



(1) **CHS Healthcare Software Limited**

and

(2) **[CUSTOMER]**

Licence Agreement

relating to

Caretrack Software

VERSION HISTORY

VERSION	FILE NAME	MODIFIED DATE
1.0	CARETRACK SOFTWARE LICENCE AGREEMENT	25/10/2023
2.0	ADDITION OF SCHEDULE 5, AUTHORISED USER TERMS OF USE	16/12/2024
2.1	ADDITION OF NEW CLAUSE 2.5	27/03/2025

CONTENTS

1	INTERPRETATION	1
2	USER LICENCES	3
3	ADDITIONAL USER LICENCES	5
4	CARETRACK SERVICES	5
5	CUSTOMER DATA	6
6	CARETRACK'S OBLIGATIONS	7
7	CUSTOMER'S OBLIGATIONS	7
8	CHARGES AND PAYMENT	8
9	PROPRIETARY RIGHTS	9
10	CONFIDENTIALITY	10
11	LIABILITY	10
12	INSURANCE	11
13	TERM AND TERMINATION	11
14	GENERAL TERMS	12
	Schedule 1 – Caretrack Services	15
1	Spine Support Services	15
2	DIGITAL REFERRAL, ASSESSMENT AND REVIEW PORTAL APPLICATION	17
3	BUSINESS INTELLIGENCE TOOL	18
4	REFERRAL PORTAL	19
	Schedule 3 – Caretrack Services Levels and Support Services	24
	Schedule 4 – Data Protection	29
	Schedule 5 – Authorised User Terms of Use	36

THIS AGREEMENT IS DATED [DATE]

PARTIES

- (1) CHS Healthcare Software Limited, registered in England (Company number 11582111) whose registered address is at 4th Floor, 9 Appold Street, Liverpool Street, EC2A 2AP ("Caretrack").
- (2) [CUSTOMER NAME], whose place of business is [address] (the "Customer").

Background

The Caretrack system provides a simple and effective way of storing, organising and accessing the complex information required by an organisation managing NHS-funded continued care. It has been designed and honed over time to provide exactly the functionality required for the task quickly, effectively and cost effectively.

Agreed Terms

1 INTERPRETATION

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

Agreement: this agreement and any schedules to it.

Authorised Users: those employees, agents, independent contractors and service providers of the Customer who are authorised by Caretrack to use the Caretrack Services as further described in clause 2.2. For the avoidance of doubt, Authorised Users shall not include any individuals employed or engaged by any third party (including any sub-contractor or outsourced provider of the Customer) unless agreed and approved in accordance with the terms of this Agreement by Caretrack.

Caretrack Administrator: a super-user nominated by the Customer to manage aspects of the Caretrack Services and be the primary point of contact with the Caretrack Support Service.

API: means Application Programming Interface

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Caretrack Services as further described in clause 2.2.

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

Business Intelligence Reporting Functionality ("BIRF"): is a web application which enables Customers to access live dashboards that display continuing health care operational and performance data. Customers have the ability to filter, review and analyse the data within each dashboard. This enables the Customer to create their own view of performance.

Caretrack Services: the software and associated services provided by Caretrack to the Customer under this agreement (including Business Intelligence Reporting Functionality, CHS Referral Portal Application and DRAR as further described at Schedule 1).

CHS Referral Portal Application: is a web application which enables service providers to submit referral details and supporting documents to a sub-ICB directly into their continuing healthcare patient management system via an API connection

Confidential Information: information that is proprietary or confidential (including but not limited to all Intellectual Property Rights of either party and the Customer Data) and is either clearly labelled as such or identified as Confidential Information in clause 10.

Concurrent Users: refers to the total number of Authorised Users simultaneously using the Caretrack within a predefined period of time.

Customer Data: the data inputted by the Customer, Authorised Users, or Caretrack, on the Customer's behalf, for the purpose of using the Caretrack Services or facilitating the Customer's use of the Caretrack Services.

DRAR: means the Digital, Referral, Assessment and Review Portal Application

Effective Date: the date of this agreement.

Initial Licence Term: the initial term of this agreement as set out in the agreement.

ICB: means Integrated Care Board

Licence Fees: the licence fees payable by the Customer to Caretrack for the User Licences, as set out in Schedule 2 of this agreement.

Licence Term: has the meaning given in clause 13 (being the Initial Licence Term together with any subsequent Renewal Terms).

NHS Live SPINE: provides a direct link to the NHS Spine for patient demographic information, allowing users to locate and import patients that exist on the SPINE into Caretrack

Normal Business Hours: 8.30 am to 5.00 pm local UK time, each Business Day.

Renewal Term: the period described in clause 13.

Personal Data: has the meaning given in applicable Data Protection Laws from time to time.

Release: shall mean any moderate modification of the software which Caretrack make a functional or operational amendment.

Services: services provided by Caretrack to the customer under this agreement.

Support Services Hours: the hours during which Caretrack shall provide Support Services to the Customer as set out in Schedule 2.

Support Services: Caretrack's policy for providing support in relation to the Caretrack Support Service as set out in Schedule 2.

User Licences: the number of User Licences purchased by the Customer, as set out in Schedule 2, pursuant to clause 8.1 which entitles Authorised Users to simultaneously access and use the Services in accordance with this agreement.

Variation: a signed agreement between the Parties to amend the terms of this Agreement.

Virus: anything 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 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)
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular, and a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

2 USER LICENCES

- 2.1 Subject to the Customer purchasing the User Licences in accordance with clause 3.2, and on the other terms and conditions of this agreement, Caretrack grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Caretrack Services during the Licence Term solely for the Customer's internal business operations.
- 2.2 The Customer undertakes that:
 - 2.2.1 It will not permit the number of Authorised Users to simultaneously access or use the system to exceed the number of Authorised User licences.
 - 2.2.2 Is responsible for ensuring that each Authorised User keeps a secure password for the use of the Caretrack Services, that such password is changed in accordance with good data security practice, and is kept confidential;
 - 2.2.3 In compliance with its obligations under clause 2.2.2 with regards to security the Customer shall give due consideration to the following types of security measures
 - (a) Physical Security.
 - (b) Access Control.
 - (c) Security and Privacy Enhancing Technologies.

- (d) Awareness, training and security checks in relation to personnel.
 - (e) Audit Controls/Due Diligence.
- 2.2.4 it shall maintain an up to date list of current Authorised Users and provide such list to Caretrack within 5 Business Days of a request;
- 2.2.5 Prior to granting access to the Caretrack Services to any third-party Authorised User, Customer shall:
 - a) send the Authorised User Terms of Use as appended to this Agreement (**Schedule 5**) to each third-party Authorised User;
 - b) maintain appropriate records that the Authorised User Terms of Use have been sent; and
 - c) provide such records upon the reasonable request of Caretrack as evidence of compliance.
- 2.3 The Customer shall permit Caretrack to audit its use of the Caretrack Services; such audit may be conducted no more than once per quarter, at Caretrack's expense, with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business. If any audit reveal that the Customer has underpaid Licence Fees to Caretrack, then without prejudice to Caretrack's other rights, the Customer shall pay to Caretrack an amount equal to such underpayment as calculated in accordance with Caretrack's then current price list, within 10 Business Days of the date of the relevant audit.
- 2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property; and Caretrack reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.5 Caretrack shall implement appropriate measures to detect and block files that may contain harmful content. Caretrack will automatically block all harmful files from upload to the Caretrack Services without notice to the Customer.
- 2.6 Except as expressly permitted under applicable law, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to all or any portion of the software or services that comprise the Caretrack Services except to the extent strictly is necessary for the purposes of integrating the Caretrack Services with the operation of other software or systems used by the Customer, where Caretrack is unwilling or unable to provide such integration support.
- 2.7 The Customer shall not and shall procure that the Authorised Users shall not access all or any part of the Caretrack Services in order to build a product or service which competes with the Caretrack Services and shall not remove or alter any copyright or proprietary notices in or from the Caretrack Services.

