentation into one place. The Solution is designed to free up resources by providing a more effective means of managing service user case files, establishment and staff files billing and immediate access to tailored key performance Indicators saving the time, space and money.

The following major functionality areas are included in the Solution:

- Record management for
 - Homes
 - Service Users
 - Employees
 - Vehicles
 - Schools
- Task Reminders
- Event Reminders
- Calendars
- Outcomes Star™ Management
- Reporting
- Data analysis
- Custom Form definition
- Kids App
- Staff Rota Management
- Online Help System