- 2.8 The Customer shall not and shall procure that the Authorised Users shall not sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Caretrack Services available to any third party except the Authorised Users or use the Caretrack Services to provide services to third parties, without the prior written consent of Caretrack.
- 2.9 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Caretrack Services and, in the event of any such unauthorised access or use, promptly notify Caretrack.
- 2.10 The Customer acknowledges that it is solely responsible for determining whether the Caretrack Services is suitable for its requirements and no such warranty is given by Caretrack.
- 2.11 The Customer acknowledges that Caretrack has the right to withhold approval for or reject the access to any Authorised User at its discretion or to make any approval conditional on such terms as Caretrack considers appropriate.
- 2.12 The Customer will comply with its obligations set out in Schedule 4 (Data Protection).

3 ADDITIONAL USER LICENCES

- 3.1 Subject to clause 3.2, the Customer may, during any Licence Term, request additional User Licences in excess of the number set out in the Purchase Order and, where purchased in accordance with this agreement, Caretrack shall grant access to the Caretrack Services to such additional Authorised Users in accordance with the provisions of this agreement. Caretrack shall not unreasonably refuse to approve additional User Licences.
- 3.2 If Caretrack approves the Customer's request to purchase additional User Licences, the Customer shall pay the relevant fees in advance. If such additional User Licences are purchased by the Customer part way through the Initial Licence Term or any Renewal Term (as applicable), such fees shall be pro-rated for the remainder of the Initial Licence Term or then current Renewal Term (as applicable).

4 CARETRACK SERVICES

- 4.1 Caretrack shall use commercially reasonable endeavours to make the Caretrack Services available 24 hours a day, seven days a week during the Licence Term, except for:
- 4.1.1 planned infrastructure maintenance carried out outside Normal Business Hours
 - 4.1.2 planned software maintenance carried out outside Normal Business Hours
 - 4.1.3 unscheduled infrastructure or software maintenance performed during Normal Business Hours, with the Customer's agreement.
 - 4.1.4 the Customer acknowledges that, whilst Caretrack will make reasonable efforts to give notice, unscheduled maintenance may be performed from time to time without prior notice.
- 4.2 Caretrack will endeavour to provide change control documentation with reasonable notice for releases to the Caretrack Services.

- 4.2.1 The Customer must return signed change control documentation within the specified time frame to prevent delay in the release.
 - 4.2.2 Provide sufficient users to carry out the Customer's User Acceptance Testing during any subsequent upgrade, new release or new module, where applicable.
- 4.3 Caretrack will, as part of the Caretrack Services and at no additional cost to the Customer, provide the Customer with Caretrack's standard customer support services during Normal Business Hours in accordance with Caretrack's Support Services Policies in effect at the time that the Caretrack Services is provided. Caretrack may amend the Support Services Policies in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Caretrack's then current rates, and on its then current terms and conditions.
- 4.4 Caretrack will implement and maintain, in accordance with good industry practice, a business continuity and disaster recovery plan in connection with the Caretrack Services, to minimise disruption to the Caretrack Services from unforeseen events and to restore the Caretrack Services to full availability as soon as reasonably possible in accordance with the availability commitments in the service description. However, the Customer acknowledges that the Caretrack Services will not operate uninterrupted, and Caretrack shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Caretrack or any other party), failure of a utility service or transport or telecommunications network, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Caretrack or any sub-contractor, provided that the Customer is notified of such an event and its expected duration.
- 4.5 Caretrack will undertake annual system health checks and reporting of the Caretrack Services utilising Caretrack's Business Intelligence reporting platform. The results of the health checks and reporting will be shared with the Customer for further discussion.

5 CUSTOMER DATA

- 5.1 Caretrack Services will comply with its obligations set out in Schedule 4 (Data Protection).
- 5.2 The Customer shall own all right, title and interest in and to all of the Customer Data, including Personal Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.3 Caretrack shall regularly backup Customer Data. The back-up routine may be amended by Caretrack in its sole discretion on one or more occasions.
- 5.4 Subject to clause 5.2, the Customer agrees that Caretrack shall be permitted to share anonymised Personal Data with the Department of Health & Social Care ("DHSC") solely to enable DHSC to conduct analysis in order to understand more about individuals who receive continued healthcare and the patterns of update and funding from the Customer.
- 5.5 Caretrack shall not be responsible for any loss, destruction, alteration or disclosure of

Customer Data caused by (i) any failure by an Authorised User to maintain the confidentiality or security of a password; (ii) any breach by the Customer of clause 2.4; or (iii) any third party (except those third parties sub-contracted by Caretrack to perform services related to Customer Data maintenance and back-up).

6 CARETRACK'S OBLIGATIONS

6.1 The Caretrack Services will operate substantially in accordance with Schedule 1 and Schedule 2 of this Agreement and Caretrack will deliver the services with reasonable skill and care.

6.2 The commitment at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Caretrack Services contrary to Caretrack's instructions, or any modification or alteration of the Caretrack Services by any party other than Caretrack. Notwithstanding the foregoing, Caretrack:

6.2.1 does not warrant that the Caretrack Services will be uninterrupted or error-free; that the Caretrack Services or information obtained by the Customer through the Caretrack Services will meet the Customer's requirements; and

6.2.2 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 Customer acknowledges that the Caretrack Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 If the Services do not conform to the service description Caretrack will use reasonable commercial efforts to correct any such non-conformance as soon as reasonably possible or provide the Customer with an alternative means of accomplishing the performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of clause 6.1.

6.4 Caretrack warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

7.1.1 Provide Caretrack with all necessary co-operation and access to information as reasonably required in order for Caretrack to provide the Caretrack Services, including but not limited to Customer Data, security access information and configuration services;

7.1.2 Comply with all applicable laws and regulations with respect to its activities under this agreement;

7.1.3 Maintain a minimum of two trained Caretrack Administrators throughout the duration of the agreement;

7.1.4 Comply with their responsibilities as set out in the Schedule 4.

- 7.1.5 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, Caretrack may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.6 Ensure that the Authorised Users are aware of, and comply with the obligations and restrictions imposed on the Customer including all obligations and restrictions relating to record keeping, audits and use of the Caretrack Services and Caretrack's confidential information in accordance with the terms and conditions of this agreement and
- 7.1.7 The Customer shall be liable for the acts and omissions of the Authorised Licensees as if they were its own;
- 7.1.8 Obtain and shall maintain all necessary licences, consents, and permissions necessary for Caretrack, its contractors and agents to perform their obligations under this agreement;
- 7.1.9 Obtain and maintain any additional licences, consents and permissions necessary for Customer's Authorised Users to use the Caretrack Services;
- 7.1.10 Be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Caretrack'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.

8 CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Licence Fees to Caretrack for the User Licences at the rate set out in Schedule 2 in accordance with this clause 8.
- 8.2 Access to any additional licences will be granted when a Purchase Order has been received.
- 8.3 The Customer will pay all invoices submitted by Caretrack within 30 days of receipt of the invoice. If any payment is not received by Caretrack on the due date for payment, in addition to its other rights and remedies Caretrack may:
 - 8.3.1 charge interest on the overdue amount, accruing on a daily basis at an annual rate equal to 5% over the then current base lending rate of HSBC Bank Plc. from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and/or
 - 8.3.2 suspend access to the Caretrack Services for any Authorised User on giving notice until receipt of payment in full of all outstanding sums due to Caretrack, whether under this agreement or any other contract or relationship between Caretrack and the Customer.
- 8.4 All amounts and fees stated or referred to in this agreement, shall be payable in pounds sterling, are exclusive of value added tax which shall be added to invoices at the appropriate rate, and are non-cancellable and non-refundable.

- 8.5 The Customer acknowledges that Caretrack shall be entitled to increase the fees set out in the Schedule 2 in line with any increase in inflation or to reflect a price increase from its third-party suppliers, and following any renewal, Caretrack's then current pricing policy at the start of any Renewal Term.

9 PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that Caretrack and/or its licensors own all Intellectual Property Rights in the Caretrack Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Caretrack Services.
- 9.2 The Customer acknowledges that all Intellectual Property Rights in any configuration or integration work undertaken by Caretrack to enable the Customer or any Authorised User to access the Caretrack Services will be owned by Caretrack, and nothing in this agreement will prevent or restrict Caretrack from using any general skills or experience acquired during the Licence Term elsewhere in its business providing that this does not breach any confidentiality information or the Customer.
- 9.3 Caretrack confirms that it has all the rights in relation to the Caretrack Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 9.4 Caretrack shall defend the Customer, its officers, directors and employees against any claim that the Caretrack Services infringes any UK patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that Caretrack is given prompt notice of any such claim and sole authority to defend or settle the claim and the Customer provides reasonable co-operation to Caretrack to defend or settle such claim.
- 9.5 If a claim is alleged, Caretrack may procure the right for the Customer to continue using the Caretrack Services, replace or modify the Caretrack Services so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement on 5 Business Days' notice to the Customer without any additional liability to the Customer. This clause sets out the Customer's sole and exclusive rights and remedies and the entire liability of Caretrack in connection with any infringement of any patent, copyright, trademark, database right or right of confidentiality.
- 9.6 Caretrack shall not be liable to the Customer to the extent that any alleged infringement is based on a modification of the Caretrack Services by anyone other than Caretrack; the Customer's use of the Caretrack Services in a manner contrary to any instructions given to the Customer or the terms of this agreement; arising as a result of any Customer Data or the Customer's use of the Caretrack Services after notice of the alleged or actual infringement from Caretrack or any appropriate authority.

10 CONFIDENTIALITY

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2 was in the other party's lawful possession before the disclosure or is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 10.1.3 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 10.1.4 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 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 and provision of, or use of the Caretrack Services.
- 10.3 Either party may disclose information about this Agreement to its employees, agents and other group companies provided that they are bound by equivalent confidentiality obligations and 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 breach of the terms of this agreement.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 This clause 10 shall survive termination of this agreement, however arising for a period of 3 (three) years.
- 10.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11 LIABILITY

- 11.1 The Customer shall defend, indemnify and hold harmless Caretrack against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Caretrack Services, provided that the Customer is given prompt notice of any such claim, Caretrack provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and the Customer is given sole authority to defend or settle the claim.

- 11.2 The Customer shall indemnify, keep indemnified and hold harmless Caretrack from and against any losses, claims, damages, liability costs (including legal and other professional fees) and expenses incurred as a result of or in connection with any breach by the Customer of clause 10 (Confidentiality).
- 11.3 Except as expressly and specifically provided in this agreement:
- 11.3.1 the Customer assumes sole responsibility for results obtained from the use of the Caretrack Services by the Customer, and for conclusions drawn from such use. Caretrack shall have no liability for any damage caused by errors or omissions in any Customer Data or other information provided to Caretrack by the Customer in connection with the Caretrack Services, or any actions taken by Caretrack at the Customer's direction;
- 11.3.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 11.3.3 the Caretrack Services is provided to the Customer on an "as is" basis.
- 11.4 Nothing in this agreement excludes the liability of either party for death or personal injury resulting from its negligence, for fraud or fraudulent misrepresentation or any other circumstance where liability cannot be limited or excluded under any applicable law.
- 11.5 Subject to clause 11.2 and clause 11.3
- 11.5.1 Caretrack shall not be liable whether in tort (including for negligence 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 loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 11.5.2 Caretrack's total aggregate liability howsoever arising whether 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 the aggregate value of the Licence Fees paid for the User Licences during the 12 months immediately preceding the date on which the claim arose.

12 INSURANCE

- 12.1 Caretrack will take out and maintain professional indemnity, public liability and Employer's Liability insurance in each case with a reputable insurance company providing a minimum cover of £5 million pounds and will supply the Customer with a broker's verification of insurance cover on request for the duration of this Agreement.

13 TERM AND TERMINATION

- 13.1 This agreement shall commence on the Effective Date and continue for the Initial Licence Term unless otherwise terminated as provided in this clause 13. Following the expiry of the Initial

Licence Term, the agreement will automatically renew for successive periods of 12 months (Renewal Term) unless either party notifies the other party of termination, in writing, at least 6 months before the end of the Initial Licence Term or any Renewal Term, in which case this agreement shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Term as appropriate. The Initial Licence Term together with any subsequent Renewal Terms shall constitute the Licence Term.

13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

13.2.1 the other party fails to pay any 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;

13.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

13.2.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 Any breach by the Customer of clauses 2 and/or 7 shall be deemed a material breach of this Agreement which is not remediable.

13.4 Caretrack and the Customer will develop an exit strategy to facilitate the transfer of the service and data on termination of this agreement. On termination of this agreement for any reason:

13.4.1 all licences granted under this agreement shall immediately terminate;

13.4.2 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;

13.4.3 the Customer will take steps to retrieve any Customer Data, and Caretrack will provide reasonable assistance, at the Customer's expense, to facilitate the transfer of any Customer Data in an agreed format and secure transfer method in accordance with the agreed exit strategy. Caretrack will retain the Customer Data for up to 6 weeks following termination, and thereafter will make arrangements for its secure disposal upon the instruction of the Customer.

13.4.4 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.

14 GENERAL TERMS

14.1 No Variation of this agreement shall be effective unless it is in writing and signed by the parties authorised representatives.

14.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or

restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.3 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.
- 14.4 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 14.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.6 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 14.7 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.
- 14.8 The Customer shall not, without the prior written consent of Caretrack, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 14.9 Caretrack may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 14.10 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, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.11 For the duration for this agreement and 12 months following its expiry or termination the Customer shall not directly or indirectly engage or employ any individual who is employed or acting on behalf of Caretrack in the provision of the Caretrack Services or implementation of this Agreement.
- 14.12 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.
- 14.13 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that

party for such purposes, sent by email to the other party's email account, as set out in this agreement.

- 14.14 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by sent email by the sender).
- 14.15 Both parties shall aim to resolve all disputes, differences and questions by means of co-operation and consultation where possible. Either Party may call a management meeting of the Parties by service of not less than 10 Business Days' written notice and, both Parties shall procure that an authorised representative attends such meetings called in accordance with this Clause. Those attending the relevant meetings shall use all reasonable endeavours to resolve disputes arising out of this Agreement. If the meeting fails to resolve the dispute within 10 Business Days, either party by notice in writing may refer the dispute to a director or senior manager of each party who shall co-operate in good faith to resolve the dispute as amicably as possible within 10 Business Days of the dispute being referred to them.
- 14.16 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 the law of England and Wales. 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 – CARETRACK SERVICES

1 SPINE SUPPORT SERVICES

Purpose of the schedule

- 1.1 This schedule 1 describes the agreed conditions for the provision of the Caretrack-SPINE Integration Service and the Support Services to connect to the NHS Live SPINE.

Scope

- 1.2 Caretrack will provide a managed service to connect Caretrack to the NHS Live SPINE.
- 1.3 Any issues or problems that occur which are identified as being the responsibility of the Customer, such as Customer site connectivity, are outside of the scope of the agreement.
- 1.4 Any issues or problems that occur which are identified as being the responsibility of the NHS Live SPINE, such as the provision of data or the accuracy of data, are outside the scope of this agreement.

Service

- 1.5 This Contract assumes that the number of transactions passed via the NHS Live SPINE service will be based on the number of patient records held by the individual ICBs.
- 1.6 The number of transactions for this contract is based on:

Service	Availability
Patient Records	60000
End User ICBs	NHS XXXX

- 1.7 Caretrack reserve the right to make an additional charge for the NHS Live SPINE service if the number of sub-ICBs supported increases or the number of patient records checked exceeds the levels documented in this contract by 15% for three consecutive months. This cost will reflect the current rate chargeable by NHS Live SPINE at the time of the change.

Service Definition

- 1.8 The Caretrack-SPINE integration service comprises a hosted synchronised patient index, which is approved to access the NHS Personal Demographics service. This service is provided to the Customer via a managed service under NPFIT-ELIBR-AREL-DST-0405 ITK Additional Module Spine Mini Services Provider Requirements v2.1 on the basis that the Customer is at all times compliant with the NHS HSCIC Interoperability Tool Kit Trust Operating Model.
- 1.9 Caretrack is responsible for the supply, maintenance and support of the integration between Caretrack and the managed service access to the NHS Live SPINE.

Customer Obligations

- 1.10 The Customer acknowledges that completion of the HSCIC ITK Trust Operating Model ('TOM') documentation and on-going adherence to it for the purpose of implementing and operating the managed service is the sole responsibility of the Customer.

- 1.11 The Customer, and Authorised Users, shall comply with all applicable laws, regulations and any policies governing the use of data obtained from the NHS Spine.

Availability Definition

- 1.12 The Caretrack-SPINE integration service is available on receipt of completed Trust Operating Model documentation that is approved and remains approved by HSCIC (or any subsequent organisation).
- 1.13 Elements of the NHS Live SPINE service will be available as follows

Service	Availability
Patient Demographics	• Available 24x7
RIP Reporting	• All patient records updated on the first run of the service. • All current patient records updated once per week as per the RIP Schedule

- 1.14 Caretrack Support Services are available from 8:30 to 17:00 on a Business Day. Any fault with NHS Live SPINE that occurs outside of these hours will be addressed at 8:30 on the next Business Day.

Service Availability

- 1.15 Any planned maintenance work to NHS Live SPINE will be restricted to the following maintenance window:

Maintenance Type	Window
Daily	Tuesday to Sunday inclusive – 03:00 GMT to 05:00 GMT
Weekly	Sunday 18:00 to Monday 06:00 inclusive

- 1.16 Notice of planned maintenance will be given the Customer within 5 days of the Planned Maintenance Period wherever possible.
- 1.17 If a delay in resuming the SPINE services after planned maintenance is caused by the products and services outside of the control of Caretrack, then any outage created by the delay will not constitute a breach of the Service Agreement.

2 DIGITAL REFERRAL, ASSESSMENT AND REVIEW PORTAL APPLICATION

- 2.1 This clause describes the agreement between Caretrack and the Customer for the provision and support of the DRAR Portal Application and the integration into the Caretrack Services.

Scope

- 2.2 Caretrack will provide a licence to the Customer for use on the DRAR application.
- 2.3 Caretrack will provide a managed service to the Customer to connect to and maintain the connection with the DRAR and Caretrack.
- 2.4 Any issues or problems that occur which are identified as being the responsibility of the Customer, such as Customer site connectivity, are outside of the scope of the agreement.

Service Definition

- 2.5 The DRAR is a web application which enables service providers to submit referral details and supporting documents to a sub-ICB directly into their continuing healthcare patient management system via an API connection.
- 2.6 The digital forms functionality enables users to complete continuing healthcare referrals, including fast track tools, assessments, and review forms electronically.
- 2.7 Caretrack is responsible for the supply, maintenance and support of the DRAR and its integration with the Caretrack Services.

Customer Obligations

- 2.8 It is the Customer's obligation to provide and authorise access to the DRAR to Authorised Users. The Customer acknowledges that they will need to manage and maintain the Authorised Users on the DRAR who have permission to submit referrals to the Customer.
- 2.9 The Customer acknowledges that Caretrack may withhold or reject any Authorised User request, such Authorised user access request not to be unreasonably withheld.
- 2.10 The Customer and Authorised Users shall comply with all applicable laws, regulations and any policies governing the use of data.

Availability Definition

- 2.11 The provision of services through the DRAR, including: DRAR administration; submission of referrals; and the transfer of data between the DRAR and the Customer's continuing healthcare patient management system will be available 24 hours a day, 7 days a week, aside from during planned or unplanned maintenance work
- 2.12 Caretrack support services for the DRAR are available from 8:30 to 17:00 on a Business Day. Any fault with that occurs outside of these hours will be addressed at 08:30 on the next Business Day.

Service Availability

- 2.13 Any planned maintenance work to the DRAR application will be restricted to the following maintenance window:

Maintenance Type	Window
Planned Maintenance	Planned maintenance carried out during non-Normal Business Hours 08:30 – 17:00 UK time Monday – Friday
Planned downtime	Approved down time to deploy updates as agreed with the Customer
Unscheduled Maintenance	During Normal Business Hours where required to perform emergency maintenance

- 2.14 For planned maintenance, a minimum of 5 days' notice will be given to the Customer, where possible.
- 2.15 Unscheduled maintenance may be performed during Normal Business Hours. The Customer acknowledges that Caretrack will seek to give reasonable notice of unscheduled maintenance where possible.

3 BUSINESS INTELLIGENCE TOOL

SCOPE

- 3.1 Caretrack will provide a licence for use of the Business Intelligence Reporting Functionality.
- 3.2 Caretrack will provide a managed service to connect to and maintain the connection with the Business Intelligence Reporting Functionality and the Customer's software.
- 3.3 Any issues or problems that occur which are identified as being the responsibility of the Customer, such as Customer site connectivity, are outside of the scope of the agreement.

SERVICE DEFINITION

- 3.4 The Business Intelligence Reporting Functionality is a web application which enables Customers to access live dashboards that display continuing health care operational and performance data. Customers have the ability to filter, review and analyse the data within each dashboard. This enables the Customer to create their own view of performance.
- 3.5 The backing data that provides the performance data used within the dashboards can be extracted into Microsoft Excel for further analysis.

CUSTOMER OBLIGATIONS

- 3.6 It is the Customer's obligation to provide and authorise access to the Business Intelligence Reporting Functionality to Authorised Users. The Customer acknowledges that they will need to manage and maintain the Authorised Users on the Business Intelligence Reporting Functionality who have permission to run reports on behalf of the Customer.
- 3.7 The Customer and Authorised Users shall comply with all applicable Data Protections Laws as detailed within the Agreement

AVAILABILITY DEFINITION

- 3.8 The provision of Business Intelligence Reporting Functionality services will be available 24 hours a day, 7 days a week, aside from during Planned Maintenance or Unscheduled Maintenance work.
- 3.9 Caretrack's support services for the Business Intelligence Reporting Functionality are available from 08:30 to 17:00 on a Business Day. Any fault with that occurs outside of these hours will be addressed at 08:30 on the next Business Day.

SERVICE DEFINITION

- 3.10 Any planned maintenance work to the Business Intelligence Reporting Functionality will be restricted to the following maintenance window:

Maintenance Type	Window
Planned Maintenance	Planned maintenance carried outside of Business Hours
Planned downtime	Approved down time to deploy updates as agreed with the Customer
Unscheduled Maintenance	During Normal Business Hours where required to perform emergency maintenance

- 3.11 For Planned Maintenance, a minimum of 5 days' notice will be given to the Customer, whenever possible.
- 3.12 Unscheduled maintenance may be performed during Normal Business Hours. The Customer acknowledges that Caretrack will seek to give reasonable notice of Unscheduled Maintenance where possible.

4 REFERRAL PORTAL

Scope

- 4.1 Caretrack will provide a licence for up to 150 users on the CHS Referral Portal Application
- 4.2 Caretrack will provide a managed service to connect to and maintain the connection with the CHS Referral Portal Application ("Referral Portal") and Caretrack Services.
- 4.3 Any issues or problems that occur which are identified as being the responsibility of the Customer, such as Customer site connectivity, are outside of the scope of the agreement.

Service

- 4.4 This Contract assumes that the number of users logging onto and submitting referrals via the Referral Portal will not exceed 150 named users.
- 4.5 Caretrack reserves the right to make an additional charge for the Referral Portal if the number of ICBs supported increases or the number of users exceeds the level documented in this contract.

Service Definition

- 4.6 The Referral Portal is a web application which enables service providers to submit referral details and supporting documents to a sub-ICB directly into their continuing healthcare patient management system via an API connection.
- 4.7 Caretrack is responsible for the supply, maintenance and support of the Referral Portal and its integration with the Caretrack Services.

Customer Obligations

- 4.8 It is the Customer's obligation to provide and authorise access to the Referral Portal to Authorised Users. The Customer acknowledges that they will need to manage and maintain the Authorised Users on the Referral Portal who have permission to submit referrals to the Customer.
- 4.9 The Customer and Authorised Users shall comply with all applicable laws, regulations and any policies governing the use of data.

Availability Definition

- 4.10 The provision of services through the Referral Portal, including: Referral Portal administration; submission of referrals; and the transfer of data between the Referral Portal and the Customer's continuing healthcare patient management system will be available 24 hours a day, 7 days a week, aside from during planned or unplanned maintenance work
- 4.11 The provision of services through the Referral Portal, including: Referral Portal administration; submission of referrals; and the transfer of data between the Referral Portal and the Customer's continuing healthcare patient management system will be available 24 hours a day, 7 Days a week, aside from during planned or unplanned maintenance work.
- 4.12 CHS support services for the Referral Portal are available from 8:30 to 17:00 on a Business Day. Any fault with that occurs outside of these hours will be addressed at 8:30 on the next Business Day.

Service Availability

- 4.13 Any planned maintenance work to Referral Portal Application will be restricted to the following maintenance window:

Maintenance Type	Window
Planned Maintenance	Planned maintenance carried out during non-Normal Business Hours 08:30 – 17:00 UK time Monday – Friday
Planned downtime	Approved down time to deploy updates as agreed with the Customer
Unscheduled Maintenance	During Normal Business Hours where required to perform emergency maintenance

- 4.14 For Planned Maintenance, a minimum of 5 days' notice will be given to the Customer, where possible.

- 4.15 Unscheduled Maintenance may be performed during Normal Business Hours. The Customer acknowledges that Caretrack will seek to give reasonable notice of Unscheduled Maintenance where possible.

Schedule 2 – Hosted Software Schedule & Licence Fees

Client Information

Contract Reference:		
Customer:		
Address:		
End Client:		
Nominated Contact (1):		
Nominated Contact (2):		

Payment Schedule

Commencement Date:	
Initial Licence Term:	3 Years
Contract Term:	Commences on the Contract Commencement Date and terminates 3 years from the start of the Initial Licence Term.
Effective Service Date:	
Notice Period:	Six-month notice period.

Payment Profile	Annually Paid in Advance.	
Licence Basis:		
Licence Fees	Year 1	
	Caretrack Licence	
	DRAR	
	BIRF	
	Referral Portal	
	NHS Live SPINE service	
	Total per year	£00,000.00 + VAT
	Year 2	
	Caretrack Licence	
	DRAR	
	BIRF	
	Referral Portal	
	NHS Live SPINE service	
	Total per year	£00,000.00 + VAT
	Year 3	
	Caretrack Licence	
	DRAR	
	BIRF	
	Referral Portal	
	NHS Live SPINE service	
	Total per year	£00,000.00 + VAT

	Consultancy & Set Up Costs	
	Total	

SIGNED on behalf of Caretrack
Authorised Signatory
Full Name
Position
Date

SIGNED on behalf of NHS [ENTER NAME] Integrated Care Board
Authorised Signatory
Full Name (please print)
Position (please print)
Date

SCHEDULE 3 – CARETRACK SERVICES LEVELS AND SUPPORT SERVICES

1 PURPOSE

- 1.1 This schedule 3 describes the Service Level and Support Services provided for Caretrack.

2 SERVICES COVERED

- 2.1 The Support team supports call handling and management for the Caretrack. Primary Functions include:

- Call management
- Incident and problem management
- Change & release management
- User administration and support.

- 2.2 The support team will answer all calls and attempt a resolution where possible. In the event that a first time fix is not possible the incident will be routed to the appropriate Technician.

The following services are outside of the Agreement:

- Support or maintenance of software, accessories, attachments, computer hardware, systems or other devices not supplied by Caretrack;
- Diagnosis and/or rectification of problems not attributable to Caretrack Services
- Loss or damage caused directly or indirectly by operator error, omission or improper use of the software (see Clause 7).

3 FOR CLIENT HOSTED SOFTWARE ONLY

- 3.1 The support of Customer IT infrastructure is not within the scope of the Schedule.
- 3.2 If it is unclear whether an incident raised is related to the Caretrack or the Customer Hosted IT infrastructure, Caretrack will use reasonable endeavours, in conjunction with the Customer's IT Service, to determine the root cause of the issue and responsibility for resolution.
- 3.3 If the investigation outlined in clause 3.2 requires Caretrack to incur additional cost, Caretrack will pass these costs to the Customer if the responsibility for the fault rests with the Customer IT infrastructure. Caretrack will advise the Customer of any costs before any work commences.

4 CUSTOMER OBLIGATIONS

- 4.1 The Customer shall:
- 4.1.1 Ensure that Caretrack is used in a proper manner by competent trained Authorised Users
 - 4.1.2 Notify each software fault to Caretrack as it arises and shall supply Caretrack with a documented example of such fault;
 - 4.1.3 Co-operate fully with Caretrack in diagnosing any software fault;

- 4.1.4 Make available to Caretrack free of charge all reasonable facilities and services which are required by Caretrack to enable it to provide the support services including, without limitation, computer runs, memory dumps, telecommunications facilities, printouts, data preparation, office accommodation, typing and photocopying;
- 4.1.5 Not request, permit or authorise anyone other than Caretrack to provide any support services in respect of the Caretrack Services; and
- 4.1.6 Nominate a representative through whom all technical questions shall be put to Caretrack. The representative may be changed from time to time by written notice to Caretrack by the Customer.

5 SERVICE AVAILABILITY

- 5.1 Caretrack shall use all reasonable efforts to make the Caretrack Services available 24 hours a day, 7 days a week, during the licence term, except for:
- 5.1.1 Planned maintenance carried out during the maintenance window 22.00 to 02.00 UK time;
- 5.1.2 Planned downtime, approved by Caretrack and the client through the change and release management process; and
- 5.1.3 Unscheduled maintenance performed during normal business hours. The customer acknowledges that whilst Caretrack will try to give reasonable notice, unscheduled maintenance may be performed without any notice.

6 SUPPORT SERVICES

- 6.1 Caretrack will provide Support Services for problems that are a result of an error or defect within the software. Support Services will be provided during the Support Hours as set out below:

Term	Definition
Standard	08:30 to 17:00 during Normal Business Hours
Enhanced	No enhanced services agreed

- 6.2 Incidents and requests for change can be raised by in Support Service Hours via the Support Contact Number, email address or via online Support Services System detailed below.

Type	Method
Caretrack Portal	https://support.chshealthcare.co.uk
Support Telephone	01270 845000

- 6.3 Incidents and requests for change can be raised during and outside of Support Service Hours via email or via the online Support Services System and will be responded to within the support hours.

- 6.4 When reporting a problem, the customer shall provide the following information; (1) Customer ICB, name and contact number (2) details description of the problem, (3) number of users affected. Customer shall cooperate fully with Caretrack to achieve a resolution.
- 6.5 Incidents will be assigned a ticket number and will be dealt with priority order and in order of receipt.
- 6.6 A response time is the period of time between an incident being received by Caretrack during the Support Services hours and Caretrack communicating with the Customer.
- 6.7 Priority levels will be established initially by the Customer at the time the request is raised. If Caretrack disagrees with the Priority Level, the Support Services staff will contact the Customer to adjust the priority. In the event of a dispute in relation to Priority levels, Caretrack's decision shall be final.
- 6.8 Issue requests must be raised using the method set out in this agreement
- 6.9 This SLA agreement does not apply when
- 6.9.1 The problem has been a direct cause of the customers equipment, software or systems
- 6.9.2 The customer has not responded to requests from Caretrack in a timely manner
- 6.9.3 In circumstances that could reasonably be said to be beyond Caretrack's control, For instance: Floods, acts of god, etc
- 6.9.4 If the customer is in breach of contract for any reason
- 6.10 The Priority Levels and Response Times will apply during the Support Services Hours:

Incidents and Service Requests

Caretrack will always endeavor to resolve problems as quickly as possible.

However, Caretrack is unable to provide guaranteed resolution times, this is due to the varying amount and nature of issues that can arise.

in all cases the Caretrack will make its best efforts to resolve the problems as quickly as possible and update the customer during the process.

Priority	Definition	Example	Response Time
1 – Urgent / Not Usable	Total loss of Server/ System/Application/Network with major Business Critical Impact and no workaround or alternative service available.	• Total loss of service. • All users unable to access Caretrack • Financial implications must be resolved that day. • SQL database down • Incorrect data – IG risk.	1 hour
2 – High / Severe Limitation	As above but only impacts a minority of users or part of Caretrack is degraded or unusable. Remaining areas of system/ functionality available.	• System is unusable workaround available. • Financial Year-end issues • Reporting issue with high impact / financial/ no workaround available.	1-3 hours

3 Medium / Moderate limitation	Restricted functionality. Degraded service or difficult to use. NON-critical problem. OR Workaround or alternative available.	• Reporting issues with a workaround available. • Schedule issues. • User Permission issues. • Performance issues with a work around available or minimal impact • Password reset.	4- 6 hours
4 Low – Slight limitation or Request / Query	Minor disruption or inconvenience but user can continue with majority of job function, no Business Impact. Service Requests	• Requests to delete data/ file removal • Requests for information/ help or training • Request for change. • Help and Information • Training • Data Export • Date Cleansing • Date Import	Will resolve within our reasonable endeavors and where appropriate.

7 RESOLUTION

- 7.1 Aim of incident management is to 'restore normal service as quickly as possible'. The resolution could either be a temporary 'work around' or permanent fix. The Agent will advise the end user of the likely resolution time.
- 7.2 Caretrack will work with the Customer's users and any independent and third-party suppliers in matters directly concerned with the Provision of services.
- 7.3 During the Support Services Hours, Caretrack will provide suitably qualified and authorised staff to set up new users and to resolve queries raised by the Customer, and Authorised Users, in the use of the Caretrack Services. Services shall be performed primarily by telephone and electronic access to the Customer Caretrack database.

8 CHARGEABLE SERVICES

- 8.1 Services shall not be performed on the Customer's, or Authorised Users, premises. If the Customer requests any on-site support and where this is agreed to be provided, Caretrack reserves the right to charge for these services. This may include fault resolution, the provision of onsite training or process mapping.
- 8.2 Caretrack reserve the right to charge the Customer for services which are outside normal support services, including but not inclusive to;
- 8.2.1 Requests for additional reports.
- 8.2.2 Data mapping and cleansing.
- 8.2.3 Development of additional, or bespoke, Caretrack functionality.
- 8.2.4 Any ad-hoc services agreed with the Customer.
- 8.3 Caretrack shall reserve the right to charge the Customer for Support Services in the event that the number of support tickets on the same or related topic in a monthly period indicates a training

need for the Customer rather than a system fault. The Support Desk will advise the Customer of the training need and subsequent support will be chargeable.

9 MANAGEMENT INFORMATION AND REPORTING

9.1 Each month, Support Services will provide the following reporting;

9.1.1 A list of all named Users

9.1.2 Any exceptions on system usage or performance that require local review.

10 ISSUE ESCALATION

10.1 Caretrack Support Manager is dedicated to delivering the Support Services documented within this schedule. However, if any incident is not resolved within expectations, the following levels of escalation are available to progress the problem resolution:

Escalation Level	Contact	Name & Contact Details
Level 1	Support Services	01270 845000
Level 2	Support Manager	01270 845000
Level 3	Account Manager	01270 845000
Level 4	Software Operations Manager	07977 487283

SCHEDULE 4 – DATA PROTECTION

DEFINITIONS

In this Agreement:

Applicable Law	means any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the services are provided to or in respect of the common law and laws of equity as applicable to the parties from time to time, any binding court order, judgment or decree, any applicable industry code, policy or standard or any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Communication	means a complaint, inquiry or request (other than a Data Subject Request) relating to either party's obligations under Data Protection Laws relevant to this Agreement and/or the Processing of any of the Protected Data, including any compensation claim from a Data Subject or any notice, investigation or other action from a Data Protection Supervisory Authority relating to any of the foregoing;
Controller	has the meaning given to that term in Data Protection Laws;
Data Protection Laws	means, all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	has the meaning given to that term in Data Protection Laws;
Data Subject Request	means a request made by a Data Subject to exercise any right(s) of Data Subjects under the GDPR or under any similar Data Protection Laws in relation to any of the Protected Data or concerning the Processing of such data;
Personal Data	has the meaning given to that term in Data Protection Laws;
Personal Data Breach	means any actual or potential breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
Processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including Process , Processed and Processes shall be construed accordingly);
Processing Instructions	has the meaning given to that term in clause 2.1.1;
Processor	has the meaning given to that term in Data Protection Laws; and

- Protected Data** means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of Caretrack's obligations under this Agreement.
- UK GDPR** means the retained EU law version of the General Data Protection Regulation, Regulation (EU) 2016/679;

1 Processor and Controller

- 1.1 The parties agree that, for the Protected Data, the Customer shall be the Controller and Caretrack shall be the Processor.
- 1.2 Caretrack shall comply with the requirements of clause 5 of the main terms in connection with the processing of the Protected Data.
- 1.3 The Customer retains control of the Protected Data and shall comply with all Data Protection Laws in respect of the performance of its obligations under this Agreement and the processing of any of the Protected Data.

2 Instructions and details of processing

- 2.1 Insofar as Caretrack processes Protected Data on behalf of the Customer, Caretrack:
- 2.1.1 unless required to do otherwise by Applicable Law, shall (and shall ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause 2 and **Appendix 1** and as updated from time to time by the written agreement of the parties (**Processing Instructions**); and
- 2.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest).
- 2.2 Caretrack shall inform the Customer in writing if a Processing Instruction infringes the Data Protection Laws or any other Applicable Laws relating to data protection and explain the reasons for its opinion that the Processing Instruction is infringing, provided that this shall be without prejudice to clause 1.2.
- 2.3 The processing to be carried out by Caretrack under this Agreement shall comprise the processing set out in **Appendix 1**, and such other processing as agreed by the parties in writing from time to time.

3 Caretrack personnel

- 3.1 Caretrack shall ensure that access to Protected Data is limited to:
- 3.1.1 those individuals who require access to the Protected Data to meet Caretrack obligations under the agreement; and
- 3.1.2 the part or parts of the Protected Data that those individuals strictly require for the performance of their duties.
- 3.2 Caretrack will ensure that all individuals:
- 3.2.1 are informed of the Protected Data's confidential nature and use restrictions;

- 3.2.2 have undertaken training on Data Protection Laws relating to handling Personal Data and how it applies to their particular duties; and
 - 3.2.3 are aware both Caretrack's duties and their personal duties and obligations under the Data Protection Laws and this Agreement.
- 3.3 Caretrack shall ensure that all individuals who process Protected Data are subject to a binding written contractual obligation with Caretrack to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Caretrack shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

4 Subcontractors

- 4.1 Caretrack shall be entitled to engage another subcontractor (or any replacement) for carrying out any processing activities in respect of the Protected Data on the provision of 28 days written notice to the Customer in advance of any such engagement.
- 4.2 Caretrack will be deemed to have agreed to any subcontractor engaged in accordance with clause 4.1 and set out in Appendix 1, unless they provide Caretrack with any reasonable objections within the 28 day notice period set out at clause 4.1 above.
- 4.3 Caretrack may only authorise a third party (subcontractor) to process the Protected Data if:
 - 4.3.1 the Customer has not provided any objections as provided for in clause 4.2 above;
 - 4.3.2 Caretrack enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement and, upon the Customer's written request, provides the Customer with copies of such contracts;
 - 4.3.3 Caretrack maintains control over all Protected Data it entrusts to the subcontractor; and
 - 4.3.4 the subcontractor's contract terminates automatically on termination of this agreement for any reason.
- 4.4 Caretrack is permitted to use the approved subcontractors in **Appendix 1** for the provision of the service under or in connection with the Agreement.
- 4.5 Where the subcontractor fails to fulfil its obligations under such written agreement, Caretrack remains fully liable to the Customer for the subcontractor's performance of its obligations.

5 Assistance with the Customer's compliance and Data Subject Rights

- 5.1 Caretrack shall at the Customer's cost and expense:
 - 5.1.1 promptly record and then refer all Data Subject Requests it receives to the Customer within **two (2)** Business Days of receipt of the request;
 - 5.1.2 provide such information and cooperation and take such action as the Customer reasonably requests in relation to each Data Subject Request, within the reasonable timescales required by the Customer; and
 - 5.1.3 not respond to any Data Subject Request without the Customer's prior written approval.
- 5.2 Without prejudice to clause 2.1, Caretrack shall, at the Customer's cost and expense, provide such information, co-operation and other assistance to the Customer as the Customer requires (taking into account the nature of processing and the information available to Caretrack to ensure compliance with the Customer's obligations under Data Protection Laws, including with respect to:

- 5.2.1 security of processing;
- 5.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
- 5.2.3 prior consultation with a Data Protection Supervisory Authority regarding high risk processing; and
- 5.2.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or Communication, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.

6 International data transfers

- 6.1 **Appendix 1** lists all of the countries where Caretrack may receive, access, transfer or store Protected Data. Caretrack must not receive, access, transfer or store Protected Data outside the countries listed on **Appendix 1** without the Customer's prior written consent.

7 Records, information and audit

- 7.1 Caretrack shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer, containing such information as the Customer may reasonably require.
- 7.2 Caretrack shall make available to the Customer on request in a timely manner (and in any event within **three (3)** Business Days) such information as the Customer reasonably requires to demonstrate Caretrack's and the Customer's compliance with their respective obligations under Data Protection Laws and this Agreement.
- 7.3 Caretrack shall at the Customer's cost and expense to the Customer:
 - 7.3.1 allow for and contribute to audits, including inspections on reasonable notice, conducted by the Customer or another auditor mandated by the Customer for the purpose of demonstrating compliance by Caretrack and the Customer with their respective obligations under Data Protection Laws and under clauses 1 to 10 (inclusive) and any associated schedules; and
 - 7.3.2 provide (and procure) reasonable access upon prior notification for the Customer or such other auditor (where practicable, during normal business hours) provided that the Customer gives Caretrack reasonable prior notice of such audit and/or inspection to:
 - (a) the facilities, equipment, premises and sites on which Protected Data are held, and to any other equipment or facilities used in the provision of the services (in each case whether or not owned or controlled by Caretrack); and
 - (b) to any individuals who are processing the Protected Data.

8 Breach notification and communications

- 8.1 Caretrack will notify the Customer within **2 Business Day** in accordance with the requirements of **Appendix 2** if it becomes aware of:
 - 8.1.1 any potential or actual unauthorised or unlawful processing of the Protected Data; or
 - 8.1.2 any Personal Data Breach.
- 8.2 Promptly following any unauthorised or unlawful Protected Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Caretrack will reasonably co-operate with the Customer in the Customer's handling of the matter, including:

- 8.2.1 assisting with any investigation;
 - 8.2.2 providing the Customer with physical access to any facilities and operations affected;
 - 8.2.3 facilitating interviews with Caretrack's employees (and contractors), former employees (and contractors) and others involved in the matter; and
 - 8.2.4 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Laws or as otherwise reasonably required by the Customer.
- 8.3 Caretrack shall promptly (and in any event within 1 Business Day) inform the Customer by emailing the Customer if it receives a Communication and provide the Customer with full details of such Communication. Caretrack will not respond or otherwise deal with any Communication without first obtaining the Customer's prior written consent, except when law or regulation requires it, in which case Caretrack shall notify the Customer of this fact.
- 8.4 The Customer will cover all reasonable expenses incurred by Caretrack associated with the performance of the obligations under this clause 8.
- 9 Deletion or return of Protected Data and copies**
- 9.1 Caretrack shall (and shall ensure that all persons acting on its behalf and all individuals who are processing Protected Data shall) at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer after the earlier of:
- 9.1.1 the end of the provision of the relevant services related to processing of such Protected Data; or
 - 9.1.2 once processing by Caretrack of any Protected Data is no longer required for the purpose of Caretrack's performance of its relevant obligations under this Agreement, and securely delete existing copies (unless storage of any data is required by Applicable Law and, if so, Caretrack shall inform the Customer of any such requirement).
- 9.2 If any law, regulation, or government or regulatory body requires Caretrack to retain any documents or materials that Caretrack would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.
- 9.3 Caretrack will certify in writing that it has destroyed the Personal Data after it completes the destruction.

Appendix 1

Data Processing Instructions

Duration of the processing	Ongoing for the duration of this agreement.			
Processing instructions	Caretrack shall be storing, retrieving, managing and updating the Personal Data on behalf of the Customer. Caretrack shall also be permitted to share anonymised data with the Department of Health & Social Care to allow them to conduct analysis to understand more about who receives continuing healthcare and the patterns of uptake and funding.			
Location of processing	UK			
Type of Personal Data	Patient Data will be stored and includes: Name, Preferred Name, NHS Number, Date of Birth, Telephone, Mobile, Email, Patient Location, Gender, Marital status, Religion, Sexual Orientation, Ethnic Origin, First language, Disability, continuing healthcare referral data, DST			
Categories of Data Subjects	Patients of the Customer.			
Approved subcontractors	Name	Purpose for processing	Location of processing	Contact
	Cloud Rede	Software Development	UK	Christian Bolton Chief Executive Officer christian@cloudrede.com 01793230659 Cloud Rede Ltd www.cloudrede.com
	QuickSilva Limited	Systems integration & messaging services	UK	Mark Tovey Senior Business Development Executive mark.tovey@qxlva.com 01249 751 000 www.qxlva.comc
	Pulse Healthcare Limited	Software Hosting	UK	Steph Pritchard Director Group Delivery Services Steph.Pritchard@acaciumgroup.com www.acaciumgroup.com

Appendix 2

Breach Notification Form

All Personal Data Breaches must be notified to the Customer within 2 Business Day and in accordance with the provisions of Clause 8.1 and must contain as a minimum the following details:

1.	Full details of the nature of the Personal Data Breach	
2.	Full details of the categories and approximate number of data subjects concerned	
3.	Full details of the categories and approximate number of personal data records concerned	
4.	If the Personal Data Breach involved any other third parties the full details of those third parties (for example any sub-contractors)	
5.	The likely consequences of the Personal Data Breach	
6.	The measures taken to mitigate the Personal Data Breaches possible adverse effects	
7.	The name and contact details of the data protection officer or other contact point where more information can be obtained	

SCHEDULE 5 – AUTHORISED USER TERMS OF USE

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BY USING THE SOFTWARE YOU REPRESENT AND WARRANT THAT: (i) YOU ARE DULY AUTHORISED BY THE LICENSEE TO ACCESS AND USE THE SOFTWARE; AND (ii) YOU HAVE READ, UNDERSTOOD AND AGREE TO BE LEGALLY BOUND BY THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE YOU MUST NOT ACCESS OR USE THE SOFTWARE.

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 - 1.1.2. your ceasing to be authorised by the Licensor to use the Software.

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- 2.1. You shall not, directly or indirectly:
 - 2.1.1. use the Software or Documentation except as set forth in Section 1;
 - 2.1.2. copy the Software or Documentation, in whole or in part;
 - 2.1.3. modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;
 - 2.1.4. combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
 - 2.1.5. reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
 - 2.1.6. remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices included on or in the Software or Documentation, including any copy thereof;
 - 2.1.7. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to, or use of the Software, or any features or functionality of the Software, for any reason, to any other person or entity, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualisation, time-sharing, service bureau, software as a service, cloud, or other technology or service;
 - 2.1.8. use the Software or Documentation in violation of any law, regulation, or rule;
 - 2.1.9. use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to the Licensor's commercial disadvantage; or
 - 2.1.10. access, store, distribute or transmit any malicious code, or any material during the course of your use of the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property.

3. Compliance Measures.

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 - 3.1.2. prohibited under Section 2.
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5. Disclaimer of Liability.

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6. Governing Law.

- 6.1. These Terms of Use are governed by and construed in accordance with the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Terms of Use.

7. Acknowledgments.

- 7.1. You acknowledge that in the event of a breach or threatened breach or anticipated breach of these Terms of Use, damages alone may not be an adequate remedy for the Licensor and in addition to seeking any other remedy available at law or in equity, the Licensor is entitled to seek injunctive relieve for any breach or threatened breach.